



# NSW Ombudsman

## Annual Report 2001–2002

**accountable** /ə'kauntəbəl/

justify, explain, record, answer for, give reasons for

**transparent** /træns'pæərənt/

open, frank, clear, candid, understandable

**responsible** /rə'spɒnsəbəl/

reliable, consistent, rational



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## Letter to Parliament

October 2002

The Hon Meredith Burgmann MLC President Legislative Council Parliament House Macquarie Street Sydney NSW 2000	The Hon John Murray MP Speaker Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
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Dear Madam President and Mr Speaker

I am pleased to present our 27th annual report to the NSW Parliament.

This report contains an account of our work for the twelve months ending 30 June 2002 and is made pursuant to ss.30 & 31 of the Ombudsman Act.

The report also provides information about my office's functions under the Police Service Act and information that is required pursuant to the Annual Reports (Departments) Act, Freedom of Information Act and Disability Services Act.

The report includes updated material on developments and issues current at the time of writing (July–September 2002).

Yours sincerely



Bruce Barbour  
Ombudsman

# Foreword



As we find ourselves at the end of another busy reporting year, once again the office is looking to the future and preparing for change. In June 2002 Parliament passed legislation that will see the Community Services Commission become part of our office. It is anticipated that this will take place in December 2002. The challenges that this presents cannot be underestimated. It is a very exciting time in the life of the office.

I am indebted to our team of hard-working and dedicated staff members who continue to perform their work with professionalism and integrity, even during times of significant organisational change. This year many staff members had to move several times, adapt to structural changes in their teams and work with staff from the Community Services Commission to develop practical strategies to successfully integrate the work and systems of our two offices.

Over the years the office has developed as our functions have expanded. We have established ourselves as a leader in standards of service and effective administration. Our expertise in handling complaints, dealing with staff misconduct and fixing poor administration, within both public sector and private sector agencies, is well recognised.

We see change in many areas in which we work. Many services traditionally provided by the government are now provided by profit-driven organisations. It is imperative, particularly when the services are provided for the most vulnerable members of our society — children, people with a disability, homeless people — that standards of ethical conduct and accountability are maintained at the same level that we have come to expect from government agencies. Our office plays an integral role in preserving and promoting these standards. The upcoming merger provides a unique opportunity to take an active and comprehensive approach to this work.

As always, with all opportunities come particular challenges. Our office will soon expand by around 40 people. We will be responsible for several new and a broader range of functions. Significant work is already underway to ensure a smooth transition. With around 175 members of staff, we will need to be vigilant in ensuring that internal communication channels remain open and effective and that resources are used efficiently. Successful management of our own people and functions during a time of such change is essential to maintaining our reputation in the field of public administration. Over the next 12 months we will continue to work hard to maintain our standards of service and accountability.

Bruce Barbour  
**Ombudsman**



# About Us

## Who we are

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The NSW Ombudsman is an independent and impartial watchdog body. Our job is to make sure that the agencies we watch over fulfil their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

We are independent of the government of the day and accountable to the public through the NSW Parliament.

We are the State's Parliamentary Ombudsman. Our office was established by an Act of Parliament in 1975. Like many other Ombudsman around the world, the office was modelled on the Justice-Ombudsman created in Sweden in 1809. The primary purpose of that body was to investigate complaints about government administration. Loosely translated, the term Ombudsman means 'the citizen's defender' or 'representative of the people'.

Today, many countries have adopted the Ombudsman concept. There are more than 150 Ombudsman-type bodies affiliated to the International Ombudsman Institute. Australia has a Commonwealth Ombudsman and a Parliamentary Ombudsman in every State and Territory.

Every member of the public has the right to complain to us so much of our work is generated by complaints. We believe that complaints are one of the best sources of client and staff feedback on how an agency is performing. This is why we encourage agencies to set up and maintain effective complaint-handling systems so that they can use the information in complaints to improve the way they function.

Our key aim is to improve the delivery of services by NSW agencies to the public and our corporate goals reflect this objective.

## Corporate plan

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### Our vision

Fair, accountable and responsive administration in NSW agencies.

### Our mission

To promote good conduct and fair decision-making in the interests of the NSW community.

### Our goals

- to assist agencies to remedy deficiencies and improve their service delivery
- to be a cohesive and effective organisation
- to be accessible and responsive
- to be a leader in standards of service.

### Our values

In everything we do we will:

- act fairly, with integrity and impartiality
- treat individuals and organisations courteously and sensitively
- use resources efficiently and effectively
- ensure we are accessible to everyone.

### Our guarantee of service

We guarantee to give all matters referred to us proper consideration and attention. If we decide to investigate a matter we will do so as quickly as possible, acting fairly and independently.

If we decide not to investigate, we will provide reasons for our decision.

If there are alternative ways of dealing with a matter we will provide an explanation.

# What we do

Our office helps agencies in the public sector, and some in the private sector, to improve how they fulfil their functions and discharge their obligations. We use our experience and knowledge to help agencies identify problems in their systems and operations, solve those problems and improve the way they function.

Our mandate is to improve the conduct and decision-making of agencies within our jurisdiction. Traditionally, we fulfilled this mandate by responding to complaints and recommending improvements to the way agencies perform in relation to individual matters and broader issues.

In more recent times we have been given the role of overseeing systems and individual investigations of the police and agencies providing children's services. We also keep under scrutiny the implementation of certain legislation.

## Our jurisdiction

We currently have jurisdiction in relation to:

- several hundred state public sector agencies, including departments, statutory authorities, area health services and NSW Police
- 192 local and county councils
- various private sector agencies such as the operators of Junee Gaol, private certifiers (who sometimes perform certain local council functions) and accreditation bodies for those private certifiers
- over 7,000 agencies providing children's services, non-government schools, child care centres and agencies providing substitute residential care.

This translates to over 360,000 public sector employees and over 100,000 people who work for private agencies providing children's services. Almost 16% of all the people employed in NSW come within our jurisdiction.

Although our jurisdiction extends over many private agencies and individuals, our primary focus is still the conduct of public sector agencies and public sector staff. The agencies we receive the most complaints about are the police, corrective services and local councils.

At the end of 2002 the Community Services Commission will be merged with this office (please see 'Management Overview'). This means that in the future we will be involved in improving the quality and standards of care within the community services sector. This includes both public and private agencies providing community services such as accommodation, respite care, home and community care, information services and other services to help children, young people, people with disabilities, older people, parents and foster carers.

### Complaints about water, electricity, gas, banking and telephone services

You should contact one of the *Industry Ombudsman* about these kinds of complaints. Some of the main Industry Ombudsman are the Energy and Water Ombudsman NSW, the Telecommunications Industry Ombudsman and the Banking Industry Ombudsman.

In many ways, these *Industry Ombudsman* act similarly to traditional Parliamentary Ombudsman but only in relation to the individual industry concerned.

### Using the name Ombudsman

Over the years we have been pleased to see many agencies recognise the value of establishing systems to handle complaints made about them. Sometimes agencies, particularly local councils and universities, have set up a separate complaint-handling body and called it an Ombudsman.

In some other countries, only the Parliamentary Ombudsman is permitted to use the name. We are comfortable with others using the word Ombudsman in their name as long as—

- they publicly distinguish themselves from our office, because we are independent of both the government of the day and all the agencies we oversee
- the name is clear enough that the public cannot confuse them with our office
- their policies and practices ensure that they are as independent as possible from the agency that they handle complaints about
- their standards of service and professionalism are of the highest quality, to protect the reputation of all of us who share the name.

## Our legislative functions

We have the following responsibilities under a range of legislation.

### Investigating and resolving complaints

<ul style="list-style-type: none"> <li>complaints about NSW public sector agencies including local councils, government departments, the commercial activities of universities and the conduct of entities controlled by universities</li> <li>child abuse allegations against employees of agencies providing children’s services and complaints about how such an allegation was handled by the agency concerned</li> </ul>	<p><i>Ombudsman Act 1974</i></p> <p>Legislation for each NSW university, as amended by the <i>Universities Legislation Amendment (Financial and Other Powers) Act 2001</i></p>
<ul style="list-style-type: none"> <li>complaints about how agencies have handled freedom of information applications and the merits of their decisions</li> </ul>	<p><i>Freedom of Information Act 1989</i></p>
<ul style="list-style-type: none"> <li>complaints about officers and complaints about the way such complaints are investigated by the police</li> </ul>	<p><i>Police Act 1990 (formerly the Police Service Act 1990)</i></p>
<ul style="list-style-type: none"> <li>protected disclosures from public sector staff / officials about maladministration</li> </ul>	<p><i>Protected Disclosures Act 1994</i></p>
<ul style="list-style-type: none"> <li>complaints from participants in the witness protection program</li> </ul>	<p><i>Witness Protection Act 1995</i></p>

### Assessing and reviewing complaints and notifications and monitoring investigations

<ul style="list-style-type: none"> <li>receive notifications of any child abuse allegation or conviction against an employee of certain agencies</li> <li>monitor the progress of the agency’s investigation into the matter</li> <li>determine whether a matter was properly investigated and whether appropriate action was taken as a result of the investigation</li> </ul>	<p><i>Ombudsman Act 1974</i></p>
<ul style="list-style-type: none"> <li>assess decisions of the police not to investigate a complaint of police misconduct — we decide whether they should be investigated and, if so, require the police to investigate these complaints</li> <li>monitor the progress of an investigation</li> <li>determine whether a complaint not requiring investigation was properly dealt with</li> <li>determine whether a complaint requiring investigation was properly investigated in a timely manner</li> </ul>	<p><i>Police Act 1990</i></p>

### Keeping systems under scrutiny

<ul style="list-style-type: none"> <li>the systems established by certain agencies to prevent child abuse by the agency’s employees and to handle and respond to child abuse allegations or child abuse convictions involving employees</li> </ul>	<p><i>Ombudsman Act 1974</i></p>
<ul style="list-style-type: none"> <li>the systems established by the police to deal with complaints about officers</li> </ul>	<p><i>Police Act 1990</i></p>
<ul style="list-style-type: none"> <li>compliance by law enforcement agencies with accountability requirements relating to the use of telephone intercepts and undercover operations</li> </ul>	<p><i>Law Enforcement (Controlled Operations) Act 1997</i></p> <p><i>Telecommunications (Interception)(NSW) Act 1987</i></p>

### Hearing appeals

<ul style="list-style-type: none"> <li>hear appeals against certain decisions and orders made by the Commissioner of Police about participation in the witness protection program</li> </ul>	<p><i>Witness Protection Act 1995</i></p>
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### Keeping legislation under scrutiny

<ul style="list-style-type: none"> <li>scrutinise the implementation of various legislative schemes and requirements</li> </ul>	<p>Various Acts</p>
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## Handling complaints: a snapshot

When we receive a complaint, we assess it on its merits to decide how we should handle it. Some complaints are outside our jurisdiction. Others are police complaints which we generally oversee rather than investigate ourselves. Many complaints could be more effectively dealt with by the agency concerned, or another body, so we will not intervene. Sometimes the complainant has a reasonable alternative, such as legal action. Other times the complaint is too old, or finding a practical solution to the complainant's grievance is unrealistic.

We do not have the resources to resolve every complaint we receive but we do give reasons if we decide to decline a complaint. We try to resolve complaints we do take on in a practical way. We do not take sides. Our aim is to find a reasonable

solution that addresses any justified concerns of the complainant as well as broader more systemic public interest issues. We focus mostly on allegations of serious misconduct or abuse of power and issues of a systemic nature.

We focus on agencies and their systems, rather than individuals. We are able to use Royal Commission powers if necessary. If we uncover systemic problems, we work with the agency to address the issues and develop improvements.

We must do most of our work in private, but we have the power to bring any continuing concerns that we have about a particular issue or organisation to the attention of the public through a special report to Parliament.

## Keeping systems under scrutiny

We have had many years experience in handling complaints. One of our key messages has been that complaints, whether they come externally or from employees, provide useful feedback on how agencies are performing. The effective management of complaints is therefore crucial to improving performance.

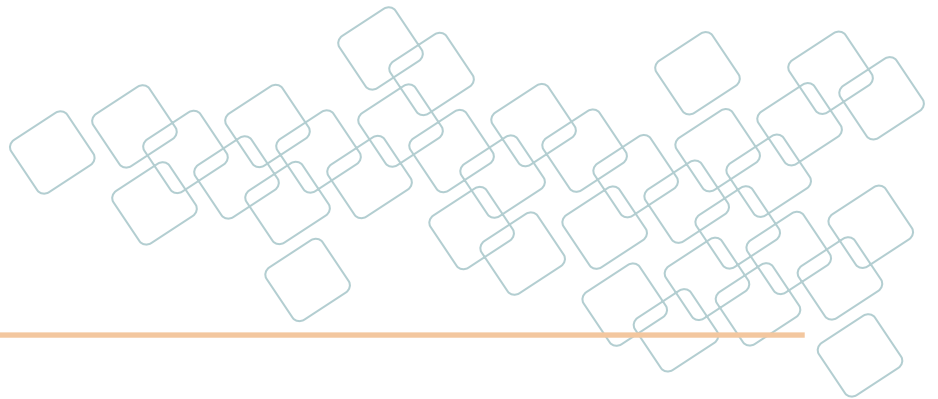
We currently have the power to keep under scrutiny the complaint-handling systems of the police and agencies providing services to children. After the merger of the Community Services Commission into our office, we will also be keeping under scrutiny the systems that agencies providing community services have in place to handle complaints.

## Keeping legislation under scrutiny

Over recent years, Parliament has turned to this office as a safeguard mechanism when it has introduced laws expanding administrative powers arguably at the expense of civil liberties. This year, Parliament required us to monitor the implementation of several new laws, including laws giving police powers to:

- enter and search suspected drug premises and arrest people on those premises
- establish a child sex abuse offenders register
- use sniffer dogs to detect the presence of drugs on members of the public.

Our task is to make sure that the powers are exercised and the schemes are implemented in a fair, accountable and reasonable way.



# Our organisation

## Our staff

We recognise that our staff are our most important resource and the success of the office depends on them.

The people who work for us come from a wide range of backgrounds including state, federal and overseas police, other investigative backgrounds, state and local government, town planning, youth, community and social work, child protection, journalism, teaching and the law.

This unique mix of people and expertise ensures that we thoroughly understand the workings of the agencies within our jurisdiction and can consistently make positive and useful recommendations.

We have a dedicated team of 135 officers working on either a full or part-time basis. The team is an energetic and diverse mix of experience and new faces. While almost 50% of our staff started less than two years ago, about 15% have been with the office for over 10 years. For more details about our staff, please see 'Corporate support'.

## Our team structure

Our office is divided into four teams — the general, police and child protection teams, each headed by an Assistant Ombudsman, and the corporate support team, led by the Manager Corporate Support.

### The general team

The work of the general team is very broad. They:

- resolve, conciliate and investigate complaints about all NSW public sector agencies (except the police), including complaints about local councils, freedom of information applications and protected disclosures
- assist and refer people who telephone or visit the office to make inquiries

- provide constructive advice and guidance to agencies on a range of issues relating to good administration and complaint-handling
- audit records of investigative agencies undertaking covert operations and using telephone intercepts
- hear appeals and handle complaints from participants in or applicants to the witness protection scheme
- visit juvenile justice centres and correctional centres periodically
- conduct customer service audits
- provide training in conducting investigations and complaint management.

There are more details about the work of the team in 'Scrutiny', 'Investigations and complaint resolution' and 'Appeals'.

### The police team

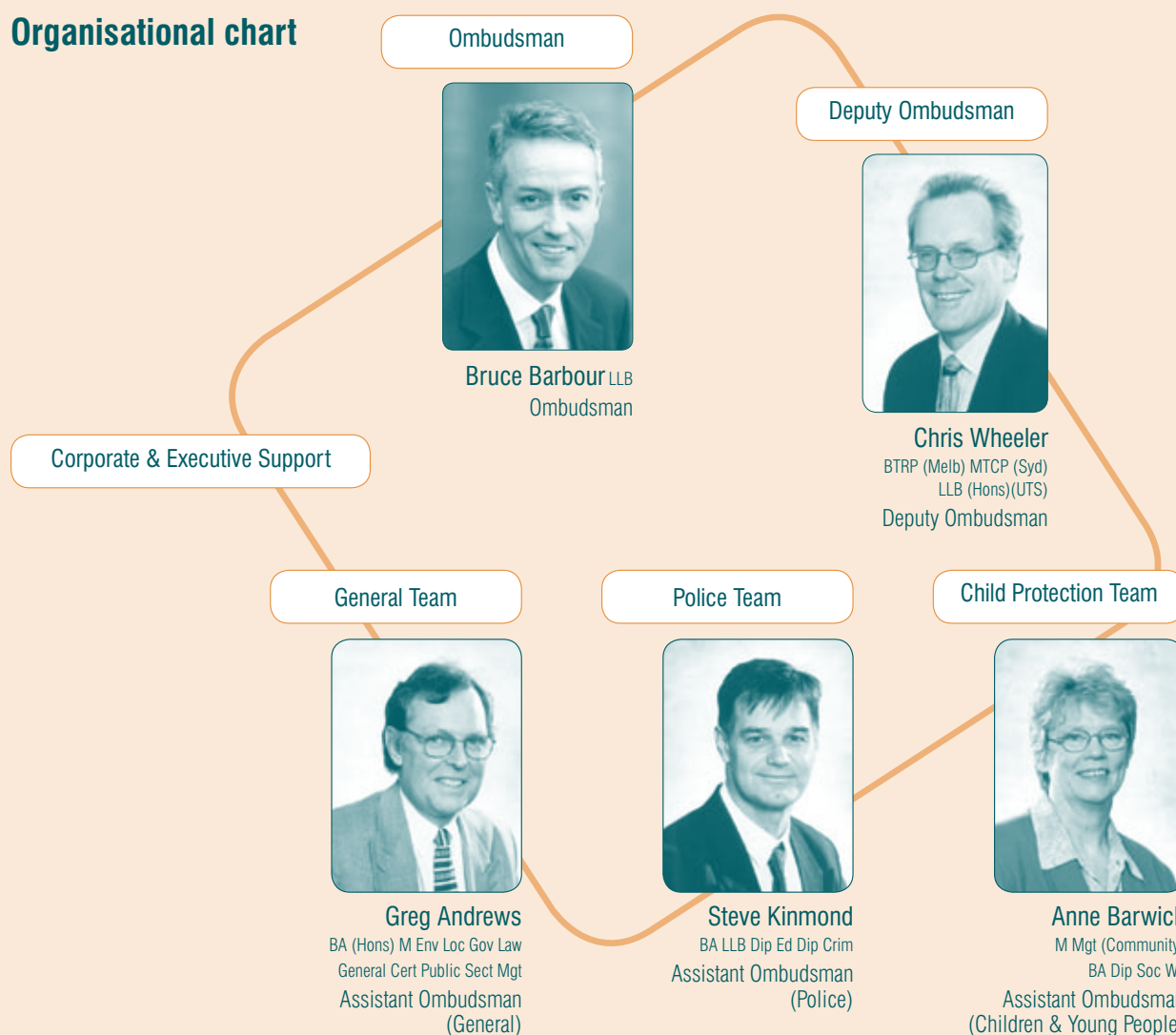
The police team deals exclusively with NSW Police (the police). They:

- oversight the investigation of individual complaints about police officers
- directly investigate matters that have not been properly investigated by the police
- facilitate the resolution of complaints, particularly where ongoing relationships between police officers and the community are at stake
- keep the police's complaint-handling system under scrutiny
- work with the police to improve the way complaint-related information is analysed and used to improve organisational performance and the management of individual officers
- keep under scrutiny the implementation of new legislation giving police additional powers.

The work of the team is discussed in detail in 'Scrutiny'.



## Organisational chart



### The child protection team

The child protection team is responsible for ensuring that agencies comply with their child protection obligations under Part 3A of the *Ombudsman Act 1974*. They:

- oversight and monitor the investigation of individual child abuse allegations
- directly investigate matters which have not been properly investigated
- keep under scrutiny the systems established by agencies for preventing child abuse by their employees and for handling child abuse allegations
- educate and advise agencies about their reporting obligations, how to establish child protection systems, how to properly respond to allegations of child abuse, how to conduct effective investigations, and how to properly respond to investigative findings that allegations have been substantiated

- conduct research into trends and patterns of abuse to help develop a strong foundation for future child protection strategies.

The work of the team is discussed in detail in 'Scrutiny'.

### The corporate support team and the executive

The corporate support team and the executive are responsible for:

- providing personnel, information technology and financial services
- managing the office's public relations and producing a wide range of publications, including reports, guidelines, fact sheets, brochures and posters
- records and document management, mail and library services
- managing and coordinating office-wide projects and policies.

The work of the team is discussed in detail in 'Corporate support'.

# Highlights

## Goal 1 To assist agencies to remedy deficiencies and improve their service delivery

### Strategies

Agencies assisted to address deficiencies in service delivery and conduct

Focus our resources on complaints that relate to systemic issues or serious abuse of power

Assist agencies to improve customer service through such things as agency liaison, review of agencies' policies, provision of training

Develop and review guidelines to assist agencies in relation to service delivery and good conduct issues

### Highlights for this year

Issued three special reports to Parliament: two about NSW Police and one about DoCS

Successfully implemented initial stages of a new information system to record and track complaints about NSW Police

Assisted NSW Police develop a new protocol for removing officers through 'Commissioner's confidence' provisions

Provided training to almost 1,000 agencies to increase awareness of child abuse allegation reporting obligations.

Audited the quality of the systems for preventing and responding to child abuse allegations in a number of special schools for children with disabilities

Our recommendations have led to the NSW Aboriginal Land Council providing a higher level of assistance to local land councils to comply with statutory requirements

Provided significant input into the preparation of the *Aboriginal Land Rights Amendment Act 2001*

The Department of Housing agreed to give reasons in writing for appellable decisions as a result of our involvement

Following our intervention the State Debt Recovery Office amended its policy to provide guidance about the lifting of sanctions in cases of hardship when a time to pay agreement has been entered into

Joined the steering committee to establish the Corrective Services Support Line, designed to handle phone inquiries and complaints

Published enforcement guidelines for local government and the 4<sup>th</sup> edition of our protected disclosures guidelines

Conducted 19 fee-for-service workshops on various aspects of complaint handling, including 10 in regional areas

### Future

Work to improve disclosure mechanisms for non-pecuniary conflicts of interest in local councils

Examine conditions in court complex cells controlled by the Department of Corrective Services and review their processes for banning visitors to correctional centres

Expand the range of audit activity to improve complaint-handling practices by police local commands

Trial innovative complaint handling practices in select areas and evaluate the results

Help NSW Police develop and improve measures for assessing its complaint handling performance

Audits and investigations aimed at assessing and improving NSW Police strategies for working with Aboriginal communities

Extension of our audit of special purpose schools for children with disabilities within the next year

Audits of independent schools particularly those with boarding facilities

Make a submission to Planning NSW about clarifying obligations on councils in dealing with applications under tree preservation orders

## Goal 2 To be a cohesive and effective organisation

### Strategies

Structures and operational practices of the office maximise flexibility, cohesion and efficiency

Staff are supported as main resource of office

Improve sharing of knowledge and information across the office

### Highlights for this year

Determined cross-team benchmarks for common functions

Increased the number of investigations conducted by the general team and reduced the timeframes to complete them

Developed a new investigation training course for our staff

Implemented a successful restructure of the police team to streamline our work, complete more direct investigations and complete almost double the number of projects on systemic issues than last year

Improved documentation of administrative procedures in the child protection team

### Future

Implement a document management system across the office

Pilot the investigation training course and revise the course as required

Monitor and review the effectiveness of the new inquiry and resolution team

Review all relevant policies and procedures to develop appropriate and consistent approaches for the new functions arising from the merger of the Community Services Commission with our office

**Goal 3 To be accessible and responsive**

<b>Strategies</b>	<p>Implement effective access and awareness and information programs</p> <p>Consider the views of people we deal with</p>	<p>Maintain a strong identity to ensure continuing relevance and better recognition</p>
<b>Highlights for this year</b>	<p>Conducted extensive training for principals of independent schools and disability service providers</p> <p>Participated in a number of forums involving agencies providing services to Aboriginal children</p> <p>Helped local council and police to develop local protocols to improve their contact with homeless people</p> <p>Strengthened strategic relationships with key agencies in the community</p>	<p>Responded to complaints about police from young people in Coonabarabran by arranging community meetings which included representatives from the police, the shire council, elders and youth groups to discuss issues and concerns.</p> <p>Kept key police personnel at regional and local command levels regularly informed of complaint performance data</p> <p>Provided training to frontline officers about the complaints system at the Police College, local commands and specialist training sessions</p>
<b>Future</b>	<p>Review our access and awareness strategies</p> <p>Expand our work with key organisations, targeting the concerns of a range of key community groups and agencies</p>	<p>Further educative strategies with privately owned and operated child care centres</p>

**Goal 4 To be a leader in standards of service**

<b>Strategies</b>	<p>Have in place appropriate internal standards and policies relating to administrative conduct</p> <p>Continue to improve the quality of our service</p>	<p>Provide effective and meaningful reporting and performance measurement strategies</p> <p>Ensure best practice in complaint handling, investigative and other practices</p>
<b>Highlights for this year</b>	<p>Implementing a targeted training program and ongoing spot audits/reviews of files to address deficiencies in our own practices</p> <p>Rollout of a new system to provide for more rigorous management of projects in the police team</p> <p>Formalised the risk management framework in the police team</p> <p>Back-captured information from 2,000 child protection files and audited those files to check our consistency in decision making</p>	<p>Regularly reviewed our turn around times for dealing with matters and found that some agencies were taking excessive time to finalise matters</p> <p>Revised the general team procedures manual</p> <p>Introduced a further premature complaint protocol by referring non-priority complaints to public sector agencies for internal review</p>
<b>Future</b>	<p>Review and refine our internal processes to ensure timely and high quality advice to agencies we oversight</p> <p>Propose legislative change for ongoing reforms to complaints processes</p> <p>Ensure successful implementation and use of intelligence from new police-Ombudsman complaint information systems</p>	<p>Finalise and issue a supervisor's and induction manual</p> <p>Issue standard templates and style guidelines to guide staff in preparing correspondence</p> <p>Review all team procedure manuals to ensure consistency of approach wherever possible</p>

# Management Overview

## Where we are now: a snapshot

### Year at a glance

#### Complaints, notifications and oral inquiries

This year we received 8,292 written complaints and notifications (see fig 1) and 26,449 oral inquiries (see fig 2).

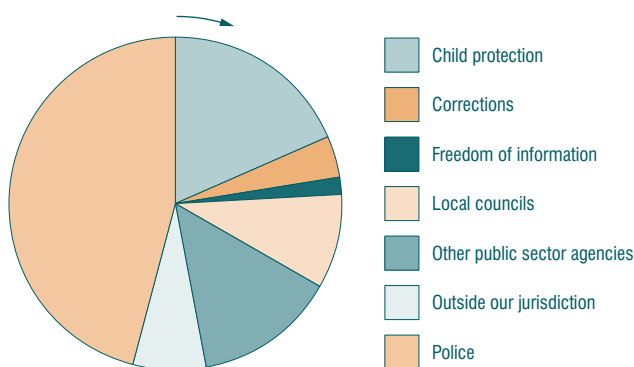
Some complaints were from members of the public and employees of agencies within our jurisdiction and some were referred to us by the police or other complaint-handling bodies. More than 10,500 oral and written complaints were made about matters that are outside our jurisdiction (see fig 3). This is comparable to last year. We gave referral advice and information in these cases.

The number of complaints referred from the police this year is less than previous years because we expanded our class or kind agreement with them. This means that the police don't need to notify us of complaints about relatively minor matters.

The law also requires certain agencies providing children's services to report allegations of child abuse against their employees to us. We call these matters 'notifications'.

The legislative schemes under which we receive complaints and notifications and the specific processes that we use to assess and act on them are explained in greater detail in 'Investigations and complaint resolution', 'Police' and 'Child protection'.

Figure 1:  
Written complaints and notifications received



	00/01	01/02
Child protection *	1435	1528
Corrections	379	334
Freedom of information	137	138
Local councils	959	760
Other public sector agencies	1249	1140
Outside our jurisdiction	639	588
Police	5022	3804
<b>Total</b>	<b>9820</b>	<b>8292</b>

\* Does not include notifications about police officers

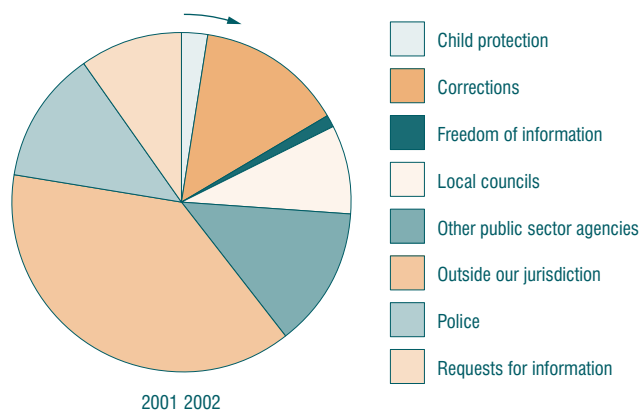
### How we responded

We do not finish our work with every complaint, notification or inquiry on the day that it is received. If something can be quickly resolved, it may take only days to finalise. On the other hand, a full-scale investigation can take some time to complete. This is why some of the matters we received during 2001–2002 are still being dealt with and some matters we completed during the year were received before the reporting period.

During 2001–2002 we finalised 9,164 written complaints and notifications (see fig 4). As fig 5 shows, over 40% of complaints we handled in our general jurisdiction were resolved after preliminary inquiries or an informal investigation, about a quarter were outside our jurisdiction and over 30% were not taken any further for a variety of reasons, such as:

- complaints that were premature because the agency concerned had not had a chance to address the matter itself — we advised these complainants to complain to the agency
- complaints where the complainant had a reasonable alternative means of redress
- complaints that were quickly resolved by our staff providing advice or an explanation.

**Figure 2:**  
Oral complaints and inquiries received



	00/01	01/02
Child protection	939	661
Corrections	3331	3715
Freedom of information	312	306
Local councils	2409	2247
Other public sector agencies	3690	3546
Outside our jurisdiction	9751	10111
Police	3639	3354
Requests for information	2493	2593
<b>Total</b>	<b>26564</b>	<b>26533</b>

We conducted 33 formal investigations into complaints in our general jurisdiction and made adverse findings in 20 of them. In the remaining matters, the agency concerned took action that resolved the issues to our satisfaction without the need for a formal report.

This year we intervened to investigate directly 22 police complaints and seven child abuse notifications, and directly monitor 10 police complaints and 21 child abuse notifications. In the majority of matters notified, we were satisfied that the investigation was conducted properly and more direct intervention was not required.

### Special reports to Parliament

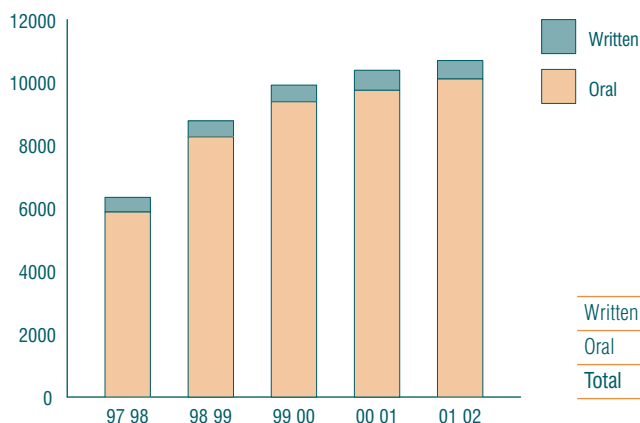
Sometimes our work uncovers a state of affairs that is too important to keep private. We are able to make a special report to Parliament if it is in the public interest to do so.

This year we made three special reports to Parliament, two about NSW Police and one about the Department of Community Services —

- Improving the management of complaints: Identifying and managing officers with complaint histories of significance
- Speedometers and speeding fines: A review of police practice
- DoCS — Critical Issues: Concerns arising from investigations into the Department of Community Services.

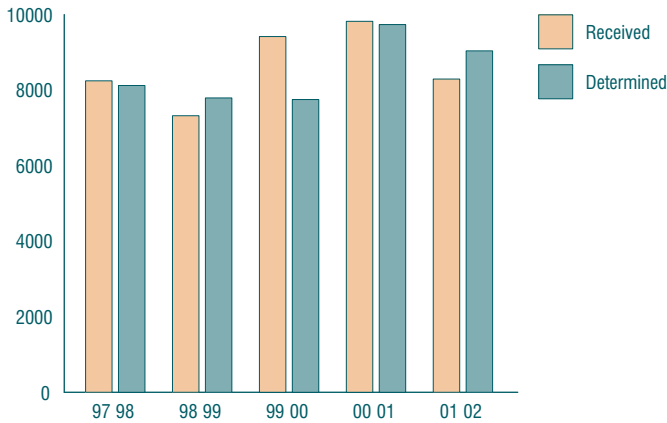
There was significant media interest in each of those reports. Public debate about some very important issues was stimulated and better informed as a result.

**Figure 3:**  
Complaints received about matters outside our jurisdiction – five year comparison



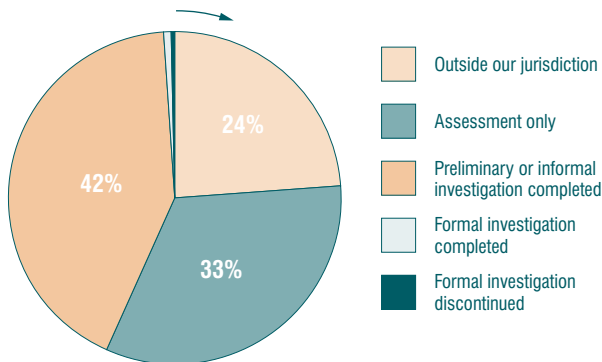
	97/98	98/99	99/00	00/01	01/02
Written	467	510	530	639	588
Oral	5882	8271	9388	9751	10111
<b>Total</b>	<b>6349</b>	<b>8781</b>	<b>9918</b>	<b>10390</b>	<b>10699</b>

**Figure 4:**  
Written complaints and notifications determined



	00/01	01/02
Child protection	1487	1499
Corrections	392	349
Freedom of information	188	157
Local councils	956	809
Other public sector agencies	1177	1238
Outside our jurisdiction	630	611
Police	4904	4501
<b>Total</b>	<b>9734</b>	<b>9164</b>

**Figure 5:**  
General complaints determined



\* This figure shows how we determined complaints in our general jurisdiction only. Please see Appendix F for full details.

### Balancing the books

This year we received a total of \$11.78 million in funding (see fig 6). We were granted extra funding for additional accommodation, our security review and for our new legislative review functions.

Most of our revenue is spent on employee-related expenses. These include salaries, superannuation entitlements, long service leave and payroll tax. In 2001–2002 we spent approximately \$8.8 million on employee-related expenses and \$2.2 million on the day-to-day running of the office (see fig 7).

### Our people

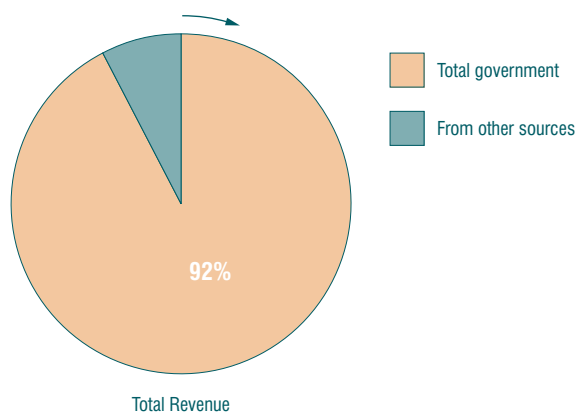
A total of 135 people work for the office. Fig 8 (equivalent full-time staff levels) shows how we have grown over the past 5 years. We have had to increase our staff because of our expanding jurisdiction and increased workload. Our legislative reviews and child protection functions continue to expand with increasing numbers of notifications.

The majority of our staff are employed on a permanent full-time basis. We also have 23 part-timers and 31 temporary staff.



(l-r) Lin Phillips, receptionist, and Wendy Parsons, inquiries officer, at our reception with a member of the public.

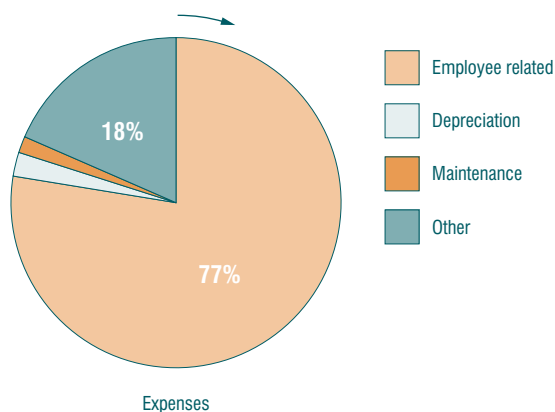
Figure 6:  
Total revenue 2001–2002\*



Government	\$
Recurrent appropriation	9,611,000
Capital appropriation	358,000
Acceptance of superannuation and long service leave	916,000
<b>Total government</b>	<b>10,885,000</b>
<b>From other sources</b>	<b>898,000</b>
<b>Total</b>	<b>11,783,000</b>

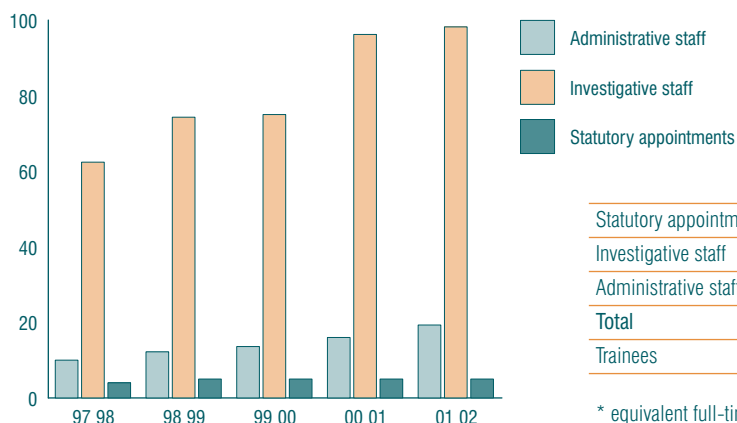
\* including capital funding and acceptance employee entitlements

Figure 7:  
Total expenses 2001–2002



	\$
Employee related	8,817,000
Depreciation	267,000
Maintenance	183,000
Other	2,098,000
<b>Total</b>	<b>11,365,000</b>

Figure 8:  
Staff levels – five year comparison\*



	97/98	98/99	99/00	00/01	01/02
Statutory appointments	4	5	5	5	5
Investigative staff	62.4	74.3	75	96.2	98.2
Administrative staff	10	12.2	13.6	16	19.3
<b>Total</b>	<b>76.4</b>	<b>91.5</b>	<b>93.6</b>	<b>117.2</b>	<b>122.5</b>
Trainees	1	1	1	1	0

\* equivalent full-time



Bruce Barbour, Ombudsman, addresses one of our monthly staff meetings.

## Merger of the Community Services Commission

The most significant challenge we are currently facing is the merger of the Community Services Commission (CSC) with this office. This is expected to happen on 1 December 2002.

On 27 June 2002, the NSW Parliament passed the *Community Services Legislation Amendment Act 2002*. The effect of this Act is that the current functions of the CSC are to be performed by our office.

We will also be responsible for performing a variety of new functions including:

- reviewing certain deaths of children and people with a disability in care
- scrutinising the running of boarding houses through an expanded community visitor program
- keeping under scrutiny the systems of community service providers for handling complaints relating to their conduct or provision of services.

Last year, we reported that our role in relation to complaints about the Department of Community Services had expanded following legal advice obtained by the Minister for Community Services that certain complaints were outside the jurisdiction of the CSC. This particularly included complaints about certain child protection and out of home care matters. The jurisdictional issue has been resolved by the merger. Those matters will continue to be the responsibility of the Ombudsman, with the work to be carried out by a new division to be called the community services division.

The impact of the merger on our office will be significant. Our staff numbers will increase by around 40 to around 175. Our jurisdiction will expand further into the private sector and we will perform a number of new and distinct functions. As a result, we will have an unprecedented capacity to oversee systematically the systems that are in place to protect children in NSW.

The preparations needed to ensure a smooth and successful merger will also be significant. Our challenge is to bring together two organisations, with their individual priorities, practices and cultures without compromising the core work for which we are still responsible. We have already had extensive negotiations and consultations with the CSC and will report on the results of the merger in next year's annual report.



## Other significant corporate projects

### Accommodation

This year we secured additional accommodation to meet our existing and future needs. We are in the process of upgrading accessibility for people with physical disabilities, fitting-out and moving staff into the new accommodation and installing more functional workstations.

### PCCM, document management and security upgrade

We have continued to be involved in the police complaints case management (PCCM) project this year. The project is a major initiative sponsored by the Premier's Department and involving NSW Police, the Police Integrity Commission and our office. The project aims to create an integrated database to help improve the collection, monitoring and analysis of complaints about police and complaint-related data.

To ensure the security of that information, we are putting in place new technology and infrastructure to upgrade office and information security. We aim to receive accreditation under the Australian standard for information security AS7799 and are well on track to being one of the first NSW agencies to achieve this. The upgrades are nearly completed.

As part of the PCCM project, we also needed to develop a new enterprise document management system (EDMS) for documents relating to police complaints. The Ombudsman recognised the importance of expanding the scope of the EDMS across the whole office and his proposal for funding to do this was approved. A project manager and information manager were recruited to develop the EDMS and substantial work has been done on revising our information management policies and procedures.

A tender process has been conducted and a contractor engaged to implement the system. We expect this project will deliver significant improvements to the way we store, maintain and retrieve information and documents.

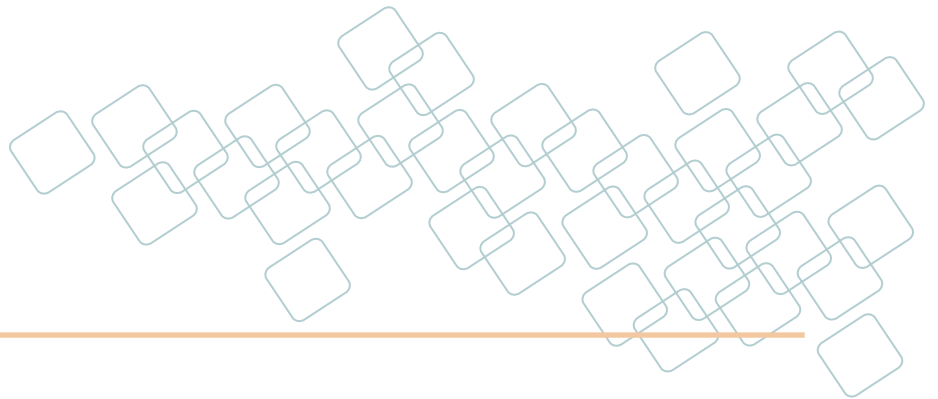
### Cost savings

While the government has agreed that all public sector staff receive a 16% pay increase between January 2000 and December 2003, they only provided funding for 10%. This office, like other agencies, has had to develop productivity-based savings strategies to fund the balance. Although we have done considerable work in reviewing our processes and spending patterns, it is unlikely that we can find the savings required without reducing our staffing levels. This will significantly affect our delivery of services to the public.

The government also wants smaller agencies to share corporate services. We find this problematic because we need to maintain our independence from the bureaucracy we oversee plus we already run a very efficient corporate support section. We expect more negotiations to take place in relation to these 'savings' issues in the coming year.



*Members of staff moving into new workstations.*



# How we operate

We pride ourselves on the quality of our work and the standard of our service. Our reputation for maintaining high standards in administrative conduct is important because it helps ensure that agencies accept our advice and implement our recommendations. We aim to lead by example and focus on practical outcomes that do the most good for the most people.

The environment in which we operate is never static so we have developed the ability to be flexible and adapt to change. We continually monitor our performance to identify areas for improvement and then work towards making those improvements.

We have found that employing and developing specialist staff is the most effective way of fulfilling our various functions. We also make sure that corporate knowledge is shared and work and management practices are consistent across the individual teams.

This section discusses some of our strategies for meeting the challenges our office faces.

## Statement of responsibility

The Ombudsman, senior management and other staff have put in place an internal control process designed to provide reasonable assurance regarding the achievements of the office's objectives. The Ombudsman, Deputy Ombudsman and each Assistant Ombudsman assess these controls.

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

Bruce Barbour  
Ombudsman

## Accountability

Our office is accountable to the public in much the same way as any other NSW public sector agency. We come under the scrutiny of agencies such as the Auditor-General, the Independent Commission Against Corruption, the Privacy Commissioner, the Anti-Discrimination Board, State Records and Treasury.

### State Records

This year we were audited by the Audit Office (on behalf of State Records) to see how we were progressing with establishing strategies and systems to comply with the *State Records Act 2000*. The Act has been introduced progressively over the past few years in recognition that agencies need time to put strategies and systems in place. The audit found that we have made significant progress but there are still areas which need work to ensure full compliance with the requirements of the Act.

### The PJC

The Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (commonly known as the PJC) has broad responsibilities for monitoring and reviewing how we exercise our functions. The PJC is made



*Our accounts are audited annually by the Audit Office (clockwise from top left: Rodney Scanlon, K P Sharma, Tony Terrel, Jasmina Draskovic are pictured)*

up of parliamentarians from different political parties. This ensures that we are accountable to Parliament, not to the government of the day, and is crucial to maintaining our independence.

The PJC can examine our policies, practices and systems, review our reports and performance measures, examine complaints made about us, and suggest ways in which we could improve how we operate. It cannot review substantive decisions we have made about individual complaints, but it can criticise the process by which those decisions were made.

In June 2002, the Ombudsman and other senior officers gave evidence before the tenth general meeting of the PJC. Discussion focused on the expansion of our functions and the consequent changes to the way we do our business.

### Giving reasons

Under section 15 of the Ombudsman Act we have to give each complainant reasons for refusing to investigate or conciliate their complaint or for discontinuing an investigation. There are no restrictions on what they do with that information. This is an important accountability mechanism and has helped us establish a public reputation for making fair and well-reasoned decisions. As a result of this reputation, we have greater credibility when we make recommendations to agencies and our recommendations are more likely to be followed. Our need to be accountable actually helps to make us more effective.

## Our annual report

Our annual report is a public record of our work for each financial year. It provides the community with an opportunity to find out what we have achieved and the way we have achieved it. Although specific investigations and inquiries are generally conducted in private, we may include certain issues or instances of misconduct or maladministration in our annual report if we feel it is in the public interest.

## Corporate planning

Our corporate plan provides broad strategic direction for our work. Each investigative team develops a detailed business plan outlining strategies and activities to support the corporate plan. These differ between the teams because they operate within different and changing environments and face quite specific challenges. Each team's business plan forms the basis of the work plans for individual staff. The teams regularly evaluate their performance against their business plan to see if any improvements or changes need to be made.

The corporate plan is supported by centralised office policies and plans such as the IT strategic plan, the access and awareness plan and the plans underpinning the information and document management projects. We also have consistent performance indicators across the different teams.

We expect to develop a new corporate plan in 2002–2003 to take into account the new functions we will be performing after the merger of the CSC.

## Performance management

### Performance indicators

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

This year we reviewed our performance indicators. One of our aims was to make sure that all the activities we were carrying out were being acknowledged. We have now adopted consistent performance indicators across the office. There are more details about specific performance results throughout this report.

## Monitoring performance and risk management

We track our performance at two levels — in relation to individual files and in relation to our systems and structures for completing work.

Supervisors are responsible for formally reviewing files monthly or bi-monthly. This enables them to monitor the performance of individual staff members and provide guidance on how files or a particular matter might be better managed.

### **Timeliness**

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.

With many of our complaints and notifications, we need to factor in the time it takes for an agency to provide us with information. This could be answers to inquiries or a response to a draft investigation report. Sometimes an agency's tardiness is the main cause of a delay. However, we do have a responsibility to escalate certain matters in the interest of all parties potentially affected by an investigation, particularly the complainant and the subject of the allegations. We try to reduce the risk that, if a matter takes too long to resolve, all parties may be unsatisfied and it may be too late for any of our recommendations to be implemented.

This year a review of delayed files in one of our teams showed that three agencies in particular were not reporting back to us within a reasonable time. To address our concerns about the way the agencies were handling these matters, we intensified scrutiny over some matters to accelerate their completion and are considering investigating one agency for its failure to respond in a reasonable time. To address our concerns about our internal processes, we developed a new policy to help staff decide how and when a matter should be escalated.

During the year we reduced the opening hours of our inquiries service from 9am–5pm to 9am–4pm. With the continuing high numbers of calls being received we found that staff were not able to keep all complainant-related information, such as the last time a person called and what was discussed, up-to-date and accurate. The change in opening hours has produced significant improvements to the currency of information on our database. It has also enabled staff to undertake further training to better equip them to handle the wide variety of inquiries received every day.

### **Accuracy, integrity and good decision-making**

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.

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 the management of files is efficient and effective.

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.

## Internal structures and systems

### Team structures

Our internal structures and systems are designed to maximise the sharing of corporate knowledge, provide a cohesive and open environment for staff and use resources in the most effective way. During the year, our police and child protection teams consolidated the new structures that were discussed in last year's annual report. These structural changes were reviewed this year and we have seen very positive outcomes so far. For more details about the structure of the police team, please see 'Police'.

At the end of this year, the general team began a process of restructuring that involved the creation of a larger unit, with more staff, to handle not only inquiries but also a larger case load of minor matters. Most overflow inquiries and minor matters are currently dealt with by other members of the general team. We also revised our program of visits to correctional centres to focus on key centres that generated the most complaints or were the source of the most significant grievances. We anticipate these changes will improve our ability to focus on systemic issues.

This year the corporate team restructured the IT unit to manage the additional work required by the security review. The roles and responsibilities of two staff members were changed and a new position was created for a systems analyst.

An information manager was also recruited as part of the document and information management project.

### Policies and procedures

During the year we began a systematic review of our policies and procedures. We focused on making sure that information is up-to-date, the policies and procedures are consistent throughout the office and policies are in place where required. We expect to complete the review early in 2002–2003.

### Meetings

Our senior staff meet weekly to inform each other about the progress of work, exchange information and discuss issues of concern.

Office-wide committees, issues groups and teams meet regularly to discuss current developments, reinforce new policies or management directions and exchange information. We also hold staff meetings once a month.

### Intranet, newsletters, bulletins and operations reports

We encourage the exchange of information through the office intranet, the email system and the circulation of periodic newsletters. Monthly operational review reports are prepared for the Ombudsman and contain details about work inputs and outputs and current issues.

The intranet currently gives staff easy access to complaint management information, legislation, precedents, policy and procedure documents of agencies we oversight, a telephone directory and trend analysis reports.

We are in the process of implementing an information and document management system that should significantly improve the ability of staff to access corporate information. An information management steering committee with representatives from each of the teams was established to coordinate this project and ensure consultation on key decisions.

### Training and development

This year we wanted to provide training for our staff on conducting investigations, one of our core business activities. We recognised that we had the expertise to develop our own training program, so a senior investigation officer was given the task of developing, coordinating and running the program. We are currently in the process of trialling this program. It covers topics such as the Ombudsman's powers, investigation planning and risk management, interviewing techniques and writing reports.

This year our staff undertook a range of different courses, including training in:

- the use of case management systems
- records management
- presentation skills
- disability awareness
- Aboriginal cultural awareness
- project management
- negotiation skills
- staff selection
- conflict management
- business writing
- security issues
- running training courses.

## Relationships with others

### Ombudsman offices here and overseas

Like other Australian Ombudsman, our office is part of the International Ombudsman Institute and participates in the activities of the Australasian and Pacific Regional Group. We are currently preparing to host the 20<sup>th</sup> Australasian and Pacific Ombudsman Conference which will be held in November 2002.

Networking with other Ombudsman's offices gives us the opportunity to learn from their experience, share our own knowledge, provide mutual support and promote the importance of the Ombudsman concept in all jurisdictions. This year we were visited by Mr Michael Buckley, UK Parliamentary Ombudsman, Mr Clare Lewis, the Ontario Ombudsman (Canada) and the Queensland Parliamentary Committee on the Crime and Misconduct Commission.



*Greg Andrews, Assistant Ombudsman (General), with a delegation from the Thailand Ombudsman.*

We continue to be a leader in the field of public administration accountability. This year we were pleased to support the establishment of Ombudsman's offices in other countries by providing training and advice and by making our guidelines and other resources readily available. We provided fee-for-service training and information workshops for the Thailand Ombudsman, the National Ombudsman Commission of Indonesia, an Indonesian Parliamentary delegation and an East Timor Parliamentary delegation. We also sent materials to Lebanon to help them set up an Ombudsman.

We have designed our new investigations training program so that in the future other Ombudsman, although operating within different statutory frameworks, can adapt the course and use it to train their own staff.

This year our Assistant Ombudsman (General) continued to act as part of the technical monitoring and review group for the AusAID Papua New Guinea (PNG) Ombudsman Commission institutional strengthening project. This project provides assistance to the PNG Ombudsman Commission to improve its management and professional skills and systems. The group reviews project progress and provides advice to AusAID on variations to project design and other matters. The Assistant Ombudsman made one trip to PNG during the year and completed several desk audits. We receive fees for this service and AusAID meets all other expenses.

### Other watchdog bodies

The Ombudsman Network Group is a group of the CEOs of most NSW watchdog agencies who meet regularly to exchange information and discuss issues of concern. This year the group supported our proposal to set up a 'one stop shop' for complaint referrals (see box below).

The joint initiative group (JIG) is a committee of the network group established to explore options for working more cooperatively together and sharing information, skills, resources and training. This year the JIG organised information-sharing forums on a range of topics including conducting special inquiries, alternative dispute resolution models and practice, measuring client satisfaction and how to run self-funding training programs. A subcommittee is working on a joint brochure containing tips for making complaints as well as organising joint access and awareness activities.

Our office meets regularly with the Police Integrity Commission (PIC) to review topical issues, avoid duplication and ensure the most effective use of the resources of both our organisations. We also

meet with the Inspector General of Corrective Services quarterly to discuss emerging issues and coordinate our activities.

### Statewide child protection agencies

We are part of the child protection senior officers group that includes representatives from agencies such as the Departments of Health, Education and Training, Community Services and Juvenile Justice, the Attorney General's Department and NSW Police. We meet every six weeks to review issues relating to the protection of children. The group set up a working party to consider the exchange of information across interagency partners. The working party met several times in 2001 and produced a draft report on this issue. For more details, please see 'Reform'.

We work closely with the Commission for Children and Young People and are both part of a statewide strategy on child protection. This year we jointly prepared 'reader friendly' guidelines setting out the reporting responsibilities of employers and explaining which agency they should report to.

### Agencies within our jurisdiction

It is very important for us to maintain cooperative relationships with the agencies we oversight. A good working relationship allows us to have frank and open discussions about issues and helps to speed up the resolution of both complaints and any systemic concerns that we raise. We have formal liaison arrangements with senior staff of the Department of Corrective Services, NSW Police, the different State departments providing services to children (including the Department of Education and Training), and peak bodies representing non-government agencies that provide services to children (such as the Catholic Commission for Employment Relations).

### Class or kind agreements

This year we made two significant amendments to our class or kind agreement with NSW Police. For more details, please see 'Police'.

We also revisited our class or kind agreements with the Department of Education and Training and the Catholic Commission for Employment Relations for reporting child abuse allegations. Both parties indicated that they were satisfied with the current scope of our agreements.

## Complaints NSW

There are a number of watchdog and complaint-handling bodies in NSW with widely varying and often overlapping jurisdictions. This causes confusion for members of the public when they are trying to decide who they should complain to. Almost half of the 24,000 oral inquiries we receive each year are about matters outside our jurisdiction, but within the jurisdiction of other watchdog bodies.

To reduce this confusion, we proposed establishing a 'one stop shop' to receive, assess and refer complaints and inquiries about NSW public officials, government agencies, health and legal professionals and community services. The service would provide general information about these matters and would be accessible by telephone, web site, letter and fax.

The aim was to reduce the number of non-jurisdictional inquiries dealt with by individual watchdog bodies and improve the accuracy of referrals and information provided to the public. It would also help to reduce the 'referral loop' that some people may experience when trying to make a complaint.

The proposal was discussed with the heads of other NSW watchdog and complaint-handling bodies at the August 2001 meeting of the Ombudsman network group and refined at subsequent meetings. With the support of the group, we applied for funding to establish the service from the connect.nsw Capital Funding Program administered by the Office of Information Technology and Management (OIT). In early January 2002, the OIT informed the Ombudsman that our funding application had been successful.

We sought legislative amendments to make sure that the service could lawfully refer complaints, inquiries

and related information, such as the complainant's name, to participating bodies. At the same time, we began negotiations with Treasury to secure recurrent funding for the service. The OIT was advised that the funding offer could not be accepted until the legislative changes and recurrent funding required for the service were confirmed.

In the meantime, we started to prepare for setting up the service. One of our staff acted as project coordinator and a more detailed scope document was prepared. The budget was reviewed, additional research conducted and contact made with other agencies offering services like those we were proposing. The service was given the working title of *Complaints NSW*. Regular liaison meetings were introduced to ensure the detailed planning and implementation was done with the input and support of the participating agencies. These included the Health Care Complaints Commission, Police Integrity Commission, Independent Commission Against Corruption, Office of the Legal Services Commissioner, Energy and Water Industry Ombudsman, the Anti-Discrimination Board, Privacy NSW, Community Services Commission, the NSW Commission for Children & Young People, the Judicial Commission and the Inspector General of Corrective Services.

A draft bill was prepared and sent to the members of the Ombudsman network group for comment. After much discussion, detailed comments were provided in response to the draft.

In March 2002 Treasury confirmed recurrent funding would be provided for the service and it appeared that the proposal would soon become reality. By this time we had done significant work, with input from

other agencies, in devising draft work flows, inquiry loads, and staffing and equipment requirements and costs. It became apparent that additional funds and an extended timeframe were needed to implement the new service successfully. A revised budget and timeframe were submitted to the OIT in April 2002. The OIT approved most of the revised budget and offered the office a grant of \$477,300, with the service to be operational in December 2002.

The establishment of the service seemed largely assured, although we were still negotiating over the legislation. All that remained was to secure Treasury's approval to carry forward the unspent grant funds to the next financial year. After a series of discussions with Treasury, the Ombudsman was advised that while the funds could be carried forward there would be no corresponding increase in the office's capital expenditure authorisation limit for the year. In effect, we could accept the money and bank it, but we could not spend it — or if we did so, we could not spend other money allocated for other capital items in the 2002–2003 financial year.

It seems incomprehensible that such a project, supported by so many agencies, was stopped by the refusal to extend an authorisation limit to spend funds that were available. Despite our protests, the decision was not changed and we were forced to abandon the project. The substantial work of many senior staff of our office, the Premier's Department, the Office of Information Technology and other participating agencies over more than six months was effectively wasted.



(l-r) Andrew O'Brien, youth liaison officer, and Lisa Du, public relations officer, attending the Pacific Islanders Youth and Family Festival.

### Other stakeholders

Maintaining good relationships with community groups, unions and other interest groups is important to us. This year we met with the police association, the teachers federation and the independent education union to discuss how our work affects their members.

Our Assistant Ombudsman (Police) made several visits to Goulburn Academy to explain our role to student police officers. We also met with Aboriginal groups in western NSW and homeless groups in Byron Bay to discuss policing issues.

We liaised with the Aboriginal child, family and community care state (ACFCS) secretariat and key agencies providing services to Aboriginal children to discuss the particular challenges they face in fulfilling their reporting obligations. We are planning a series of briefings and workshops, under the auspices of the ACFCS secretariat, for managers and staff working in agencies providing out-of-home care services for Aboriginal children.

## Relationships with complainants

### Complaints and compliments

Our policy on complaints and compliments gives us a framework for using customer feedback to continually improve our services. Complaints can help us to identify areas of our service that need improvement or show where expectations of service levels exceed what we can reasonably deliver. Compliments are a useful tool for obtaining feedback on the aspects of our service that we do well.

Complaints, compliments and suggestions for improvement are recorded and analysed to help us identify areas that we need to improve. When someone complains about our service, we firstly try to address the complainant's dissatisfaction and secondly think about how to prevent similar issues arising in the future.

If necessary, we take some form of remedial action to resolve complaints. In most cases we contact complainants and provide an explanation and further information about our policies and procedures. We have also offered apologies,

Figure 9: Complaints about us

Issues	Number
Bias/unfair treatment/tone	12
Confidentiality/privacy related	2
Delays	8
Failure to deal appropriately with complaint	16
Lack of feedback/response	3
Limits to jurisdiction	1
Faulty procedures	1
Inaccurate information/wrong decision	7
Poor customer service	10
<b>Total issues</b>	<b>60</b>
<b>Total complaints</b>	<b>45</b>
of all written complaints determined	0 50

Figure 10: Complaints about us – outcome

	Number
Unjustified	21
Justified or partly justified	3
Some substance and resolved by remedial action	21
<b>Total complaints resolved</b>	<b>45</b>



## Performance indicator

## Requests for review of decision

Team	Target	00/01	01/02	Number of reviews	Number of complaints determined
Child protection	< 1.0%	0.2%	0.3%	4	1499
General	< 6.0%	4.5%	5.1%	161	3164
Police	< 1.8%	1.3%	1.4%	64	4501

## Interpretation

This performance indicator refers to the number of requests for a review of our decision as a proportion of the total matters determined. Separate figures are kept for each of the investigative teams. The results for each team are under the targets set.

reviewed workloads giving greater priority to identified files, or reallocated matters for prompt attention. We also review our procedures for dealing with delayed complaints and implement more rigorous procedures.

This year we received compliments about the quality of our feedback and assistance during inquiries and our training and workshop presentations.

## Requests for the review of a decision

Anyone who has lodged a complaint with us and is dissatisfied with a decision or finding may ask for that decision to be reconsidered. Review requests are most commonly received from complainants whose complaints we have declined. All reviews are carried out by a different staff member. This person has equal or greater seniority than the person who originally dealt with the complaint. We only allow one request for review of a matter so once the Ombudsman has considered the findings of the review the matter is closed. Generally, we do not reconsider decisions about a Freedom of Information complaint if the applicant has a second avenue of external review to the Administrative Decisions Tribunal.

This year we received a request for a review of our decision in 2.5% of complaints received (see fig 11). In the majority of cases, the original outcome was confirmed after the file was reviewed (see fig 12).

Figure 11:  
Request for review of decision  
(% of complaints and notifications received)

Agency	Number of reviews	%
Child protection	4	0.3%
Corrections	8	2.3%
Freedom of information	5	3.2%
Local councils	80	9.9%
Other public sector agencies	65	5.2%
Outside our jurisdiction	3	0.5%
Police	64	1.4%
Total	229	2.5

Figure 12:  
Outcomes of requests for review of decision

	A1	A2	Res	Reo	Total
Child protection	4	0	0	0	4
Corrections	5	0	0	1	6
Freedom of information	4	0	0	0	4
Local councils	43	37	5	1	86
Other public sector agencies	44	24	2	5	75
Outside our jurisdiction	3	0	0	0	3
Police	75	0	5	0	80
Total	178	61	12	7	258

A1 = original outcome affirmed after file review  
A2 = original outcome affirmed after telephone enquiry  
Res = Resolved  
Reo = Reopened





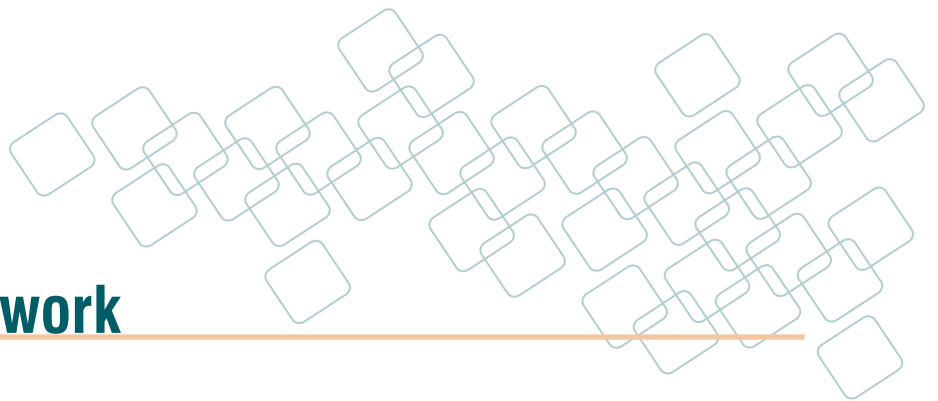
# Investigations and complaint resolution

Although our role has expanded considerably over the years, our traditional function of dealing with complaints from members of the public about government agencies is still an essential part of our day-to-day work. This year our general team dealt with over 2,300 written complaints and over 9,700 oral inquiries about public sector agencies. These figures do not include complaints about the police.

In this section we discuss our investigative work and the work we have done to resolve complaints in the following areas:

- general complaint work
- local councils
- corrections
- protected disclosures
- freedom of information.

We also discuss the training in complaint handling that we have provided for a range of agencies.



# General complaint work

## Complaint numbers

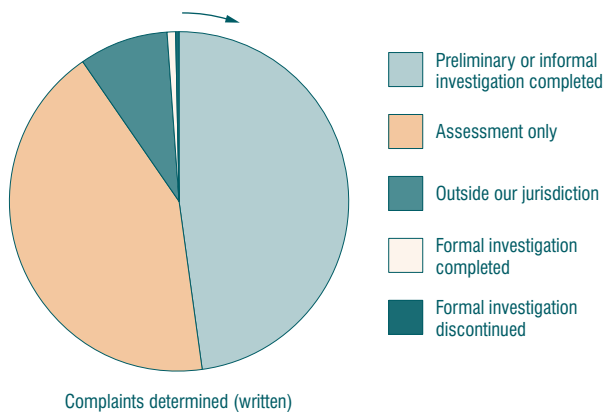
In 2001–2002, we received 1,140 written complaints and 3,546 oral inquiries about 126 different agencies, not including local councils and correctional centres, and not including complaints about freedom of information, all of which are discussed separately in this report. There is a full list of these agencies and how we handled each complaint in Appendix C.

This year we finalised 1,238 complaints (see fig 13). Almost 50% of complaints were finalised after a preliminary or informal investigation. We also completed 14 formal investigations.

Fig 14 shows that numbers of complaints received and determined have not changed much over the past five years.

The issues most commonly complained about this year were customer service, contractual issues, child protection (non-employment related issues), objections to decisions, charges/fees and complaint handling (see fig 15). These largely reflect the activities of agencies that have the most impact on members of the public, either as consumers of agency services or suppliers of services to agencies. Increased public awareness of child protection issues has also influenced these numbers.

Figure 13: Complaints received and determined \*



\* This figure shows complaints about public sector agencies other than NSW Police, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

### Complaints received

Written	1140
Oral	3546
Request for review of our decision	73
<b>Total</b>	<b>4759</b>

### Complaints determined (written)

Preliminary or informal investigation completed	584
Assessment only	535
Outside our jurisdiction	105
Formal investigation completed	10
Formal investigation discontinued	4
<b>Total</b>	<b>1238</b>

### Current investigations (at 30 June)

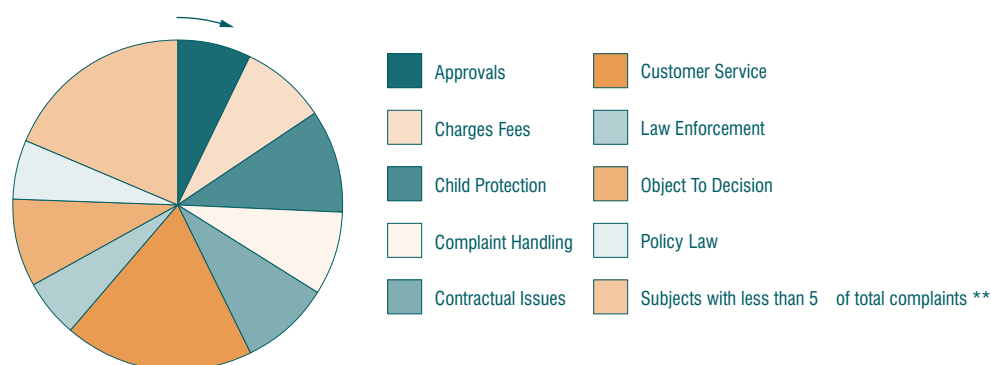
Under preliminary or informal investigation	55
Under formal investigation	4

**Figure 14:**  
Written complaints received and determined – five year comparison \*



\* This figure shows complaints about public sector agencies other than NSW Police, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

**Figure 15:**  
The subject of complaints \*



\* This figure shows complaints about public sector agencies other than NSW Police, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

Subject	Written	Oral	Total
Agency inquiry **	0	1	1
Approvals	83	254	337
Charges/fees	113	281	394
Child abuse related **	4	32	36
Child protection (non-employment related issues)	120	352	472
Complaint handling	91	293	384
Contractual issues	70	343	413
Customer service	176	692	868
Information **	86	127	213
Law enforcement	87	179	266
Management **	19	18	37
Misconduct	39	58	97
Natural justice **	8	69	77
Object to decision	54	349	403
Outside our jurisdiction **	76	132	208
Policy/law	57	215	272
Other **	57	151	208
<b>Total</b>	<b>1140</b>	<b>3546</b>	<b>4686</b>

## What we do and how we do it

Everyone has the right to complain to our office about the conduct of a public sector agency. These agencies exist to serve the public and the public has a legal right to complain to us about the way an agency is functioning. We have the power to investigate a variety of conduct that is inappropriate and wrong.

Generally complaints should be made in writing, but we do accept oral complaints in special cases. This could be when the complainant describes an emergency situation that needs urgent attention or it is very difficult for the complainant to put the complaint in writing because of, for example, their level of literacy or a disability. The complaint also needs to be sufficiently serious to warrant a preliminary investigation.

When we receive a complaint, the first thing we do is assess whether it is within our jurisdiction. If it is outside our jurisdiction, we do not have any legal power to deal with it. We always explain to complainants in writing that this is why we have declined to deal with their complaint and try to refer them to another agency that might be able to handle it or give them advice about other options.

We may decide not to pursue other matters because it would not be in the public interest for us to do so. For example, some complaints can be more effectively dealt with directly by the agency concerned or another body or the

### What is fair, accountable and responsive administration?

The *Ombudsman Act* gives us a starting point for understanding the nature of conduct that is not fair, accountable and responsive. We have the power to investigate conduct, laws or practices that are:

- contrary to law
- unreasonable
- unjust
- oppressive
- improperly discriminatory
- based on improper motives
- based on irrelevant grounds
- based on irrelevant considerations
- based on mistake of law or fact
- those for which reasons should be given but are not given
- otherwise wrong.

Working definitions of these phrases may be found on our web site.

#### Performance indicator

##### Time taken to assess complaints

Target	00 01	01 02
90% within 48 hours	85%	91.14%

##### Interpretation

Our general team aims to assess 90% of complaints it receives within 48 hours. This year we did better than our target.

#### Performance indicator

##### Average time taken to determine complaints

Target	00 01	01 02
7.1 weeks	9.5	7.1

##### Interpretation

Our general team aims to take on average 7.1 weeks to finalise complaints (not including those about freedom of information). This year we met our target.

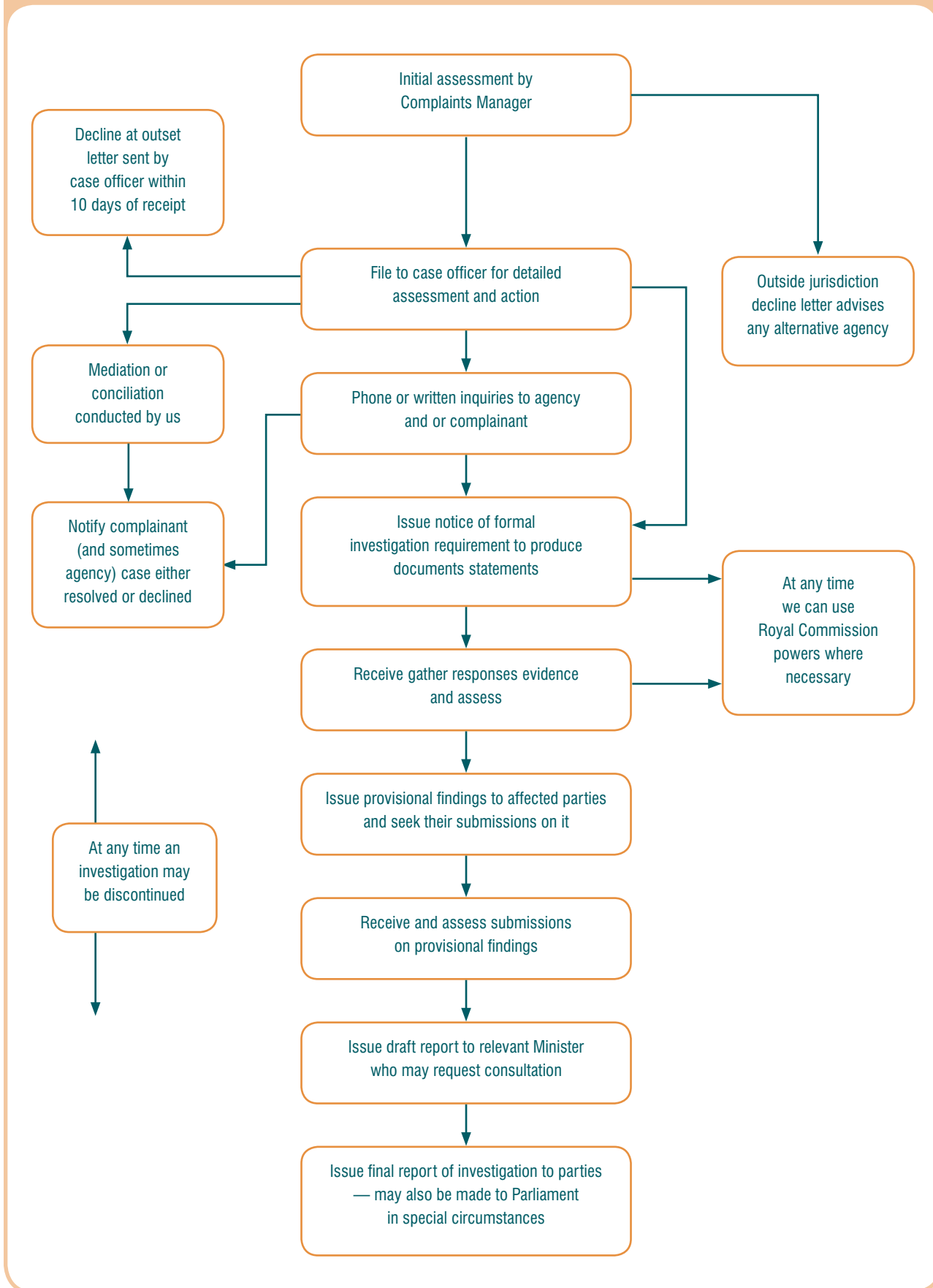
complainant may have a reasonable alternative way of resolving the complaint. Sometimes the complaint is trivial or too old, or finding a practical solution to the grievance is unrealistic. In many cases, the matter can be resolved by giving the complainant advice or an explanation. If we decide to decline a complaint, we always give the complainant reasons for our decision.

Our complaints manager is responsible for assessing each complaint and deciding how we should deal with it. Complaints are then allocated to individual staff members. If the member of staff finds further information or develops a different view after closer inspection of the complaint, they may at any time ask the complaints manager to amend the initial assessment.

We try to resolve individual complaints wherever possible, but our overriding principle is that we act in the public interest. We do not act as advocates for complainants. This means that if a complaint raises systemic matters, we focus on bringing those concerns to the attention of the agency and persuading them to improve their systems rather than just trying to resolve the complainant's individual grievance.

We made preliminary inquiries or informal investigations into 584 out of the 1,238 complaint files finalised this year. These preliminary inquiries often involve numerous phone calls and letters, and meetings and negotiations with staff from the agency concerned to resolve the complaint. Sometimes our inquiries show there is little or no evidence of any wrong conduct or that pursuing

Figure 16:  
General complaints



the matter would not produce any practical outcome in the public interest. In these cases, we conclude the matter and close the file. On the other hand, if we are not satisfied with the agency's response, particularly if they have failed to address our concerns about serious or systemic issues, we may escalate the matter and use our formal powers.

### Royal Commission' powers

If we use our formal powers and initiate an investigation, we can ask an agency to provide us with information and documents and it is an offence for them not to comply with our request. We can also exercise so-called 'Royal Commission' powers that allow us to summon and examine any person on oath and require witnesses to produce documents or relevant items.

During a formal investigation, information will sometimes come to light or an agency will take some action that resolves the matter to our satisfaction. Sometimes circumstances change and we may decide it is no longer in the public interest to continue to use our resources to pursue a matter. If this happens, we discontinue the investigation. We can suspend our inquiries or investigation at any time to conciliate a matter.

We are careful to afford procedural fairness to all parties. Before we make any comment or finding that is adverse to any party, we give them an opportunity to present their side of the story. This involves the preparation of a document we call our 'preliminary findings and recommendations' and providing it to any individual or agency about whom we propose to make an adverse comment or finding. We consider their response and make sure that any final report that we prepare is fair, accurate and takes into account their views.

At the end of a formal investigation we prepare a draft report for the Minister responsible for the agency concerned. This report may contain findings of wrong conduct and recommendations for change. We issue a final report after the Minister has an opportunity to consult with us on the draft report. This gives us the opportunity to work with the Minister and the head of the agency to improve the way the agency functions. It also helps us make sure that our recommendations are practical and workable. Occasionally we will table the report in Parliament if we feel this is in the public interest.

After we have published the final report, we monitor how the agency complies with our recommendations.

#### Performance indicator

##### Complaints resolved through the provision of advice or constructive action by public sector agency (include FOI)

Target	00 01	01 02
65%	66%	66%

##### Interpretation

This performance indicator refers to the percentage of general team complaints that were:

- declined at the outset or after preliminary inquiries by providing the complainant with information or advice on applicable law and procedures, or suggestions of how to resolve the complaint with the agency concerned
- resolved to our satisfaction by the agency following our preliminary inquiries or other intervention
- formally conciliated

The result is consistent with our target.

#### Performance indicator

##### Reports recommending changes to law, policy or procedure

Target	00 01	01 02
90%	100%	81%

##### Interpretation

We aim to include in 90% our final investigation reports recommendations for improvement. This year we included recommendations in 81% of our reports.

#### Performance indicator

##### Recommendations implemented

Target	00 01	01 02
80%	100%	91%

##### Interpretation

We aim to have all recommendations that we make at the end of our formal investigations implemented. This year over 90% of recommendations made by the general team were implemented.



## Case study 1

The NSW Aboriginal Land Council (NSWALC) has the key responsibility for the ongoing viability of the land council network. Since the 1998–99 financial year, NSWALC has not received funding from the NSW Treasury consolidated fund. This means that the land council system is now responsible for its own future funding and financial performance and NSWALC is responsible for managing substantial amounts of money and assets.

During a series of annual audits of FOI reporting by agencies, we became aware that NSWALC had not tabled an annual report since 1997–98. This was an issue of some concern because annual reports are important to ensure organisations are accountable and assist in their management and funding. Also NSWALC is required by law — under the *Annual Reports (Statutory Bodies) Act 1984* — to table an annual report each year.

We initiated an investigation into NSWALC's failure to prepare annual reports for 1998–99 and 1999–2000. We also looked at their obligations to monitor the annual reports of local and regional Aboriginal land councils and to make well-informed decisions about the funding of those land councils.

We found that NSWALC's operations were not sufficiently transparent or accountable and made recommendations for improvement. Our findings are outlined below.

### **Annual reports of NSWALC operations**

NSWALC confirmed that the last annual report they prepared was for the year ended 30 September 1998 (until 2003, NSWALC has a non-standard financial year) and that it had not been sent to the Minister for Aboriginal Affairs until May 1999 — some four months late. NSWALC did not know whether or not the report had been tabled in Parliament.

NSWALC also confirmed that annual reports for 1998–99 and 1999–2000 had not been prepared. When we asked them why they had not prepared these reports, they told us about reports containing 'anomalies' and that the

preparation of other reports had 'been commenced'. Throughout our investigation we were given varying dates for when the Minister was likely to be presented with each of these reports. Our investigation found that NSWALC was unaware of many of their legal requirements relating to annual reports. In particular, they did not know about the formal mechanisms under the *Annual Reports (Statutory Bodies) Act 1984* for seeking an extension of time to lodge an annual report or about the information that a report must contain.

By the time we finalised our investigation, the 2000–2001 annual report had also not been tabled within the legislative timeframe. However, as a result of our intervention, the three outstanding reports were sent to the Minister for tabling by the end of May 2002. Unfortunately, we found anomalies in the letters forwarding the reports to the Minister, again demonstrating that NSWALC had still not familiarised itself with the relevant legislation even though we had constantly referred to it during our investigation.

### **Monitoring the performance of regional and local Aboriginal land councils**

NSWALC has an obligation under section 61 of the *Aboriginal Land Rights Act 1983* to monitor the annual reports of local and regional Aboriginal land councils. During our investigation NSWALC told us it did virtually no monitoring of these reports. Verbal reports had been accepted in past years but numerous regional or local Aboriginal land councils had failed to provide any reports at all in the last three years. NSWALC had not taken any action in response.

We asked NSWALC for details of the land councils that had provided annual reports for the 1999–2000 year. These annual reports provide valuable information for making funding decisions and we expected that NSWALC would have them available. However, they had to contact branch offices or land councils directly to find out which of them had produced

1999–2000 annual reports. NSWALC confirmed that they did not have comprehensive information of this kind for any of the years after 1994.

We formed the view that decisions about the management of land councils in NSW were not being made in an informed and objective way. To explore this issue further we expanded the investigation and asked NSWALC to tell us about compliance by local Aboriginal land councils with mandatory reporting requirements. Land councils are meant to provide NSWALC with information about how they are operating, performing and spending their money. This information is crucial for NSWALC to make appropriate decisions about the funding of individual land councils. We asked NSWALC for the following information for 1997–98, 1998–99 and 1999–2000:

- budgets for all local land councils
- details of all land councils funded and the amount of funding
- details of those land councils not funded and the reasons why
- information about the annual meetings of local land councils.

The information NSWALC gave us was in the form of raw data, set out in a myriad of documents of varying formats, and with huge gaps. It was also clear that for those three years NSWALC did not receive this information, or did not know whether they had received the information, from approximately half of all land councils. In spite of this, each land council was still funded every year in one form or another.

The *Aboriginal Land Rights Act* directs that when a local or regional Aboriginal land council fails to do certain things, funding is to cease. However the Act does not require that a land council receive no funding at all. It allows NSWALC to pay certain essential expenses for any land council that does not receive an annual allocation of funds. Of the 117 land councils, the Auditor General found that 89 were fully funded for the year 2000. This was despite the

fact that in 1998–99 only 67 land councils received unqualified audits, 44 received qualified audits and six received no audit.

The funding process currently used by NSWALC is not effective or sufficiently transparent to provide confidence. The current system is not based on any adopted policy or legislative requirements. We found that NSWALC failed to demonstrate acceptable standards for a NSW public sector agency, especially one that is meant to represent and work for members of our community who have historically suffered marginalisation by government service providers. It also provides an extremely poor example to local and regional land councils.

NSWALC tried to excuse their conduct on the basis that many issues will be addressed by proclamation of the *Aboriginal Land Rights Amendment Act 2001*. Our view is that simply

amending the legislation will not change the situation. The existing Act already requires accountability, but NSWALC has failed to demonstrate leadership in being accountable and has provided little encouragement or assistance to local and regional land councils to comply with their responsibilities. NSWALC needs to recognise the need to comply with statutory requirements and show both a willingness and the ability to comply with the law. So far, it has demonstrated no capacity to do so.

We believe that a good starting point for reform is for NSWALC to examine seriously the causes of the problems identified in our investigation and remedy them. Over the years, our office and other agencies have raised similar concerns with NSWALC management. They have usually responded with an undertaking that the problems will be addressed and presented a plan

of action. Unfortunately these plans have seldom been implemented. When they are, we have found that implementation is often deficient.

Our final investigation report made eight recommendations for improvement. We recommended that NSWALC quickly finalise their outstanding annual reports and get expert assistance to produce compliant annual reports in the future. We also recommended specific areas where they should develop policies and introduce procedures so they can better manage and oversight the land council system.

NSWALC accepted our recommendations in a positive way and we are happy with their responses so far. We will continue to monitor their response to our recommendations and will work wherever possible with their councillors and staff to help them implement changes and meet the challenges of the new legislation.

## Changes to our work practices

We try to concentrate our resources on identifying and improving systemic problems within agencies. Some of the strategies we use include:

- declining matters that the complainant should and can raise with the agency itself
- providing agencies with guidance and advice on how to establish and operate appropriate complaint-handling systems
- conducting fewer preliminary and informal inquiries and more formal investigations — to help us obtain information more effectively
- analysing trends and issues arising from complaints to better inform our decisions about which complaints to investigate and which agencies to monitor more closely
- using time-saving methods to speed up preliminary inquiries eg organising a face-to-face meeting with senior staff from an agency may take much less time than waiting for them to respond to written inquiries
- focusing our visits to correctional centres and juvenile justice centres on discussing any systemic issues and encouraging centres to resolve inmate complaints themselves
- strictly enforcing our policy that, if we have finalised a matter, we will only review that decision once on the complainant's request.

One of the issues we had to tackle this year was a significant increase in the numbers of complaints about the Department of Community Services (DoCS) that warranted investigation. The department suffers from many systemic problems that will take some time to address. Until this happens, we expect to continue to receive complaints about DoCS that need to be investigated.

Complaints to us about DoCS have increased since January 2001 when certain complaints were deemed to be outside the jurisdiction of the Community Services Commission. This year we received 181 written complaints and 584 oral inquiries about the conduct of DoCS, compared to just 38 written complaints and 240 oral inquiries in 1999–2000. These figures do not include allegations of child abuse by DoCS workers that are dealt with by our child protection team.

The impact of this increase on our general team has been significant. Child protection issues often need more resources to investigate than other kinds of complaints. There may be several parties involved that we need to speak to and interviewing children often requires more preparation and care. As we received no additional funding to deal with these extra complaints, we have had to divert resources from other areas and set new priorities for our general team.

## Department of Community Services

In April 2002 we made a special report to Parliament called 'DoCS — Critical Issues'. We had been conducting an unprecedented number of inquiries and investigations into DoCS and we wanted to inform Parliament and the public about the significant concerns we had. These concerns touched on almost every area of the department's operations. We found significant problems in fundamental areas such as record keeping, file maintenance and the effectiveness of supervision. Our report demonstrated the clear link between poor internal processes and ineffective DoCS interventions.

We are still conducting investigations into individual complaints about DoCS. Two more investigations have been completed since the special report was tabled.

One of the issues we investigated was DoCS' practice in deciding whether to intervene in a case if there are current Family Court proceedings. Our recommendations included developing written procedures for deciding whether or not to join Family Court proceedings and a case management system for cases where:

- DoCS has confirmed abuse
- the matter is in the Family Court
- DoCS seeks to rely on a third party to present the child protection concerns to the court.

This system should enable DoCS to check that child protection concerns are being adequately put before the Family Court to decide if it needs to review its decision not to intervene in proceedings.

DoCS has accepted our recommendations and now has to report to us on their response. We expect to see significant changes in their practice and procedures in the coming year.

## Internal complaint systems

Our inquiries and investigations often give us the opportunity to advise agencies on implementing or strengthening their internal complaint-handling systems. Agencies that deal with their own complaints can improve the way they function by using the information in those complaints as feedback about their conduct, service and performance. This is more effective than being investigated and perhaps criticised by an external body such as our office.

We regularly give agencies advice, training and guidance on setting up and improving their complaints systems. For example, during the year we joined the steering committee to establish

the Corrective Services Support Line. This is a significant innovation by the Department of Corrective Services designed to handle phone inquiries and complaints about its operations. In the pilot stage (due to start by September 2002), the support line will only take calls from inmates at selected correctional centres. When fully operational, we expect it to cater for all inmates and relevant members of the public.

Over the past few years we have received several complaints that revealed deficiencies in the complaint-handling processes of the State Rail Authority (SRA). We have discussed these with the SRA and they have now established a central complaints unit, enhanced their case management system and produced written guidelines for handling complaints.

## Agency standards of ethical conduct

This year we dealt with a matter that highlighted the issue of public sector agencies behaving lawfully but unethically in situations where members of the public have suffered serious detriment as a result of the agency's wrong conduct. See case study 55 in 'Freedom of information'.

We are of the view that all public sector agencies should be model citizens in the same way that government policy states that agencies should be model litigants. These agencies exist to serve the public. The public are entitled to rely on them to do the right thing. This includes performing their functions in a responsible and transparent way. If they engage in any wrong or improper conduct, this should not be kept secret. If conduct is kept secret but an agency is exposed, they should not hide from their responsibility for the conduct. Instead, they should accept responsibility and try to address any problems that the wrong conduct has caused. They have an obligation to act fairly and reasonably towards any member of the public who has suffered from the wrong conduct. In case study 55 the publicly-owned mining company should have not have sought to keep secret certain documents that recorded what had actually happened. The regulatory agencies also should not have agreed to keep the documents secret. The public are entitled to know the truth.

We have long been of the view that where there has been wrong conduct, agencies should at least explain what occurred to cause the person detriment and make an apology. In some cases we have recommended the agency pay some fair and reasonable compensation to settle the matter.

## Universities

Although still relatively small, the number of complaints we receive about universities continues to rise. Formal complaints for the past three years have increased from 34 to 46 to 56. These complaints often raise serious allegations of misconduct, corruption and conflicts of interest. Many are complex and have required extensive inquiries or formal investigation. Another feature of university complaints is that a significant proportion of them are made as protected disclosures. Please see case study 2 and 41.

## State superannuation bodies

Superannuation complaints are often of acute concern to complainants because of the implications for their ongoing financial welfare. We had 17 such complaints this year.

The State Authorities Superannuation Trustee Corporation (STC) manages the defined benefit State Superannuation Scheme, State Authorities Superannuation Scheme and Police Superannuation Scheme. These schemes are all closed to new members. The First State Superannuation Trustee Corporation (FTC) manages the First State Superannuation Scheme and the Public Sector Executives Superannuation Scheme. Pillar Administration administers all these schemes on behalf of the STC and FTC.

Two new employee schemes were set up in 1997 — the Local Government Superannuation Scheme (LGSS) and the Electricity Industry Superannuation Scheme (EISS). These schemes are managed by boards of trustees and administered by the Superannuation Services Company Pty Ltd (SSC).

Our jurisdiction covers the conduct of the trustees and administrators of all these schemes. We can investigate complaints about their administrative conduct, but we cannot investigate complaints about decisions to pay or withhold payment of superannuation benefits or the investment of funds (clause 15, Schedule 1, *Ombudsman Act 1974*).

Members can contest Pillar Administration's decisions about payment or non-payment of benefits with the trustees. The outcome of any dispute with the STC or FTC can be appealed within six months to the NSW Industrial Relations Commission. We have found the trustees keen to resolve any complaints we raise with them.

Some members can dispute the SSC's decisions about payment or non-payment of benefits with the board of trustees of LGSS or EISS — with an avenue of appeal to the Superannuation Complaints Tribunal. Other members, with rights transferred from state superannuation schemes, have a similar right of appeal to the NSW Industrial Relations Commission. Case study 3 is an example of a complaint we dealt with this year.

### Case study 2

A number of University of New England (UNE) students complained that they had not been adequately consulted about UNE's decision to close its Modern Greek course. We contacted the university and found that UNE's internal ombudsman was already examining the complaint and the university was also handling the students' concerns about their ongoing academic studies.

The UNE ombudsman reported their findings to the Vice Chancellor but we felt that UNE's administrative procedures for dealing with such a report and its recommendations were unsatisfactory. We used our own motion powers to begin an investigation. We found that UNE did not have adequate or

sufficient procedures in place to respond effectively to reports and recommendations by its internal ombudsman. We also found that the handling of the closure of the Modern Greek course had been in accordance with Faculty of Arts procedures but that the procedures lacked sufficient detail to make sure they could be followed properly and fairly.

We recommended that UNE adopt a more formal procedure for considering reports from its internal ombudsman and develop an improved protocol for consulting and communicating decisions about course closures. UNE accepted our recommendations.

### Case study 3

The State Superannuation Scheme stopped payments to an elderly pensioner after they received a death

notice for a person with the same name. The pensioner complained to us about his distress at being declared dead when he was very much alive and that he had suffered financially from his loss of income.

We found that the scheme's administrator had failed to contact the pensioner's family or to check whether any of the dead person's other details matched scheme records.

After our inquiries, the scheme's administrator restored the payments with an apology, made sure that the pensioner had not been financially disadvantaged by the error and reviewed procedures and staff administrative skills.

## The fines system

Last year we reported our concerns about the fines enforcement system. While improvements have been made, the complaints we received this year continue to demonstrate flaws in the system.

We received several complaints from drivers who had had their licences suspended or cancelled for non-payment of fines because of an administrative error by one or more of the enforcement authorities, rather than through any fault of their own. See case study 4.

One issue arising from such cases is how the Roads and Traffic Authority (RTA) should record these suspensions and cancellations on the person's driving record. We decided to investigate the RTA's apparent inconsistency in its handling of this issue. We met with senior representatives of the RTA and the State Debt Recovery Office (SDRO) and successfully conciliated the matter. The RTA acknowledged that cases such as those we had identified were exceptional. It agreed the driving record of people whose licences had been suspended or withdrawn because of an administrative error should be noted in a different way to those whose licences were returned to them after they had paid their overdue fines. We will continue to monitor this issue.

Another concern we have raised with the Infringement Processing Bureau (IPB) is about their policy of treating fine recipients who return their infringement notices with the court-election option ticked as if they were making an informal representation not to pay the fine (two quite different things). Instead of proceeding to prosecute the matter through the courts, the IPB writes back to the person advising that their 'representation' has been unsuccessful, and repeating the option for the fine to be paid or for the matter to go to court. If the person does not respond to this letter, the IPB treats it as an unpaid fine and then refers the matter to the SDRO, which will then issue further orders requiring payment. We were concerned that many people receiving this letter might not respond because they might reasonably assume the matter would be going to court as they had already ticked the court-election option when they initially received the fine.

The IPB is currently reviewing its business rules. We will assess the results of the review to see whether or not they have taken our concerns into account.

Case studies 5 and 6 are other examples of our work in this area.

### Case study 4

A man in rural NSW complained he was unable to get work because the Roads and Traffic Authority (RTA) refused to reinstate his driver's licence. The State Debt Recovery Office (SDRO) had ordered the RTA to suspend his licence because of unpaid fines. The man had entered an agreement with the SDRO to repay his debt and was up-to-date with his repayments so he asked the SDRO to order the RTA to reinstate his licence.

The SDRO declined his request even though he supplied evidence that the nearest public transport was more than 170km from his home and he had a job offer from a company 40km from his home. Without a licence, the man could not accept work which would

help him to pay the debt that had led to his licence suspension.

The SDRO's reason for its decision to continue licence suspension was that the man's need for a licence was not 'an integral and essential requirement of employment, such as a truck driver or courier'.

In last year's annual report we noted that the SDRO had told us it 'will generally lift sanctions if the person enters a time to pay agreement and can provide independent evidence that they need the licence to generate income to pay the debt'. This had not happened in this case and we decided to investigate.

In responding to our draft report, the Attorney General's Department (the SDRO has since been transferred from that department to Treasury) claimed

the SDRO had changed its procedures several months before the man applied to have his licence suspension lifted. It provided details of the new procedures. We were surprised because the existing SDRO manual and its handling of the man's application did not reflect these new procedures.

Nevertheless we were satisfied with the wording of the new policy and with the department's undertaking to review the complainant's application and update the SDRO manual to reflect the new policy. We discontinued our investigation. Shortly afterwards the complainant's licence was reinstated and the SDRO amended its manual to reflect the changed procedure.

### Case study 5

A man complained about a fine he received from Sydney City Council. The envelope enclosing the infringement notice stated that informal representations about the matter would only be considered if the fine was paid.

Although the Infringement Processing Bureau (IPB) withdrew the fine against the complainant after our inquiries, we looked into the broader issue of IPB's statement that informal representations would only be considered if the fine was paid.

The *Fines Act 1996* enshrines a person's right to elect to have alleged infringements heard at court. Although there is no legal right to make informal representations to the IPB contesting a fine, the IPB has traditionally had a policy where these representations will be considered. The IPB told us that their experience had shown that many people made representations only to delay having to pay the fine. Most representations appeared to be from offenders who didn't seriously believe their representations would succeed. The IPB told us they expended substantial resources dealing with these matters. In the interests of deterring those without genuine reasons for avoiding the fine, they changed their policy to require fines to be paid before they would consider representations. If a representation was successful, the IPB would refund the money.

While we appreciated the inefficiencies of dealing with people just trying to delay paying their fines, we were concerned about the impact that this policy would have on those people with genuine grounds to query infringement notices. After we raised our concerns with the IPB, they agreed to return to their original policy of considering representations without the fine having to be paid. They also agreed to stop using the envelopes that stated that the fine had to be paid first.

### Case study 6

A man made representations to the IPB about a speeding fine. He claims that after the IPB told him he was unsuccessful, he sent them a letter electing to have the matter heard at court. The IPB claims that it did not receive the letter, so it treated the matter as an unpaid fine and referred it to the State Debt Recovery Office (SDRO). The SDRO followed ordinary procedures and issued the man with a 'penalty notice enforcement order'. When you receive such an order, the law provides that you can pay \$50 to apply for the order to be annulled.

The man applied for the order to be annulled and included the \$50 fee, but was not notified of the outcome of his application for annulment. Instead, he received a notice of suspension of his driver's licence. This is the action that the SDRO takes if you do not follow the penalty notice enforcement order.

We made inquiries because it appeared that the man's application for annulment had not been properly processed. The SDRO told us they could not locate any annulment application from the man nor, after 'an extensive search', could they locate a record of his payment.

We pursued the issue of the annulment application with both the complainant and his credit union. We obtained a copy of the \$50 cheque with 'State Debt Recovery Office' as payee and received confirmation the cheque had indeed been cashed. This supported the complainant's version of events.

The *Fines Act 1996* only gives people 12 months in which to contest fines and orders made by the SDRO. By the time we had made our inquiries, more than 12 months had passed since the issuing of the speeding fine. However, because the Attorney General has the power to annul a penalty notice enforcement order, we liaised with the Attorney General's Department to annul the penalty enforcement order against the complainant. Meanwhile, the SDRO refunded the complainant's \$50 application fee and apologised to him.

### Case study 7

This year the Department of Fair Trading drastically reduced a backlog of outstanding insurance claims and debt recovery files after we criticised its procedures and monitoring processes.

The background to this case was that in 1996 a dispute between a builder and claimant over work worth less than \$14,000 had been mediated 'in full and final settlement of all issues in dispute'. Despite this, the claimant lodged an insurance claim later in the year. The department dealt with the claimant and the builder very differently.

In 1997 the department asked the claimant for some information within 21 days, stating that if the claimant did not respond within that time, it would assume the claimant did not wish to pursue the claim. After the claimant had failed to respond in time, the department sent 12 reminders and extensions to provide the information. Finally, the claimant provided the department with the appropriate information.

In handling the matter, the department sought the builder's comments, but approved the claim 'in principle' before it received the builder's submissions. The builder told the department about the settlement but it failed to address this issue. The builder assumed the matter had been dropped because the department did not write for two and a half years. To the builder's surprise, the department wrote to advise that it had paid out the insurance claim for \$30,000 and began recovery action against the builder. By that time, over four years had passed since the mediation.

In addition to the excessive delays in dealing with the matter and the department's decision to ignore the mediated settlement, the builder alleged that they had paid out on work that was never part of the original contract.

We found that the department's response to the builder's complaints was unreasonable and improperly discriminatory. The department at one

stage told the claimant that it had to consider the rights of all parties when it assessed complaints and insurance claims and that it had to observe natural justice. In this case it did not appear to give proper consideration to the builder's submissions.

We also found systemic problems with the way the department monitored claims and with its debt recovery procedures. We found these problems with many files, including those outsourced to private legal firms.

The department responded quickly and positively to our criticisms. Open claims were audited to ensure appropriate determinations and outstanding matters finalised. Nearly 3,000 debt recovery files were reviewed and about 1,300 were written off. Files outsourced to legal firms were significantly reduced and put under close management. A policy and procedures manual was developed and a new management reporting system introduced. Customer service standards were also developed and reinforced with staff at all levels. We congratulate the department for the work they have done to reform this area.

### **Case study 8**

With his parents' support, a young quadriplegic man wanted to attend mainstream classes at a high school about 2km from his home. Other disabled students attended this school and it had disabled access and facilities to cater for his specific needs. The Department of Education and Training local office initially declined to enrol him at this school because it was not his local high school. His 'local' high school was about 5km from his house, did not have any other students that used a wheelchair and would not have been able to provide access for the young man unless major costly modifications were undertaken. Also the modifications would not have been completed by the time of his enrolment. In spite of these barriers, the department was prepared to modify the school to make it accessible.

The parents of the young man asked the department to reconsider, but the

department would not enrol him at the school he wanted to enrol in. In frustration, his parents wrote to their state and federal MPs and the Minister for Education. They sought legal advice and contacted the media. Their complaint was resolved after a story was shown on television and the young man was able to enrol in the school closer to his home.

Even though this individual complaint appeared to be resolved, we felt it was in the public interest to start an own motion investigation into the mainstream enrolment process for students with very high support needs. We found that there may be inadequate time for planning to cater for students with these needs if they enrol at the same time as other students. In our provisional findings on the matter, we suggested that the department should plan for enrolling students with high support needs in mainstream classes before the regular enrolment process. We discontinued our investigation after the department agreed to follow our suggestions.

### **Case study 9**

A man complained to us that he wanted to appeal against a decision by the Department of Housing to refuse him priority housing assistance, but the department would not provide specific reasons for the decision. Instead, they had sent the complainant a standard letter saying his application was unsuccessful and giving general advice about the factors they consider when making such decisions.

Departmental policy states that priority assistance applicants can expect 'to be given clear reasons in writing as to why an application is unsuccessful'. This reflects a long term trend in administrative decision-making towards openness and accountability.

Following our inquiries with the department, they told the complainant the reasons for their decision. This resolved his complaint. However, we were concerned about the department's view that the letter to the complainant

'was issued in accordance with policy' so we began a formal investigation.

During the investigation, the department gave us copies of their newly amended standard letters. They were more informative but still did not provide reasons for individual decisions. We prepared a draft report and sent it to the Minister for Housing. In the report we recommended that the department provide reasons for all reviewable administrative decisions relating to priority housing and educate its staff in the giving of reasons. The Minister met with the Ombudsman to discuss the draft report and told us that the department would change its procedures and introduce a new format for providing reasons.

### **Case study 10**

A major disruption to Illawarra train services on 25 September 2001, and a failure to communicate with commuters during the incident, prompted us to seek a review of State Rail's customer service performance. The incident left many thousands of peak hour passengers stranded and some took up to four hours to get home.

State Rail agreed to the review and have since instituted a comprehensive new customer service strategy. This includes improved communication standards and procedures, ongoing training for frontline staff, and better use of technology to ensure customers have the latest information about delays and major incidents. State Rail is also planning a crisis communication plan specifically tailored to meet the needs arising from major incidents.

They will monitor the investigation of customer complaints to identify any future communication problems. We recognise that State Rail has demonstrated a genuine commitment to improve customer service and we are hopeful that their customers will be better informed in future.



Jennifer Agius, a senior investigation officer in our general team.

### Case study 11

A resident complained about Hawkesbury City Council's refusal to prune road reserve trees overhanging power lines on his property. Council insisted this was the complainant's responsibility under section 48 of the *Electricity Supply Act 1995*. Our inquiries prompted Integral Energy to inspect the complainant's property and serve on him a 'section 48 notice' requiring him to prune the trees.

Unfortunately when the complainant complied with the notice, he breached several other Acts including the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*. The notice contained no information on these Acts. After our inquiries, Integral Energy agreed to incorporate this information in their notices together with advice that customers use suitably qualified personnel to prune trees near power lines. We were satisfied with their response and closed our file.

The complainant asked us to review our decision. We looked again at the meaning of section 48 of the *Electricity Supply Act* and decided that the notice should probably have been served on the council not the complainant.

Integral Energy agreed with us but said section 48 was really unworkable as currently drafted. They told us they rarely issued section 48 notices, preferring to resolve matters by negotiation. Integral Energy agreed to pay the complainant \$500 compensation and, as they are currently reviewing their tree-logging practices, we decided not to take the matter any further.



### Case study 12

The Cooma Rural Lands Protection Board ordered a local man to undertake rabbit eradication on his property. The man began this work and talked to the board's ranger about how he intended to comply with the order. The man said the ranger indicated the intended work would satisfy the order.

After the ranger's visit, the board gave no indication that the work in progress was unsatisfactory. Two months later the board itself did the work it claimed was necessary and billed the man \$821, asserting that he had failed to comply with the order. The man complained to us about the board's conduct and also claimed that the board's work had caused an explosion of tobacco weed on his property.

Our investigation found that the board's actions were in accordance with the law and established practice, but that the practice was unreasonable. We recommended that the board provide property owners with copies of any inspection reports relating to work orders. If the board learns that eradication work has been attempted, we recommended that they give the property owner 10 days notice before doing the work themselves. We also recommended the board stop its cost recovery action against the complainant.

The board has since acted on our recommendations and has amended its policy on property rabbit inspection procedures.

### Case study 13

A member of the complainant's family was killed in a car crash. His complaint was that the Roads and Traffic Authority (RTA) had failed to act against a checking station that had given a pink slip to a vehicle involved in the accident. The complainant alleged that the vehicle was

unroadworthy and this had contributed to the accident.

We made extensive inquiries into this matter and had meetings with senior RTA officers. The RTA's decision not to act against the checking station was based on a recommendation from an independent review committee set up under the *Road Transport (Vehicle Registration) Regulation 1998*. This committee is an independent body of six motor vehicle industry representatives chaired by an RTA representative. We only consider investigating an agency's acceptance of a qualified professional/technical body's opinion in a discretionary decision if the opinion is manifestly unreasonable. The evidence in this case did not meet that threshold.

However we found that there were no written guidelines for this system of relying on the views of the committee in making certain decisions. At present, the system appears to be governed by 'rules of thumb' known only to committee members. The RTA has agreed to address some of our concerns by reviewing this committee system. We await the results of this review.

### Case study 14

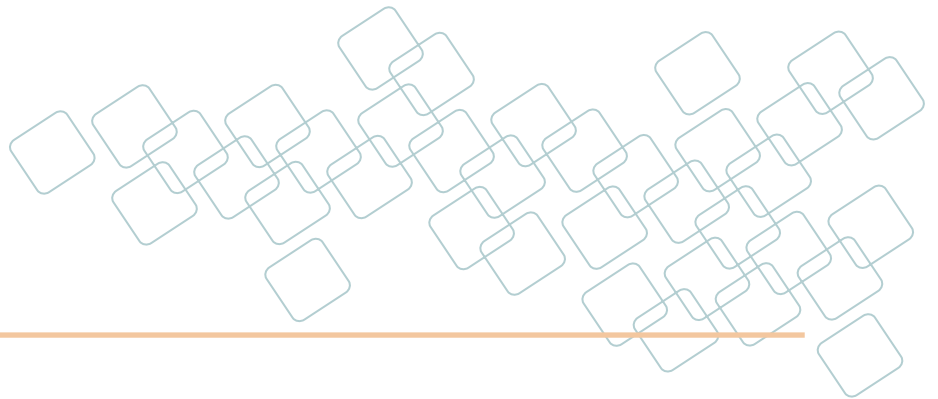
A man complained to us about the refusal of the Attorney General's Department to grant him an ex gratia payment for having served a prison sentence for a crime he did not commit.

The man was convicted of an offence and sentenced to 10 months periodic detention. He appealed and applied for bail pending the hearing of his appeal. Bail was refused and, because the appeal was delayed, the man served the entire sentence. At the appeal the court overturned the man's conviction on the basis that it was 'unsafe and unsatisfactory'. The court also described the conviction as

'remarkable' and suggested that the prosecution had wrongly sought to have evidence prejudicial to the man's case admitted and the judge wrongly allowed this evidence to be admitted.

The department refused the man's application for an ex gratia payment in 1996. Over the next five years, both he and his legal advisers wrote to the department and the then Attorney General on several occasions asking for this decision to be reconsidered. The department stood by its original decision. After the man complained to us, we made preliminary inquiries and were not satisfied with the department's responses. They did not appear to have a published policy to guide their decisions on when to grant an ex gratia payment and seemed to have departed from the informal policy in use at the time of the man's application. This policy stated that 'where losses are incurred as a result of convictions that have been quashed, *unless there is clear evidence of fault or error in the manner in which the prosecution was conducted*, then irrespective of the hardships incurred by the applicant the policy is that no ex gratia payment be made'. In this case it appeared that the court's finding that the prosecution should not have sought to introduce the prejudicial evidence was evidence that there possibly had been fault or error in the manner in which the prosecution had been conducted. The department could not explain why it did not agree with this view.

At the time of preparing this report, the department had agreed to seek independent advice on the matter in response to our preliminary findings. We had sent a draft report to the Attorney General with our recommendations and await his response.



# Local councils

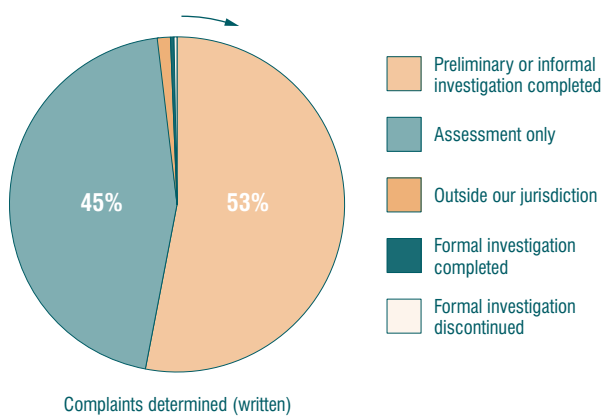
It would be fair to say that this year has not been a good one for local government. There has been an investigation by the Independent Commission Against Corruption (ICAC) into the payment of bribes to Rockdale City councillors. There have also been reports of the attendance of Fairfield City councillors at a function organised by a former councillor at Long Bay gaol and allegations of his ongoing influence at that council, a Department of Local Government investigation of Warringah Council and media coverage of misbehaving councillors. These have undermined public confidence in local government and this has been reflected in the tone of many of the complaints we have received.

Nevertheless, we have seen a drop in the number of complaints against councils this year. This was partly because our complaint numbers last year

were boosted significantly by a series of multiple complaints against three councils over single contentious issues. Taking that into account, the decline this year was around 7%. Please see figs 17 and 18.

We continue to receive significant numbers of complaints about the 'bread and butter' issues of complaint handling, enforcement and development. This year almost a fifth of complaints were about development and over 10% of complaints were about enforcement issues. Please see fig 19. We have also had to deal with a number of issues relating to councillor conduct and the management and investigation of complaints against councillors. Please see Appendix C for a table listing the councils that we determined complaints about this year.

**Figure 17:**  
Local councils complaints received and determined



**Complaints received**

Written	760
Oral	2247
Request for review of our decision	79
<b>Total</b>	<b>3086</b>

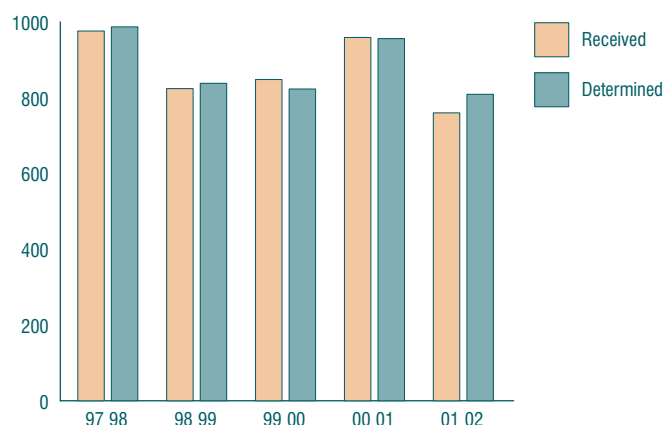
**Complaints determined (written)**

Preliminary or informal investigation completed	431
Assessment only	366
Outside our jurisdiction	10
Formal investigation completed	1
Formal investigation discontinued	1
<b>Total</b>	<b>809</b>

**Current investigations (at 30 June)**

Under formal investigation	2
Under preliminary or informal investigation	51

**Figure 18:**  
Local council complaints (written) received and determined – five year comparison



	Received	Determined
97/98	976	987
98/99	824	838
99/00	848	823
00/01	959	956
01/02	760	809

**Figure 19:**  
Nature of local council complaints

Issue	Written	Oral	Total
Building	0	4	4
Child abuse related	0	1	1
Community services	10	26	36
Corporate/Customer services	289	514	803
Development	102	456	558
Enforcement	109	261	370
Engineering services	61	173	234
Environmental service	32	226	258
Management	3	5	8
Misconduct	51	95	146
Object to decision	33	129	162
Outside our jurisdiction	7	27	34
Rates charges & fees	44	227	271
Strategic planning	14	37	51
Uncategorised	5	66	71
<b>Total</b>	<b>760</b>	<b>2247</b>	<b>3007</b>

## Councillor misconduct

Last year we reported that we had written to the Minister for Local Government suggesting the creation of a legislative power of suspension to help deal with the problem of councillor misconduct. One of the options we suggested was empowering an independent third party to suspend councillors for proven misconduct, including serious or repeated breaches of the council's code of conduct.

We were therefore pleased to see amendments made to the *Local Government Act 1993* in the wake of the Rockdale City Council affair. These allow the Minister to suspend a councillor if criminal proceedings are started against the councillor for corrupt conduct, if the councillor admits corrupt conduct or if the ICAC recommends suspension. If the ICAC finds the councillor is responsible for serious corrupt conduct, the NSW Governor can sack the councillor and disqualify them from holding office for up to five years. Although these measures are a positive step, they will unfortunately have limited application in practice.

Last year we were also supportive of the Minister's consideration of a range of measures to curb councillor misbehaviour. These measures have been called the 'sin bin' proposal. We have learnt recently that the government does not currently intend to proceed with this proposal.

This year we have received further complaints of misbehaviour by councillors. The same names come up repeatedly. If the council concerned has investigated the matter appropriately and

imposed sanctions under its code of conduct, there is no further action we can take. However, as case study 15 demonstrates, councils can impose only very limited sanctions against misbehaving councillors. Councillors who are 'repeat offenders' often seem to live by the maxim that 'there is no such thing as bad publicity'. Being publicly censured by the council for misbehaviour often just seems to encourage further misbehaviour.

Faced with such behaviour, many councils choose to ignore it. They accept it as a fact of life and fear that to discipline the councillor will merely provoke them further. Unfortunately this is little comfort to residents complaining of abuse, physical intimidation, innuendo or slander by the councillor concerned.

Other councils have tried to amend their codes of conduct to enable the council itself to suspend councillors for breaches. While we understand the frustrations that councils face, we have concerns about the legality of these amendments and their potential for abuse. Although councils are currently able to expel councillors from individual meetings for acts of disorder, they are not empowered to suspend them for any extended period. In addition, there is the possibility that majority councillors could use these kinds of sanctions to silence minorities. We support a power of suspension but we believe it should only be exercised by an external body to protect against any abuse. We are currently investigating one council that has amended its code in this manner. We are aware of at least one other and further investigations may follow.

Civic office carries with it certain responsibilities and expectations about how councillors should conduct themselves. It does not confer a right to bully, harass, abuse, intimidate or slander fellow councillors, staff and residents. Under the current disciplinary regime, councillors are free to conduct themselves in this manner knowing the worst they can face is a vote of censure by the council. Since many councils are struggling to manage councillor misbehaviour, we are disappointed the government has chosen not to proceed with its 'sin bin' proposal. In the coming year, we intend to increase our focus on councillor misbehaviour and the way councils manage it.

## Procedural fairness and the investigation of complaints against councillors

We expect councils to comply with the requirements of procedural fairness when investigating complaints about councillor conduct. Failure to do so is potentially wrong conduct under the *Ombudsman Act*.

Generally, procedural fairness requires a council to:

- notify a councillor under investigation that they are being investigated
- identify in reasonable detail the alleged conduct being investigated
- inform the councillor of any sanctions they may face if the complaint is sustained
- give the councillor an opportunity to comment on any proposed adverse comment or finding.

### Case study 15

A council investigated allegations that a councillor had used his council laptop to download pornographic images. The councillor complained about the way the investigation had been handled. In particular, he complained he had been denied procedural fairness because documents relating to the investigation were made public before he was notified he was being investigated. The councillor also alleged the general manager had manipulated the process for reasons of personal malice.

Details of the investigation became public after the councillor requested that a report on internal investigations be presented to an

open council meeting. The media sought access to documents relating to the investigation under section 12 of the *Local Government Act*. The general manager released those documents acting on legal advice from senior counsel.

During the investigation, council notified the police and referred the matter to a forensic computer specialist to determine whether there had been a breach of the code of conduct. His examination of the laptop revealed some 5,000 pornographic images including images depicting children. The investigation could not establish with certainty it was the councillor who downloaded the images. The expert advised that

further investigation was required to establish this.

The councillor contended that he had not personally downloaded the images and supplied evidence that he claimed demonstrated this. We advised council that in light of this and in the absence of further investigation as suggested by the expert, it was not open to it to find that the councillor had been responsible for downloading the images. Council ultimately resolved to censure the councillor for allowing the computer to be misused to the detriment of council's reputation. This was the most serious sanction available to council under its code of conduct.

The council should do this before taking any action against the councillor.

Some councils have complicated processes that enable procedural fairness to be provided over several stages. First they decide whether the alleged conduct is capable of constituting a breach of the code of conduct. If it is, the councillor is informed of the matters alleged and given an opportunity to comment. If the complaint is sustained after an investigation, the councillor is informed, advised of the sanction council proposes to impose and given an opportunity to comment. Some councils give councillors a further opportunity to address the council before any decision is made to impose the sanction.

Councillors are elected by the residents of their area and are ultimately accountable to them. We therefore consider it only appropriate that a council's final decision in relation to a complaint against a councillor is dealt with in an open council meeting. However before a complaint is referred to councillors for their final decision, procedural fairness requires the preliminary investigation to be conducted in the absence of the public. Under most council codes of conduct, the harshest sanction the council can impose is public censure. To publicly investigate a complaint against a councillor would be effectively to impose this sanction before the councillor has had an opportunity to respond. The councillor could suffer adverse publicity about an unsubstantiated allegation even if the council ultimately found that the complaint against them could not be sustained.

Under section 10A of the *Local Government Act*, councils are unable to close council meetings to consider allegations against councillors. Section 12 requires councils, subject to certain exemptions, to provide public access to documents held by them. Although we generally support the principles behind these provisions, they can operate in a way that denies procedural fairness to a councillor being investigated. In case study 15, compliance with sections 10A and 12 led to the public release of information about an investigation before the councillor had been notified he was being investigated or given the opportunity to respond to the allegations against him. We have written to the Minister for Local Government raising our concerns about the impact of these provisions.

We have also recently written to two councils raising our concerns about councillors moving censure motions against fellow councillors in open council meetings without having first complained about their conduct or followed proper procedures for having the complaint investigated. This has

meant that the censure motion is the first time that the allegations are raised. The council has not had an opportunity to investigate the matter and the councillor the subject of the motions has not been given an opportunity to respond. Not only does this deny procedural fairness to the councillors the subject of such motions, but councillors also tend to vote on the motions along factional lines. Invariably only the complaints made by those with the numbers on the council are sustained. This practice can only undermine any respect for the council's code of conduct, lower standards of conduct and diminish the standing of local government in the community.

## Non-pecuniary conflicts of interest

Another area of concern is the way councils deal with non-pecuniary conflicts of interest. Councillors are elected to reflect the concerns and aspirations of the communities they represent. It is therefore inevitable that, particularly in smaller communities, they will encounter matters in which they have a non-pecuniary conflict of interest.

The way in which these conflicts are dealt with is not as well regulated as pecuniary conflicts of interest. A pecuniary interest is clearly defined in the *Local Government Act* but a non-pecuniary interest is not. Most council codes of conduct define non-pecuniary interests as 'any private or personal interest which does not pertain or relate to money eg kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity'.

The *Local Government Act* requires councillors to disclose any pecuniary interest they may have in a matter under consideration and leave the meeting. In contrast, the model code of conduct only requires that if councillors have a non-pecuniary conflict of interest, they should 'not do anything which [they] could not justify to the public and... avoid any occasion for reasonable suspicion or the appearance of improper conduct or the partial performance of their public or professional duties'.

As shown in case studies 16 and 17, we have found that there is some uncertainty amongst both staff and councillors about how to identify and deal with a non-pecuniary conflict of interest.

It is important that councils educate their staff on how to identify non-pecuniary conflicts and set up processes for disclosing them. In the case of non-pecuniary conflicts faced by less senior staff, the matter can often be dealt with by the manager concerned allocating the matter to another staff member.

Dealing with a non-pecuniary conflict of interest is not quite as simple for councillors. There are a number of options available but how a councillor decides to deal with a conflict ultimately rests with them. They can declare the interest and leave the room, but they are not necessarily required to remove themselves from considering all such matters. They can choose not to declare an interest that is minor in nature, they can declare the interest but continue to participate, or they can declare the interest, participate in discussion but not vote on the matter. What action is appropriate will depend on the nature of the interest. Unfortunately, the question of whether a councillor has dealt with a non-pecuniary conflict of interest appropriately will usually not be raised until it becomes the subject of a complaint.

In a matter we are currently investigating, we have suggested the council set up a panel consisting of the general manager, Mayor and an appropriately qualified officer to deal with this issue. We have suggested the code of conduct be amended to enable councillors to refer to the panel questions of whether they have a conflict of interest and, if so, what course of action they should take. The decisions of the panel would not be binding on a councillor, but they would help the councillor decide whether they should declare an interest. The panel's decision would be published in the business papers for the matter concerned, unless there were good reasons why the public interest would not be served by doing this (for example, the interest is highly private). The panel's decision would also be a relevant consideration (as would any failure by a councillor to refer a matter to the panel for advice) in subsequently dealing with any complaints made.

### Case study 16

A Wollongong resident complained of inaction by Wollongong City Council in enforcing the conditions of consent for a neighbouring business. She alleged the investigating officer was a personal friend of the business manager.

Our inquiries prompted an investigation by the council's internal auditor. This confirmed that the officer had known the business manager for 35 years through their membership of a local surf club. The officer had told the complainant this but had not reported the relationship to the council. His manager had been unaware of the relationship and said that, if she had, she would have advised him not to deal with the matter.

As a result of our inquiries, the officer was removed from dealing with the matter. Numerous subsequent site inspections revealed no evidence the business was operating outside the hours permitted by its consent.

We suggested to council that the case demonstrated a need to educate staff about their obligations under the code of conduct. In response council agreed to train new staff on code of conduct issues, using this case to illustrate the

need to identify and declare conflicts of interest. It also agreed to use the staff newsletter to reinforce to existing staff their obligations under the code.

### Case study 17

A developer complained about Lake Macquarie City Council's handling of planning issues. He alleged that one of the council officers involved in the environmental assessment of his development proposal was biased because of her former political affiliation with the Greens and her relationship with a family member of one of the objectors to his proposal.

We considered the alleged personal interests to be too remote to pose a conflict of interest. However, our inquiries revealed that the council did not maintain a register for staff to record interests that could come into conflict with the discharge of their professional duties. Council responded positively and adopted our suggestion to record staff notifications, and the manager's decisions about them, in the council's disclosure of interests register.

### Case study 18

Residents wrote to Cowra Shire Council complaining of odour from a neighbouring dairy. They commented that the council's health inspector was

not interested in dealing with their complaints. The then acting general manager advised the complainants that if they could not substantiate their statement and did not retract it, the matter might be referred to council's solicitor.

We raised our concerns with the newly appointed general manager and referred him to our guidelines for local government which state that:

*Everyone involved in council affairs should be clear that complaints and criticism are a normal part of modern local government. They are often valuable forms of communication between councils (especially as service providers with a commitment to quality service) and their local communities. Legal action should be a last resort, and only after other means of resolving a problem have been tried.*

The new general manager responded positively. He told us that the then acting general manager had personally dealt with the complaints about the dairy and that he had told him that if he believed the comments were defamatory then he should have sought his own legal advice. He also made it clear that he would not support such actions being taken under council's authority.

## Complaint handling

We promote good complaint handling within councils by providing advice and publishing materials such as the *Complaint Handlers' Toolkit* and *Better Service and Communication — Guidelines for Local Government*.

We continue to receive complaints that highlight deficiencies in council complaint-handling systems. Over a quarter of our local councils complaints are about customer service, which includes how complaints are handled (see fig 19). Case studies 18, 19, 20 and 21 are examples of matters we dealt with this year. When we receive these complaints, we generally ask to see the council's complaint-handling policy. If the council does not have a policy, we recommend that they establish one and we provide guidance if necessary.

As case study 19 shows, we take into account the size, staffing and resources available to a council when providing advice about their complaint-handling systems. We would not expect smaller rural councils to use complaint-handling structures as sophisticated as those used by large city councils. Larger councils may have the resources to employ internal auditors to handle complaints and conduct investigations. In smaller councils, complaints may simply be referred to the head of the department concerned and dealt with locally. Whatever system is in place, we do expect that minimum standards for performance are established.

We have noticed an increasing tendency for larger councils to create specialist complaint-handling units that use sophisticated complaint-handling techniques. Sutherland Shire Council and Wollongong City Council have appointed an

### Case study 19

A resident wrote to Brewarrina Shire Council raising her concerns that council spraying was damaging vegetation on a road reserve. Council phoned her to acknowledge receipt of her letter. After some months she still had not received a written reply, so she sent a follow up letter. When this yielded no response, she complained to us.

As a result of our inquiries, the council immediately wrote to the complainant explaining and apologising for the delay.

We also asked whether council had a formal complaint-handling policy. They told us that they did not have such a policy, just a procedure where complainants were given a form to complete which was then sent to the head of the relevant department. Council advised us of the difficulties it faced as a small council.

We acknowledged that council had limited resources and small staff numbers, but stressed the importance of having formal complaint-handling procedures. To help them devise a policy, we gave them a copy of our guidelines for local government. Council subsequently told us it had implemented a policy on service and

communication based on the model policy in our guidelines.

### Case study 20

A resident complained to Lake Macquarie City Council about a development application involving the demolition of a building the Heritage Office had suggested should be reviewed for local heritage value. He sent emails to the general manager on a number of occasions but received no reply.

We made inquiries about council's correspondence handling procedures. They told us that they did not acknowledge submissions because of the large number of development applications they dealt with each year. We also found that emails received by senior staff were sometimes deleted without any action.

We suggested that council establish appropriate procedures to deal with the increasing volumes of email correspondence and make sure they acknowledge all correspondence. Council agreed to review its correspondence handling procedures and established trials to work out the best way to acknowledge receipt of submissions on development applications and handle the increasing volume of emails.

### Case study 21

A resident complained to Newcastle City Council about an unauthorised structure her neighbour had erected. Despite first raising the matter in June 2000, she received no written response to her letters, faxes and emails until May 2001 after our inquiries. She kept records of her dealings with council which showed she spoke with them about the issue on the telephone about 20 times. Despite this, council staff appeared to have made only one file note.

We wrote to council pointing out that State Records standards require full and accurate records to be kept of telephone conversations. In our *Good Conduct and Administrative Practice: Guidelines for Councils* we also suggest that adequate and contemporary records be made of any significant discussions with members of the public. Council undertook to take appropriate measures to ensure more adequate record keeping in the future.

'internal ombudsman' and there are a number of other councils exploring this option.

We generally support this development. However to avoid any public confusion with our office, we have requested that council internal ombudsman make it clear to their complainants that they are not the NSW Ombudsman nor are they associated with us, and that complainants still have a right to complain to us if they are dissatisfied with the way their complaint is handled.

We have become aware of the efforts of one council to seek statutory recognition of its internal ombudsman. We believe staff who deal with complaints appropriately currently enjoy adequate legal and institutional protection, as long as they have a suitable degree of autonomy within council's structures. We do not agree that they need statutory protection and we believe this would only compound the potential for confusion and add to the complexity of an already complicated system of local government oversight.

## Enforcement

Last year we reported that we were working with the Local Government and Shires Association of NSW, the Department of Local Government and Planning NSW to develop guidelines on enforcement. Our 'Enforcement Guidelines for Councils' were published this year.

We continue to receive many complaints about enforcement issues. Most councils see themselves as 'gatekeepers' whose roles are limited to controlling development through the development consent process. Few councils have ongoing programs to monitor compliance with consent conditions. This approach is best demonstrated in case study 22 where, despite a history of non-compliance and a failed attempt to obtain council consent to 'regularise' unauthorised usage, it took a complaint from a resident to us for the council to take action to enforce compliance. It is illustrated more starkly in case study 23 where, despite having issued a Notice of Intention to Issue an Order, it required our intervention for the same council to follow up the notice by issuing the actual order.

In our enforcement guidelines, we encourage councils to look beyond a 'gate-keeping' role and do more to monitor compliance. We suggest they use risk management techniques to identify the areas and types of activities that need most attention.

Another area we are concerned about is the inappropriate exercise of discretion in deciding whether to take enforcement action. Councils

need to consider a range of relevant matters when exercising this discretion, but should not take irrelevant issues into account. In case study 24, the council put greater weight on the offending business' expert's report than it did its own and failed to consider whether the use of that site was permissible. In case study 25, the council failed to take into account certain evidence and legal authority relevant to the question of whether a quarry enjoyed existing use rights. In case study 26, the council put undue weight on the impact of relocation on the domestic arrangements of the operator of an unauthorised industry in a residential area and insufficient weight on the complaints of his neighbours.

In our guidelines, we set out the issues a council needs to take into account when determining whether or not to take enforcement action. We hope these guidelines will help councils achieve greater consistency and transparency when exercising their regulatory functions. The guidelines are available for purchase. Please see the publications list at the end of this report.

## Development issues

Every year a significant number of complaints about local councils relate to development issues. However, for a number of reasons, we are rarely able to investigate these complaints.

Firstly, when determining development applications councils are assessing the merits of a proposal taking into account certain statutory considerations. In doing so they have the benefit of expert advice. It is therefore rarely appropriate for us to interfere in the exercise of this function, particularly since councils are representative bodies elected by and accountable to their residents.

Secondly, we cannot overturn development consents. With some minor exceptions, only the Land and Environment Court has the power to do this. There is often therefore little point in us investigating complaints about these decisions.

Thirdly, and most importantly, under section 13(5) of the *Ombudsman Act* we are prevented from investigating the conduct of councils if the conduct is subject to a statutory right of appeal or review unless we consider there are special circumstances preventing the complainant from exercising that right. In general, special circumstances must amount to more than the costs and delays normally associated with exercising a right of appeal or review or the failure to exercise those rights in time.

Applicants, and in limited cases objectors, have the right to appeal to the Land and Environment



Court against council decisions on development applications. In addition, any person may apply to the court under section 123 of the *Environmental Planning and Assessment Act 1979* for an order to remedy or restrain breaches of the Act. A complainant can apply for such an order if they contend a council has failed to comply with statutory requirements in determining a development application. This means that in the absence of special circumstances we must decline to investigate most complaints about council decisions on development applications.

Case studies 27, 28 and 29 are examples of complaints about development issues that we were able to investigate.

### Case study 22

A resident wrote to us about the failure of Woollahra Municipal Council to act on complaints about the operation of a delicatessen. Our inquiries showed council had been considerably delayed in reviewing the conduct of the business' Sunday trading, as it had agreed. We also discovered the delicatessen had been allowed to operate as a cafe for some time even though this was not a permitted usage under the Local Environmental Plan. In fact, council had previously rejected development applications to regularise this usage.

The complainant also alleged the delicatessen had a history of breaching its consent conditions by using a loading dock as a storage area and exceeding its hours of operation. In particular, it used the loading dock for early morning deliveries and late night cleaning. As a result of our inquiries, council started enforcement action against the delicatessen.

### Case study 23

A resident complained to Woollahra Municipal Council about their neighbour erecting a barbed wire fence between their properties in breach of council's fencing code. A council officer inspected the fence and advised the resident her neighbours would be told to remove the fence. After some months of inaction, the resident complained to us. We declined to investigate the matter because council

had, in the interim, issued a 'Notice of Intention to Issue an Order' requiring removal of the fence.

Some months later, the complainant asked for a review of our decision on the basis that despite her neighbours' failure to comply with council's notice, council had not taken any action to actually issue an order. We made repeated attempts to contact the responsible officer to find out what action council had taken, but received no response. We decided to reopen the matter and direct our inquiries to the general manager.

Council explained that the delay was partly due to its unsuccessful attempts to mediate a resolution to the issue. However, the responsible officer was disciplined for his failure to respond to our inquiries. After our intervention, council issued an order against the neighbours requiring removal of the fence. When they failed to remove the fence, they were fined \$1,500 and council began proceedings to enforce the order.

### Case study 24

A restaurant owner in Boorowa complained that Boorowa Council had failed to act on her complaints about noise generated by a neighbouring business. Her neighbour ran an engineering business from the premises and had recently started manufacturing scrum machines, a rugby training device he had invented.

Council's position was made difficult because the neighbour's manufacturing business had created jobs which benefited the small community. Matters were also complicated by the fact that council had never dealt with noise complaints before.

Our inquiries showed that although council was committed to resolving the complaint, there were deficiencies in the way it dealt with the matter. We were particularly concerned that council agreed to meet the cost of noise control measures proposed by the neighbour's sound consultant that varied from those recommended by its own sound consultant. Council had also not adequately considered whether manufacturing was a permissible use of the site. In addition, council's loan to the neighbour to undertake the noise control measures did not comply with section 356 of the *Local Government Act*.

We began an investigation, but the matter was resolved when council provided financial assistance to the manufacturing business to relocate to an industrial estate. Although we discontinued the investigation, council complied with our advice that they put in place a formal complaint-handling policy. They also took up our suggestion that they set up a formal financial assistance program for industries established in the area to ensure compliance with section 356.

### Case study 25

A resident complained about the operation of a quarry near his property on land owned by Port Stephens Shire Council. The quarry was operated by a private business under contract to council. Under the contract, the operator paid royalties to council on materials removed from the quarry and then supplied some of these materials to council.

The resident alleged, amongst other things, that the operation of the quarry was not permissible. When the quarry began operations in 1960, the zoning of the land permitted extractive industries. However, a rezoning in 1974 made such industries impermissible. In such circumstances, the industry may enjoy existing use rights. One of the elements required to demonstrate existing use rights is continuance of use. The complainant had evidence to suggest the quarry had been abandoned between 1974 and 1982. In this case, existing use rights would have been extinguished and extractive industries would not be permissible on the land.

Council considered the question of whether the quarry enjoyed existing use rights in 1997, some three years after it had entered into the contract with the quarry operator. A report to council confirmed that although there was a clear record of production from 1983 to the present, there was no such record before that date. Statutory declarations by longstanding residents suggested material had been removed intermittently. However, the complainant was able to point to legal authority suggesting the mere removal of stockpiled material was insufficient to demonstrate continuance of use. The material must continue to be quarried.

We suggested that council needed to reconsider the question of whether the quarry enjoyed existing use rights. We also expressed concern that council would be considering a matter in which it had a pecuniary interest. Council benefited from the continued operation of the quarry via

the royalties it earned and the cost benefits of using locally extracted materials. We advised council that it should get an independent expert to prepare a report for its consideration.

We were also concerned that council had not considered the question of existing use rights until three years after entering into the contract. We suggested that because of council's potential exposure under the contract if the quarry was required to cease operations, this question should have been considered before holding the tender.

Council told us it had begun a review of the quarry's ongoing operation. We have asked council to report to us on the progress of this review.

### Case study 26

A resident had operated a metal manufacturing business in a residential zone in Hornsby for 40 years without council approval.

After an investigation of a complaint about the business, Hornsby Shire Council decided to permit it to continue until the resident retired. In doing so they considered the fact that the complainant lived nowhere near the premises and the business had operated for many years with the support of the neighbours. We considered that decision was not unreasonable.

However, our inquiries revealed council had allowed another unauthorised manufacturing business to operate in a residential zone. This business had only been operating for six years and during this period council had received three complaints from neighbours. Staff recommended the business be closed down. However council decided that due to the hardship this might cause the resident, it would take no action. We considered that, in making this decision, council had relied on an irrelevant consideration (hardship to the resident operating the illegal business) and failed to take into account relevant considerations (impact on neighbouring residents).

To make matters worse, council arranged for its solicitors to enter into a deed of agreement with the resident. The agreement stated that council would not take any action against him for 12 months, after which it would review the matter. Council's solicitors warned that the deed was unenforceable and would create an undesirable precedent. Council subsequently failed to conduct this review.

Our inquiries prompted council to conduct a site inspection which revealed that the business was no longer operating. Although we declined to investigate on the basis that there was no longer any point in doing so, we raised concerns about council's conduct and asked it to review its enforcement policies. Council advised us it had established a Legal Services Unit to review enforcement and compliance issues and make sure that council considered relevant factors in carrying out its enforcement functions.

### Case study 27

A councillor lodged a development application to clear trees from his property. There had been a history of litigation between him and council in the Land and Environment Court about the property. In the course of dealing with this, the court had recognised the need to maintain a strip of trees on the property as a wildlife corridor.

Council's Director of Planning told the councillor that under the Local Environmental Plan the clearing was permissible without consent. The councillor however insisted on lodging an application in the interests of transparency and because he feared political attack if he cleared the trees without approval. The Director subsequently approved the application under delegated authority.

When the matter was reported to council, a fellow councillor became concerned because of the history of litigation. Her inquiries revealed the matter was allocated to a junior planning officer. He told her he had intended to refuse the application

but, before he did, the Director had taken it from him. Her inspection of the standard checklist (which needs to be filled out when assessing all development applications) revealed it had been left blank. She raised her concerns with us.

Our inquiries confirmed the Director had taken the application from the junior officer after he had indicated his intention to refuse the application. We also found serious oversights, such as the absence of any record of the Director having conducted a site inspection or checked previous files. There was no evidence to suggest interference by the councillor who lodged the application.

The Director maintained that the tree removal was permissible without consent. He said he had taken the file from the junior officer because of significant delays in his dealing with it.

We had major concerns about the way the Director had dealt with this matter. We questioned whether it was a sensible use of council's resources to process a development application after he had decided that it was not necessary. However as the councillor had lodged a development application despite the Director's views, it was reasonable to expect the assessment to be done properly. Instead the Director appeared to have simply gone through the motions.

We decided not to investigate because the Director had left council and no longer worked in local government. However in response to our concerns, council implemented a policy requiring all applications by councillors to be referred to the full council for determination.

### Case study 28

We received a complaint about the granting of an approval by a council's Director of Planning under delegated authority.

The history of the development application was long and troubled. The applicants had bought a share of

a property some years earlier with the intention of building a house on it. The property already had a house on it and the Local Environmental Plan (LEP) did not permit subdivision or a second dwelling. In 1985 the applicants successfully obtained council approval to build a storage barn. There was evidence to suggest the applicants illegally occupied this as a second dwelling. The applicants and their co-owner subsequently fell out. The co-owner sought council support to end the applicants' unauthorised occupation of the barn and later began proceedings in the Equity Division of the Supreme Court.

The applicants subsequently made a number of unsuccessful attempts to obtain council consent to subdivide the property. This included an attempt in 1997 to seek approval to create a special purpose lot for a rural industry under an amendment to the LEP. Council discouraged the applicants at the time, advising them the proposal was inconsistent with council's planning controls and the NSW government's regional development strategies and that it could not approve the use of the building as a dwelling.

In 2000, the applicants again lodged an application to create a separate lot to establish and operate a rural industry (the production of country wine) and change the use of the barn to a rural industry, office and dwelling. This time the Director approved their application. A review of the decision by a council planner suggested it had been contrived as a 'fix' to a long-standing problem and would not withstand the scrutiny of the Land and Environment Court.

We decided not to investigate because the Director had left council and no longer worked in local government. However, we wrote to the council to express our concerns about the decision.

### Case study 29

A resident complained to us on several occasions about the failure of Penrith City Council to act on her complaints about neighbouring greyhound training facilities. These had expanded since council originally consented to them in 1985, giving rise to noise and other nuisances affecting the complainant's property.

Our inquiries showed that council's ability to deal with complaints against the facilities was restricted by the ambiguity of the 1985 consent. The Notice of Determination issued by council described the development as '*Training/trial and breeding kennels for greyhounds in accordance with plans submitted to Council on 17 June 1985*'. Unfortunately, the plans were not held on council's files. The consent had been modified on several occasions since.

Given the history of development on the site, the ambiguity of the 1985 consent and the terms of subsequent consents, the question of what had or had not been approved by council remained unclear. The picture was further muddled by the fact that several of the conditions of subsequent consents were possibly unenforceable. In such circumstances, council had limited enforcement options under the *Environmental Planning and Assessment Act 1979*.

After our intervention, council explored other enforcement options to address the complainant's concerns. Following noise testing from the complainant's property, council issued a Noise Control Notice under the *Protection of the Environment Operations Act 1997* setting noise limits her neighbours were required to comply with. Although the neighbour appealed against this on a technical point, he engaged an acoustic engineer to prepare a management plan to ensure compliance with it. Council has advised that once the proposed measures are in place, it will conduct further noise testing to ensure compliance with the notice.

## Notification and consultation

One part of the development approval process we tend to become involved in is notification and consultation. We look into complaints of inadequate notification because they often raise process issues that go beyond individual approvals.

Our view is that a consent authority (including a local council) that notifies all affected parties improves its decision-making by maximising the opportunity for all relevant matters to be brought to its attention. While we applaud any efforts of consent authorities to make relevant information available to parties who are notified, case studies 30 and 31 show how important it is that councils make sure the information they supply is complete and accurate.

## Mystery shopper audit: North Sydney Council

We continued our program of mystery shopper audits of customer service provided by NSW state and local government agencies. In 2002 we tested North Sydney Council's performance by pretending to be members of the public seeking to access the services council provides. The audit was not designed to be an in-depth evaluation of the council's organisational performance — just a snapshot of its general standard of customer service.

We based the scenarios we used on actual complaints made to us about North Sydney and other councils. We also used material provided by council about its services, including council's web site. We limited our service requests to the provision of relatively simple information that should have been readily available and would not involve any unreasonable imposition on council's time or physical resources.

### Case study 30

An organisation complained that Rockdale City Council had withheld information about the proposed redevelopment of Cooks Cove. Although council did not have a determining role in the matter, a draft Master Plan prepared by the Sydney Harbour Foreshore Authority (SHFA) and a draft Regional Environmental Plan (REP) prepared by Planning NSW had been on display at council.

Following our intervention, the general manager agreed to invite members of the organisation to inspect all the files council had on the matter.

Having inspected the files, the organisation observed that the exhibition did not include maps they considered were important in understanding the proposed redevelopment. They raised their concerns with SHFA who sent them copies of the maps and the exhibition period was extended. However there was no public notification that the maps had not been, but were now, included in the extended exhibition.

After our further intervention, Planning NSW reviewed the matter. The draft Master Plan and the draft REP were re-exhibited and the community alerted to the fact the previous exhibition did not include the maps.

### Case study 31

A resident complained about Ku-ring-gai Municipal Council's handling of a neighbouring development.

The plans lodged by the developer represented the scale of the proposed development compared to the existing adjoining houses. These were sent to adjoining residents. Once construction started, it became apparent that the scale of the development was substantially bigger than had been represented. Although the complainants had objected to the development, their objections related to the development as notified as distinct from the one that had been approved.

When the developers lodged an application for modification of the consent, council attempted to address the complainant's concerns

by imposing additional conditions not sought by the developer. Council's legal advice suggested these were unenforceable as a result. Also, although council claimed to have imposed additional conditions to address the concerns of the objectors, it failed to notify them that it had done so.

Council acknowledged our concerns, particularly the need to ensure the accuracy of plans notified to affected residents and advise objectors of the outcome of development applications. It indicated it normally did this and the errors in this case were isolated. In responding to our inquiries, council observed that '...it would be fair to say that the [assessment] officer concerned had some difficulty coping with the high standards expected in Ku-ring-gai and has since left the employ of council'. It added that 'the lessons of the ... matter have been made clear to all assessment officers'.

We conducted the audit between March and June and our staff members were involved in 54 separate customer/agency interactions — 11 face-to-face inquiries, 20 telephone calls, 10 letters and 13 email queries.

### Face-to-face service

Eleven mystery shoppers visited council during the audit period with an inquiry about the work of council or seeking to access one of council's services. The physical aspects of council's service were rated highly by our staff. All mystery shoppers were served without delay, with the average initial time spent waiting in queues being 32 seconds. The quality of the waiting area was also rated as good or very good. Just over half of the council officers that mystery shoppers dealt with were wearing identification tags. Pleasingly, staff gave an appropriate greeting and made eye contact with customers in all cases. We rated no staff member — either in the reception area or staff to whom referrals were made — as discourteous.

### Telephone

We made 20 telephone calls and the line was never engaged. The telephone rang an average of only 2.2 times before it was answered. The person answering the phone always provided the name of the organisation and, in every case but one, the council staff member offered an appropriate greeting such as 'How can I help you?' or 'How can I be of assistance?'.

The majority of our mystery shoppers rated the courtesy of people answering the calls, and the council staff they were referred to, as pleasant and helpful and actively interested in their enquiry. Only one mystery shopper found the staff member she dealt with initially to be uninterested in her problem — in her words, the person tried to 'fob her off'. However when this same mystery shopper was referred to another staff member, she described this person as 'extremely helpful and informative'. We found council staff readily able to answer our questions or provide the information requested in 95% of the cases brought to their attention, with an average total time for the transaction of less than five minutes.

### Correspondence

We tested council's service in response to written correspondence by letters posted in a controlled fashion to ensure a next day delivery, and one letter sent by fax.

Council responded to 40% of this correspondence with letters that were both prompt and well written. In a further 20% of cases, council responded by contacting the correspondent by telephone and providing relevant information.

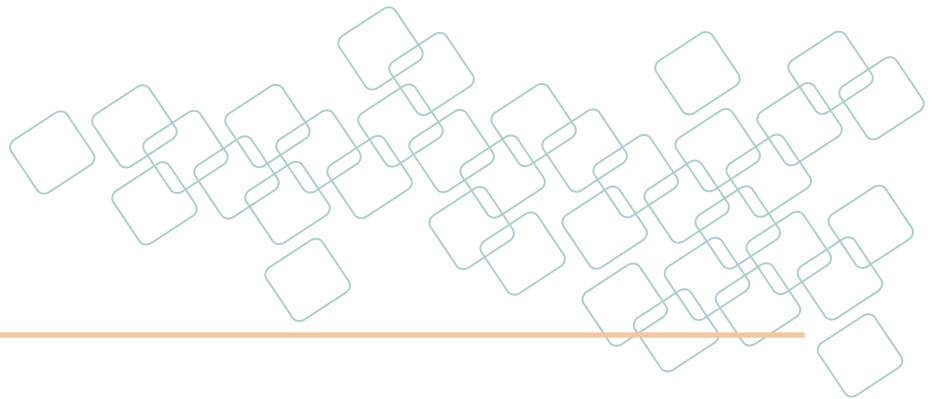
In these cases, the average turnaround time between correspondence being sent and council responding to it in either written or oral form, was 12.6 days. However, no response at all was received to 40% of letters, including the only letter sent to council in a language other than English.

### Email

Council encourages email contact with customers by having links on its web site and council's email address on its standard letterhead. Given this, it is unfortunate that council's performance in responding to email inquiries was no better than mixed. Realistically or not, most customers expect to receive much faster turnaround times for an email than for standard posted correspondence. We emailed 13 requests for information to council, including one follow-up email by a person who complained about not having received a response to his earlier inquiry. We received business-like responses to just over half of the emails within five days, but in six further cases we received no response at all. This included the follow-up email sent by the disgruntled mystery shopper.

### Summary

We found council's responses much better than satisfactory in relation to our telephone and face-to-face challenges. However, council's responses to our written communications and, in particular, our emails were much more mixed. We are happy to record that North Sydney Council responded in a positive way to our report, acknowledging the need to concentrate on turnaround times for written communications and establish service levels for electronic communications. Council also told us some of the positive steps they have already taken to improve customer service levels.



# Corrections

In this section we discuss the work we have done during 2001–2002 with correctional and juvenile justice centres. This includes working with the Department of Corrective Services (DCS) and Australasian Correctional Management Pty Ltd (ACM) that operates the private facility Junee Correctional Centre, the Corrections Health Service, and the Department of Juvenile Justice.

## Correctional centres

We received complaints from inmates in correctional centres about a range of issues, but the highest number of complaints were about daily routines. We also received a number of telephone calls and written complaints about property matters, records and administrative matters, transfers and officer misconduct (see fig 22). Please see fig 67 in Appendix E for the list of the correctional centres that we received complaints about this year. We resolved about 60% of written complaints received through a preliminary or informal investigation (see fig 20 and fig 65 in Appendix E).

We receive a small number of complaints each year alleging that corrections staff have assaulted an inmate. We view these allegations of assault as very serious, but usually do not investigate them directly as they are criminal allegations. We generally refer these matters to one of the department's investigative units. We review their investigation report and any action taken as a result to ensure the investigation is complete and thorough and that any recommendations are appropriate.

The unit that usually investigates criminal allegations is the corrective services investigation unit, a unit made up of serving police officers on secondment. They have full authority to conduct criminal investigations.

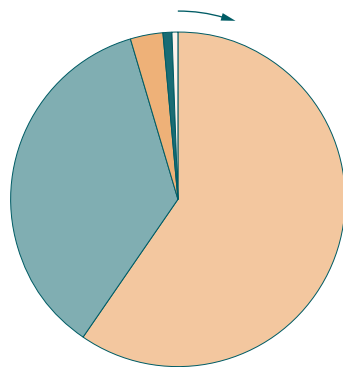
The department has a number of policies and protocols for handling complaints against staff. Recently when we were making inquiries into the handling of an allegation of assault, we found that the information available to investigative staff may be insufficiently referenced and possibly contradictory. In that case, the senior officer dealt with the matter locally according to operational procedures. He did not seem to be aware of protocols implemented in July 2000, which required the matter to have been referred directly to the department's investigation review committee to decide which unit should investigate a matter. The committee also assesses each investigation completed.

We asked the commissioner to clarify how inmate complaints are processed and what information has been provided to staff about these procedures. We are awaiting his response.

## How inmates and detainees contacted us

Telephone inquiries to our office have more than doubled in the past two years (see fig 23) and written complaints seem to have dropped as a result. Now inmates are able to have their queries answered or resolved quickly on the telephone, we can use our visits to correctional centres and juvenile justice centres to inspect the conditions of the facilities and raise our concerns about systemic issues, rather than just taking complaints.

**Figure 20:**  
Corrections complaints received and determined \*



Complaints determined (written)

- Preliminary or informal investigation completed
- Assessment only
- Outside our jurisdiction
- Formal investigation completed
- Formal investigation discontinued

\* This figure shows complaints about the Departments of Corrective Services and Juvenile Justice, the Corrections Health Service and Australasian Correctional Management Pty Ltd (operating the private facility Junee Correctional Centre)

**Complaints received**

<b>Written</b>	<b>334</b>
comprising: Correctional centres, DCS and ACM	291
Juvenile justice centres and DJJ	19
Corrections Health Service	24
<b>Oral</b>	<b>3715</b>
comprising: Correctional centres, DCS and ACM	3156
Juvenile justice centres and DJJ	209
Corrections Health Service	350
Request for review of our decision	8
<b>Total</b>	<b>4057</b>

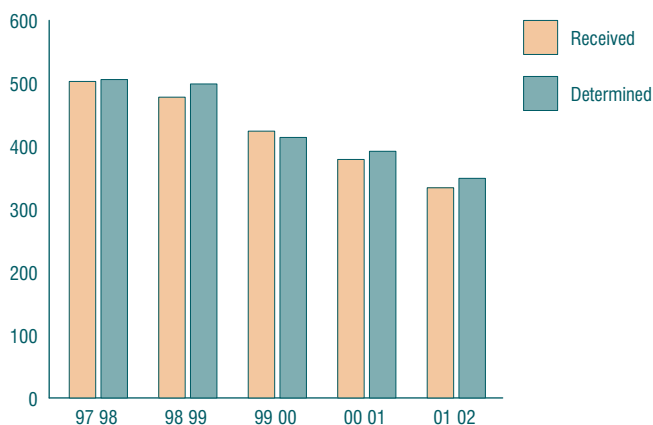
**Complaints determined (written)**

Preliminary or informal investigation completed	208
Assessment only	125
Outside our jurisdiction	11
Formal investigation completed	3
Formal investigation discontinued	2
<b>Total</b>	<b>349</b>

**Current investigations (at 30 June)**

Under formal investigation	1
Under preliminary or informal investigation	32

**Figure 21:**  
Corrections complaints (written) received and determined – five year comparison \*



	97/98	98/99	99/00	00/01	01/02
Received	503	478	424	379	334
Determined	506	499	414	392	349

\* This figure shows complaints about the Departments of Corrective Services and Juvenile Justice, the Corrections Health Service and Australasian Correctional Management Pty Ltd (operating the private facility Junee Correctional Centre)

## Visits to correctional centres

This year we decided to focus our program of visits on centres known for their complexity, centres that we received a large number of complaints from and centres with particular profiles that needed closer observation. We made 31 visits to 20 correctional centres and two court cell complexes (compared to over 40 visits last year). The reduction in the overall number of visits allowed us to spend more time at certain centres and conduct more detailed inspections and discussions with staff. It also allowed us to visit centres in more remote locations such as Brewarrina and Ivanhoe. While we still aim to resolve as many issues as possible during a visit, this year we identified a number of significant matters that needed more detailed assessment and inquiry.

**Figure 22:**  
Nature of correctional centre complaints

Issue	Written	Oral	Total
Buy-ups	1	95	96
Case management	5	51	56
Child abuse related	0	0	0
Classification	21	169	190
Community programs	0	4	4
Daily routine	41	551	592
Day/other leave/works release	2	53	55
Fail ensure safety	20	55	75
Food and diet	5	44	49
Information	3	47	50
Legal problems	5	78	83
Mail	4	71	75
Medical	5	65	70
Officer misconduct	32	231	263
Periodic/home detention	3	16	19
Probation and parole	3	69	72
Property	33	275	308
Records/administration	13	259	272
Security	4	29	33
Segregation	8	101	109
Transfers	19	294	313
Unfair discipline	2	78	80
Visits	38	200	238
Work and education	6	94	100
Other	8	185	193
Outside our jurisdiction	10	42	52
<b>Total*</b>	<b>291</b>	<b>3156</b>	<b>3447</b>

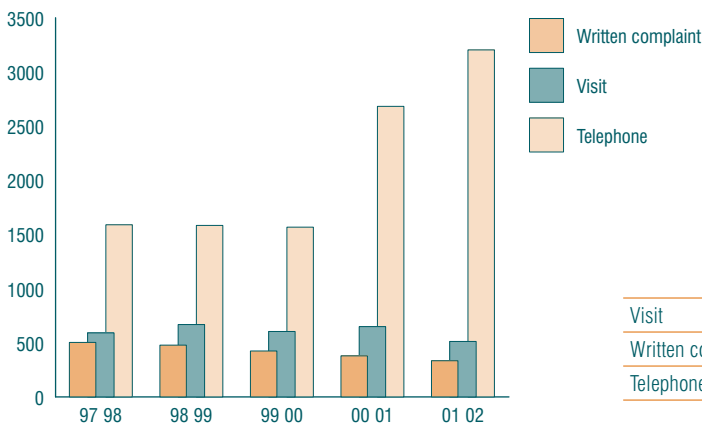
\* Each complaint received may raise more than one issue

### The Multi Functional Accommodation Unit at Kirkconnell Correctional Centre

The multi functional accommodation unit at Kirkconnell has long been of a poor standard. It is used for inmates who have misbehaved and are likely to be removed from the centre and for inmates believed to be at risk of self harm. We had always been led to believe that inmates were only held there overnight or for up to two days while transport elsewhere was organised. During our visit in September 2001, the governor advised us that it would often take at least seven days, if not longer, to have inmates moved on. This information and our direct observations of an old, cold, dirty and remote unit led us to begin an investigation into the physical conditions and amenities in the unit.

The regional commander and a senior person from the capital works branch of DCS visited immediately after we served notices of investigation. Without any dispute, DCS took steps to refurbish the unit including installing shelving and electricity to individual cells. They also replaced all the items we had identified as being substandard, such as toilets and hand basins. In addition, they built two exercise yards next to the unit to allow inmates to exercise in the open air, as required by law. By May 2002 all but some of the shelving and the painting was complete. While it was never going to be comfortable accommodation, the unit is now of a standard equivalent to those found in other correctional centres.

**Figure 23:**  
How inmates contacted us – five year comparison



	97/98	98/99	99/00	00/01	01/02
Visit	591	668	604	649	512
Written complaint	503	478	424	379	334
Telephone	1589	1583	1567	2682	3203





*Cell toilets in the multi functional accommodation unit at Kirkconnell Correctional Centre before (above) and after (right) our involvement.*



The other issue was the governor's claim that she had a problem with having inmates moved promptly to more secure centres. This claim was not supported by the paperwork, which indicated that the delay was with Kirkconnell notifying the movement coordinator that someone needed to be moved. A number of inmates served entire periods of segregation in the unit without any apparent attempt to have them moved out of Kirkconnell. We agreed with DCS that the problems with the management of difficult inmates and their removal from Kirkconnell were best dealt with by senior departmental personnel working with the governor.

### Mulawa Correctional Centre

When we visited Mulawa in August 2001 we were given a list of 70 women who wanted to speak to us. The majority of complaints were about daily routines that were severely constrained by the availability of staff. There is a complex mix of women of different classifications at Mulawa and an ongoing problem with the management of women with mental health and psychological problems. As the crisis unit, the 'Mum Shirl unit', is being reviewed as a result of a parliamentary inquiry into the NSW prison population, we focused our attention on the induction unit.

The induction unit caters for new receptions, drug court cells, segregated inmates and those held in safe cells to minimise their opportunities for self harm. The physical facilities of the unit are simply inadequate for the range and difficulty of the work done there. For example, we observed an officer having to interview a newly received woman in the

open office area because both interview rooms were in use — clearly an inappropriate venue for a woman to have to answer questions about her family, her mental health and her drug use. One of the other problems was the lack of exercise yards for women who were segregated. This meant that they could really only be let out into the day room, not into the fresh air, and the other women in the unit had to be locked away for that time.

DCS agreed that work to improve the facilities would be done. At this stage they propose to upgrade cells, install air conditioning in the entire building, upgrade telephone facilities, improve the existing officer station, kitchen, staff and monitor room, and build five exercise yards for the segregation cells. No time frames for completion have been set as yet, but we will continue to review the situation during the coming year.

### Junee Correctional Centre

Although Junee Correctional Centre is a private gaol run by ACM, we still have jurisdiction to look at the way it operates. During our visit there in April 2002, a number of inmates complained about the number of times they were locked in their cells or denied access to facilities such as the tennis court or oval. We checked the register that recorded lock downs. Although this register was said to be a record only of lockdowns of the centre as a whole, not of units within the centre, we found that times when even the entire centre was locked down were not always recorded. The requirement is that every time inmates are locked in their cells when they usually would not have been should be recorded and reported to the duty officer at DCS.

The shift supervisor we initially spoke to was clearly unaware of their poor record-keeping practices. DCS had also not identified this problem. However once we raised our concerns with more senior centre management and with DCS itself, steps were quickly taken to change the system so that a record is made every time inmates are locked in their cells when they usually would not be.

### Opportunities for Aboriginal inmates

A number of correctional centres focus on providing accommodation and programs for Aboriginal inmates. Our staff, including one of our Aboriginal complaints officers, visited three of these centres — Broken Hill Correctional Centre, Yetta Dhinnakkal Centre at Brewarrina and Warrakirri Centre at Ivanhoe — to speak with inmates and find out more about these programs.

### Case study 32

Early in 2001, a correctional officer contacted us advising that some months earlier he had witnessed four officers assault an inmate in the cells at the Downing Centre court complex. He also alleged that as a result of his reporting the matter to senior officers, his supervisor harassed him — approved annual leave was cancelled and he was moved to another work location without any reasons being given.

As a correctional officer, the complainant was bound by the provisions of the then Crimes (Administration of Sentences)(Correctional Centre Administration) Regulation 1995 to report conduct by other officers that may constitute a criminal offence or other misconduct. There were provisions in the regulation to protect an officer from retaliation for reporting such conduct.

We looked into how the department had handled the officer's allegations about the assault of the inmate and the alleged harassment of him. We asked for a copy of the report of the investigation into the alleged assault and any action that had resulted. We also reported the matter to the ICAC as the alleged assault of the inmate could constitute 'corrupt conduct'.

In July 2001 we received the report on the investigation. The investigator had recommended that the report be referred to the Director of Public Prosecutions (DPP) for advice on the prospect of achieving a conviction for excessive use of force, in effect an assault. The DPP advised that there was no reasonable prospect of conviction.

We were concerned about a number of poor practices uncovered by the investigation and about the inadequate action taken as a result of the investigation. Departmental procedures require instances where force is used to be videotaped and written records kept. Videotaping such incidents is designed to protect

both the inmate and the officers involved. In this case, the officers had told the inmate that they were going to stripsearch him and he had expressed his strong objection to that. The officers decided that they would need to use force in order to conduct the stripsearch but no one considered videotaping the use of force, even though that was required by departmental procedures. The quality of the officers' 'use of force' reports made after the incident was also poor.

Despite the officers' failure to observe important procedures, the Senior Assistant Commissioner recommended no further action be taken. He did not give reasons for this recommendation.

We were aware of the difficulties the department had in requiring officers to use video recorders, but we felt that the recommendation was inappropriate. We suggested that the decision should be reviewed, because if officers were not formally reminded of their responsibilities in such a clear case of failing to comply, it would undermine any broader effort to deal with the problem. The Commissioner agreed and letters of counselling were issued to the officers.

The Commissioner claimed that the Senior Assistant Commissioner was not required to give reasons for his decision. We did not take this matter any further at the time but will raise our concerns in the future if the department continues this practice. It is a fundamental principle of good administrative conduct and procedural fairness that reasons for decisions are given.

In June 2002 we received a report from the department's strategic operations review branch (SORB) on the recording of instances where force was used by officers. This report found a marginal improvement in the recording of instances where force was used. It was possible to tell whether a video recording was made or not, and why, in more cases. The report made further recommendations aimed at entrenching good record-keeping practices. SORB proposes to review the

issues again in a few months to check the impact of the recommendations. We will continue to monitor the situation.

### Case study 33

We received a complaint that an inmate released on bail from Junee Correctional Centre had no money to travel to Adelaide to report to police the next evening, as the court order required. The discharge procedures at Junee did not include any provision to assist him.

People released from gaol often don't have enough money to reach their destination. The department has a policy that gives governors the discretion to provide funds to ensure that people released have enough money for a bus or train ticket back to the place where they were arrested or another agreed destination. This means that inmates are able to return home even if they have been in a correctional centre some distance away. It also addresses the concerns of locals in towns where centres are situated that people released from gaol will not move on unless they are given assistance to do so.

Our inquiries showed that the department's discharge checklist did not actually specify the need to ensure people were, if necessary, given financial assistance or money from their private cash accounts at the time of release. As a result of our inquiries, the checklist has been amended to include a section on accounts. Any person to be released from now on will be questioned about their means to travel and considered for assistance where necessary. This policy has also been adopted at Junee Correctional Centre.

## Broken Hill Correctional Centre

Broken Hill Correctional Centre is a small centre with a predominantly Aboriginal population (about 85%). People are often placed there to be closer to their families. The centre provides a good range of programs and educational opportunities. They include drug and alcohol programs, courses in anger management, responsible parenting, responsible service of alcohol and gambling, as well as education in numeracy and literacy, computers and small motor vehicle maintenance. There are opportunities for community service work in the town as well as gardening in the centre's orchards and gardens. Inmates complained about only minor matters during our visit. These issues were readily resolved on the day or referred to the inmate development committee for attention.



*Broken Hill Correctional Centre.*

## Yetta Dhinnakkal

Yetta Dhinnakkal is also a centre that seems to run smoothly and maintain a strong focus on education and programs. This is the only centre in NSW where the residents are called trainees rather than inmates. Only two trainees have tried to escape from the unfenced centre since it opened in June 2000 — and they were found hitchhiking back to the centre.

Aboriginal people are encouraged to work at the centre. At the time of our visit, an Aboriginal Elder was involved in the centre and there were nine Aboriginal staff out of a total of 29 positions. All events at the centre are focused on its sacred place (a fireplace in the centre of the compound), including acknowledgment of achievements and mediation of misdemeanours. Visitors to the centre are treated to a welcoming to the land and a smoking ceremony, choreographed and performed by trainees.

Yetta Dhinnakkal is a working centre and includes mobile camps under the direction of the National Parks and Wildlife Service. When trainees are not at work, they are actively involved in a wide range of programs. These include the same programs that are available at Broken Hill Correctional Centre plus courses for the school certificate and higher school certificate, conservation and Aboriginal site identification, shearing and various certificate courses in the use of machinery.

All the trainees we spoke to were positive about their experiences at the centre and proud of their achievements. The centre seems to have settled into a very positive environment.

## Warrakirri

Our visit to Warrakirri Correctional Centre provided a rather stark contrast. It is set in the remote location of Ivanhoe, 196 kms east of Broken Hill.

The inmates we spoke to said they had been given to understand that Warrakirri operated like Yetta Dhinnakkal and they would not have volunteered for the transfer if they had known it was not. Inmates have to wait eight weeks before they can be assessed as suitable for community work parties. Programs are almost non-existent, apart from literacy and numeracy, and there are no inmate development staff (not even a welfare officer). The drug and alcohol counsellor comes from Broken Hill once every 4–6 weeks, weather permitting — if it rains the roads are impassable. There are also no cultural programs on site as yet, although the acting deputy governor said local Aboriginal Elders give cultural talks to working parties in the national park. Inmates travel to Brewarrina for specific programs offered by TAFE and the centre. The governor of Yetta Dhinnakkal is responsible for the provision of programs for all three centres.

Families trying to visit inmates at the centre also face immense difficulties as a house for visitor accommodation is not yet available. All in all, the experience at Warrakirri appears to be both isolating and boring.

In addition we found significant administrative problems with the centre. We discovered, for example, that no urinalysis had been conducted there in at least three months. Because the urinalysis unit in Sydney was unaware that the centre was physically separate from Broken Hill Correctional Centre, it sent the list of inmates to be sampled to Broken Hill. Officers there simply deleted the names of Warrakirri inmates because they weren't responsible for them. This problem was readily fixed once we raised it with the governor of Broken Hill.

## Our relationship with the Department of Corrective Services

At our regular liaison meetings with DCS, we discuss general issues as well as specific matters that arise from complaints and our visits to correctional centres.

We are in contact with governors of correctional centres and other officers who deal directly with inmates and their issues. In rare cases we encounter difficulties with members of staff who are resistant to or misunderstand the purpose of our inquiries. We sometimes need to remind them that we are not acting as advocates for inmates, but are scrutinising the conduct of individuals and the administration of the system as a whole. Problems are usually resolved amicably.

On one occasion this year we reminded the governor of a centre that although he had decided to dismiss a complaint made to us about one of his staff as malicious, he would have to be extremely careful if he intended to charge the inmate for a disciplinary offence of making a false allegation. We gave him very clear advice that it is up to the Ombudsman to decide if a complaint is vexatious. Also, it is a criminal offence to take any detrimental action against someone who has brought a complaint to us.

Although we rarely do so, we can use our formal powers of investigation if necessary. We started two formal investigations during the year, but discontinued both of them without final reports being made. In one case our investigation revealed that the conduct of concern was not inadequate but had not been properly documented. We discontinued the other matter after DCS took significant steps to address our concerns.

This year we also helped DCS establish a telephone inquiry service to deal with requests for information by inmates as well as relatively straightforward complaints. This was discussed earlier in 'general complaint work'.

## Relationship with the Inspector-General of Corrective Services

The Inspector-General is responsible for overseeing the operations of DCS. We regularly exchange information and try to minimise the potential for duplication. Coordination between our two offices has improved over the last year with more frequent meetings and regular contact between case officers. However, operational issues still arise and some duplication seems inevitable.

The Inspector-General seems to be moving away from individual complaint-handling to a more inspectorate-type function. However, because he coordinates the official visitor scheme he continues to receive complaints made by inmates to official visitors. Inmates are understandably confused about the roles of our agencies and in many cases do not realise we are different agencies until they make contact with one or the other. We have worked hard with individual inmates and officers to make sure that they understand that we are different agencies and will continue to make every possible attempt to address any confusion.

## The proper use of intelligence information

We have reported in the past on cases where intelligence information has not been well handled by DCS and individual inmates seem to have been harshly treated as a result. This continues to be an issue. DCS has recognised the problem and has been reviewing its protocols for managing and using information. The problems range from the need for locked cabinets in correctional centres to the classification and appropriate assessment of high-level information. Case studies 34 and 35 illustrate some of the issues about classification procedures that we have dealt with this year. It is important that DCS deals properly with information as it arrives and updates it when inmates are moved or reclassified. We hope the recommendations from the DCS review will address these problems.

## Segregation

Over many years we have worked with DCS to improve the administration of segregation procedures. Issues concerning the segregation of inmates continue to arise, as illustrated by case studies 36 and 37.

## Management of sex offenders

This year we received complaints that identified two key issues about the management of sex offenders.

### Child visits

Over the last year DCS has developed, and is now piloting, new guidelines and procedures for visits to correctional centres by children. While local policies had been in place at a number of institutions housing sex offenders, the new guidelines are a more detailed policy in response to changes in child protection legislation. We found they have impacted heavily on the opportunities for some children to visit their parents and that the changes had not been sufficiently acknowledged or explained to the inmates and their families. Some children who had been visiting their fathers in custody were simply no longer allowed to. After our intervention, DCS gave these inmates and their families clear explanations of what had changed and why.

### Identification of a sex offender

Being identified as a sex offender impacts greatly on an inmate's program and placement options. We became aware that DCS was including within this definition inmates who were identified as having a sexual motive for their crime, but had not been convicted of a sex offence. There was no opportunity for an inmate to ask for this definition to be reviewed.

Our inquiries showed that there was no detailed procedure for identifying an inmate as a sex offender who had not been convicted of a sex offence. DCS acknowledged that this is a specialised area where assessments need to be made by suitably qualified and experienced psychologists.

DCS recently informed us that it has developed draft procedures to be included in its Inmate Classification and Case Management Procedures Manual. They set out who should complete assessments and the process for an inmate to ask for an assessment to be reviewed. The procedures appear to address the concerns we raised and we will monitor their implementation.

### Case study 34

An inmate wrote to us from Lithgow Correctional Centre. He had recently been moved there after losing his minimum security classification. He was allegedly involved in standing over other inmates and distributing drugs at Cessnock. The allegations were made by an inmate who was found smuggling drugs into the centre and said he only did this because he was being stood over by the complainant.

Our concern was that the complainant had lost a placement and classification that allowed him to be close to his family on the basis of allegations that were not tested. We were told that a number of different people had made similar allegations, but we were only able to obtain two officer reports — and these reports were of their conversations with the drug smuggler. No attempt had been made to corroborate or disprove the allegations.

Our complainant was allowed an early review of his classification at Lithgow because he had not been given an opportunity to appeal the decision. This review resulted in him being returned to a minimum classification and sent to Bathurst Correctional Centre.

### Case study 35

Another inmate from Lithgow Correctional Centre wrote to us complaining that he had been unfairly reclassified and transferred from Silverwater Correctional Centre. The inmate alleged that he was being treated in this way because he knew about the smuggling of drugs into Silverwater.

Our initial inquiries revealed no information about why he had had his security classification increased (from C2 to A2). Finally we were given a copy of the allegations. It had been alleged that the inmate had behaved obscenely towards a member of a community group working at the centre. It appeared that there

had been no investigation of the allegations. The inmate was simply removed from the centre without being interviewed. We were finally told that the inmate had been charged and had pleaded guilty to a disciplinary offence of obscene behaviour. This is what led to his reclassification. In the process, however, he had missed his opportunity to appeal the severity of the classification decision.

As a result of our inquiries, the department advised that it was considering a number of changes to its existing policy to clarify procedures for appeals. In addition, this inmate was allowed to appeal and he regained a minimum (C1) classification that enabled him to move to a more suitable correctional centre.

### Case study 36

In August 2001 we began an investigation into the management of an inmate at the Malabar Special Program Centre. We had been told that the inmate was being held in a segregation yard without a valid direction, the yard gave him insufficient protection from the weather and he was outside for up to eight hours a day. We had rung the governor who agreed the physical conditions were insufficient and that the direction to extend the inmate's segregation had been authorised but not yet entered on the database. The following day when we rang to get a copy of the direction we were told the inmate was in fact not on segregation but being held in the Acute Crisis Management Unit (ACMU) because of concerns about his self-harming tendencies.

We examined the yard and the cell in which the inmate was being housed, inspected relevant documents including the wing log and spoke to officers in the wing, the inmate and the governor. The yard was clearly unsuitable when it was raining, but following our inquiries the governor undertook to ensure officers did not use it in those conditions. We found that exceptional efforts had actually been made to manage the inmate humanely, not least because he was only a few days away from being released on parole. The problem was with the records kept about his management.

The inmate had assaulted an officer in the Kevin Waller Unit (a unit for inmates with self-harming and suicidal problems). Instead of the usual action of segregating the inmate in the adjacent Metropolitan Medical Transit Centre, union agreement was obtained to manage the inmate in the ACMU. He had been held on segregation but the direction had expired.

The departure from normal operating routine was not documented, even though the inmate's best interests were clearly taken into account. Neither was there any documentation,

either on his file or in the unit logbook, of the inmate being held in segregation in an area not designated for this use.

The problem with the extended segregation direction appeared to be the result of poor administrative practices, compounded by the difficulty of the MSPC governor working out of two offices. The governor had given a direction for an extension of the segregation order, but it had not been processed or signed.

We discontinued the investigation after one week, congratulating officers on their humane treatment of the inmate but asking the commissioner to remind all officers that good record-keeping is essential.

### Case study 37

We reported last year on our investigation of the department's segregation of a long-term difficult inmate. This investigation was finalised in May 2002.

We were unable to reach any definitive conclusion on the complainant's claim that he was being segregated as a result of his history and reputation, rather than on current behaviour. There is no doubt inmates such as this complainant test the limits of the correctional system and his behaviour continued to warrant strict management. On the other hand, it is also possible that had he not had such a long history of segregation, more attention may have been paid to the details of the directions reviewed.

We found errors in the administration of four of the seven segregation directions examined. For example, no one thought to question a document stating that he was on the Intensive Case Management Program, even though he wasn't.

A number of improvements were made as a result of this investigation, especially to the administration of applications for review of segregation/protection by the Serious Offender Review Council (SORC). These improvements should ensure review applications are seen by the governor and sent to the SORC secretariat much more quickly. In addition, the adoption of audiovisual technology for review hearings should considerably improve the length of time it takes for applications to be determined. Our complainant

was clearly poorly informed about what was happening to the three applications he had made during the time under review. This should not happen again.

The other significant issue in this case was whether or not a direction could be made to 'extend' segregation after the original direction had expired, or whether a new direction had to be made. In this case, it was clear that the inmate had been unlawfully segregated from 13–14 August 2000. In addition, it was questionable whether or not the extension direction signed on 14 August was legal. If it was not, the segregation of the inmate between 13 August and 27 October 2000 would have been unlawful. The department has proposed an amendment to the relevant legislation to clarify whether or not a direction to 'extend' segregation can be made after the original direction has expired. We understand that the government is considering this proposal. The department has assured us that any procedure developed will preserve an inmate's right of review of their extended segregation or protection by SORC.

### Case study 38

The High Risk Management Unit was set up at Goulburn Correctional Centre to function as a program rather than as a segregation unit. It has a regime for managing inmates whereby inmates can earn increased privileges or suffer sanctions for undesirable behaviour.

In December 2001, the first unsentenced inmate was placed in the unit. In accordance with the management regime, he was allowed only one visit a week with his family, despite his legal entitlement being for two visits. When we raised the issue with DCS, the inmate's entitlement was revised and DCS agreed to review the unit's guidelines to ensure the management regime was consistent with legal entitlements.

## Transporting inmates with special medical needs

Last year we began an investigation into the procedures for transporting inmates with special medical needs. We issued a final report in August 2001. We found communication problems between the Corrections Health Service (CHS) and DCS and a failure to apply policies or make proper records. This resulted in the failure to provide appropriate transportation, on many occasions, for at least one inmate with special medical needs.

Our preliminary report included a number of recommendations aimed at remedying the identified problems. The DCS and CHS responded very positively and complied with all our recommendations before the final report was issued. These recommendations were:

- the installation of a special ergonomic seat in each of its large and medium escort vehicles — at the start of the investigation only one vehicle had this facility but by March 2002 16 escort vehicles, stationed all over the state, had had a special ergonomic seat installed
- the production by DCS and CHS of a schedule of departmental escort vehicles identifying their suitability for transporting inmates with special medical needs
- the establishment of clear and workable administrative processes for decision-making, record-keeping and dissemination of information to relevant staff in DCS and CHS
- the establishment of a clear process for communication on these matters including the clear recording of such communication.

Since the investigation was completed, the person whose complaint had led to our investigation made a further complaint of being transported inappropriately. DCS's escort unit found the allegation was true and quickly identified the problem — a failure to apply the new procedures. They have now taken further steps to ensure this does not recur, including recording an alert on their central offender management system. This was initially believed by DCS to be an unnecessary step.

We will continue to monitor the conduct of DCS and CHS in this area.

## Corrections Health Service

Last year we reported difficulties we were having accessing inmates' medical records, even when the inmate had given us their written consent. We also had difficulties organising meetings with the Nursing Unit Managers (NUMs) of correctional centre clinics to get information quickly. This matter has now been resolved.

The Chief Executive Officer agreed with our proposal to notify the NUMs when we were visiting their centre and, if necessary, make a time to go and talk to them. This allows us to raise issues that we have received complaints about during our visit. We will also be able to access medical records if we have the written consent of the inmate.

We have also established email contact with the Corrections Health Service's head office. This gives us an efficient way of dealing with telephone complaints from inmates. We email the details of the complaint and receive a response in the same way. This system is working very well.

Case study 39 is an example of a matter concerning the CHS that we dealt with this year.

**Figure 24:**  
Nature of complaints about the Corrections Health Service

Issue	Written	Oral	Total
Daily routine	1	0	1
Food & diet	1	0	1
Information	0	0	0
Medical	22	346	368
Officer misconduct	0	1	1
Other	0	1	1
Outside our jurisdiction	0	1	1
Records/administration	0	1	1
<b>Total</b>	<b>24</b>	<b>350</b>	<b>374</b>

**Figure 25:**  
Nature of juvenile justice centre complaints

Issue	Written	Oral	Total
Case management	0	4	4
Child abuse related	0	2	2
Daily routine	3	61	64
Day/other leave/works release	0	17	17
Fail ensure safety	1	3	4
Food & diet	0	22	22
Information	0	2	2
Medical	1	10	11
Officer misconduct	2	14	16
Other	3	7	10
Outside our jurisdiction	1	4	5
Probation/parole	0	3	3
Property	0	7	7
Records/administration	2	13	15
Security	2	4	6
Segregation	1	6	7
Transfers	3	11	14
Unfair discipline	0	8	8
Visits	0	8	8
Work & education	0	3	3
<b>Total</b>	<b>19</b>	<b>209</b>	<b>228</b>

## Juvenile justice centres

We received complaints from detainees at juvenile justice centres about a range of issues (see fig 25) and about a range of juvenile justice centres (see fig 66 in Appendix E).

This year we made two visits to each of the nine full-time juvenile justice centres. We also visited the juvenile justice centre at Broken Hill, which is used to accommodate juveniles for short periods. One of our Aboriginal complaints officers went on all but one of these visits and our youth liaison officer was also extensively involved in our visits program.

During the visits we talk to detainees and staff, inspect the centre, look at the programs and activities being run and examine centre records. We may also visit the centre's school, talk to nursing staff and look at a selection of casework files. As well as conducting private interviews with detainees who want to make a complaint, we talk informally with detainees as we look round the centre. We try to resolve the majority of complaints directly with the manager of the centre at the end of the visit. If there are serious concerns or matters that affect more than one centre, we raise the issues with the Director-General of the Department of Juvenile Justice (DJJ).

We recognise the difficulties young people, and particularly those in detention, have in making complaints. To try to overcome this we have a small team of specialised staff, including a youth liaison officer and an Aboriginal complaints officer, who handle their complaints and try to make our office more accessible to young people.

### Case study 39

An inmate with intellectual disabilities injured himself and stopped walking. It was four days before medical staff referred him for an x-ray that showed he had broken his hip. The next day he had an operation to pin the bone.

After the operation, a friend of the inmate rang us to complain about the delay in diagnosing his condition. We made inquiries to find out why it had taken so long.

The inmate saw medical staff from Corrections Health Service (CHS) a number of times during the four days.

They claimed they could not find a medical problem but issued the inmate with crutches. The inmate's condition did not improve and his cell was reported to be filthy with faeces and urine. It appeared that he had had great difficulty accessing the toilet in his condition.

On the fourth day, custodial staff asked CHS staff to see the inmate again and this time he was finally referred for an x-ray. A corrective services officer wrote in the inmate's case notes that CHS staff told him they only made the referral 'just to keep the [correctional] officers quiet'.

It appeared that no one had complained to the CHS directly so it had not been given the opportunity to review whether the quality of the care given to the inmate was adequate. Due to our intervention CHS investigated the case and found that staff had failed to diagnose the fracture and that this fell short of best practice. They advised us that disciplinary action in the form of counselling would be taken against the staff involved.



## Transfer of information between the Departments of Corrective Services and Juvenile Justice, and the Corrections Health Service

Both DCS and DJJ keep records of detainees at risk of suicide or other self-harming behaviour. Young people are particularly vulnerable when they first enter custody and little is known about their behaviour. Clear protocols for sharing information between departments is crucial to ensure their safety.

While arrangements had been put in place for correctional officers to call the duty team leader at Frank Baxter Juvenile Justice Centre for information about a young person identified or suspected of having previously been in a juvenile justice centre, we were concerned that it was taking too long for the centres to agree to a more comprehensive arrangement. We were also concerned that initial drafts of a proposed memorandum of understanding did not clearly identify the information that would be exchanged, how this would occur and who was responsible for passing the information to operational staff managing the young person entering custody.

After extensive inquiries, a memorandum of understanding has now been signed by all three departments — DCS, DJJ and CHS. The memorandum is in two parts. The first deals with arrangements for transferring detainees between juvenile justice centres and correctional centres. The second deals with the transfer of risk alerts and health and case management information.

With the introduction of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, more detainees will be transferring at a younger age from juvenile justice centres to correctional centres. This means that the transfer of accurate and comprehensive information between departments will be even more important. For more details about the operation and effect of this Act, see 'Legislative reviews'.

## Segregation, confinement and contraband

Dealing with detainees in a juvenile justice centre who are believed to have concealed contraband is a difficult issue. However, we were concerned to receive a complaint from a detainee who had been segregated and then confined for a total of 18 hours, the maximum permitted by the legislation, as he was believed to have a mobile

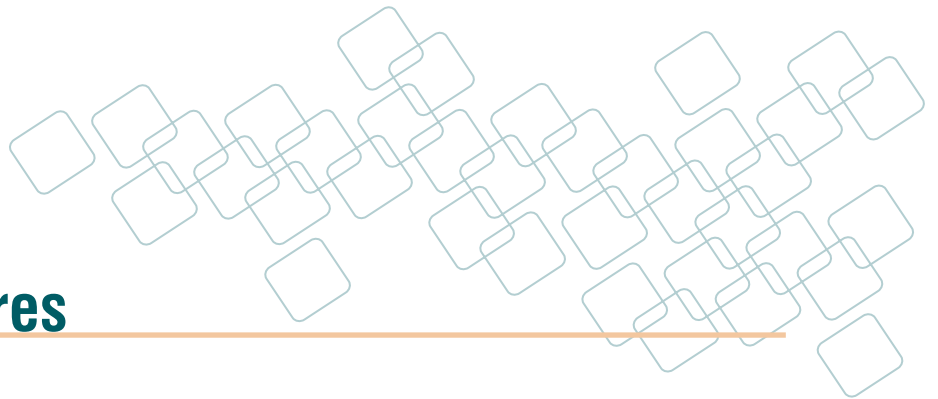
telephone. No concerted action seemed to have been taken to persuade the detainee to hand over the telephone.

Our inquiries showed this incident had in fact been a rather crude attempt to implement a direction to centres that detainees should be given an opportunity to hand over contraband before being punished. Placing the detainee in segregation led to him being kept on his own for longer than the maximum punishment of 12 hours confinement and still did not result in any telephone being handed over.

DJJ reviewed what had happened and agreed it could have been handled better. Local procedures at the centre were changed to make sure similar incidents are handled better in the future. The department also looked at how to better manage future incidents where the detainee is believed to have contraband.

## Kariong's role and structure

After our investigation into a series of riots at Kariong Juvenile Justice Centre, we recommended that the DJJ refocus Kariong's role to provide programs specifically designed to meet the special needs of maximum security detainees and detainees considered to be 'difficult'. The department advised us it would be reviewing the role and structure of Kariong, particularly in relation to therapeutic programs, but we appreciate that much of this year they have been occupied with the restructure proposed by the Council on the Cost and Quality of Government in its report on juvenile justice centres. We understand that this restructure is now well under way and look forward to seeing the promised review and refocusing of Kariong in the coming year.



## Protected disclosures

Our office plays a leading role in making sure that public sector agencies respond effectively to internal reports of serious misconduct or mismanagement. It is not in the public interest if staff who report a genuine belief that serious misconduct is occurring within their agency suffer for speaking out. Experience has shown that staff are in the best position to know how well their agency is performing its functions and whether there is anything or anyone inhibiting that performance. By actively using this information and addressing the deficiencies exposed, agencies can become fairer, more accountable and more responsive in the way they operate.

In NSW, the *Protected Disclosures Act 1994* (the PD Act) gives certain types of reports (called protected disclosures) statutory protection. Police officers can make protected disclosures and they are also protected, in most cases, under a separate scheme established under the *Police Act 1990*. These statutory schemes make it an offence to take detrimental action against a person for reporting misconduct. They also require agencies to advise the person who makes the disclosure, within six months of receiving the disclosure, how the agency proposes to respond.

These schemes aim to encourage public sector agencies to treat reports of misconduct seriously. The PD Act scheme specifically aims to encourage staff to come forward with information about corruption, serious maladministration and the serious and substantial waste of public money. Disclosures made in bad faith are not protected. If a disclosure is made in good faith but is not later substantiated, it will still be protected as long as the original allegations showed or tended to show specific kinds of misconduct.

Regrettably, many agencies still operate within a culture that discourages the exposure of corruption, misconduct and serious inefficiencies. Bearers of bad news are often considered to be traitors, malcontents or troublemakers. The risk of this attitude is that agencies may miss out on discovering information that may help them

improve their operations or avoid future problems or even a disaster. More significantly, they face the long-term risk of effectively silencing those who might be able to bring attention to future problems.

Our work in the area of protected disclosures is very broad. We resolve and investigate individual complaints, provide advice and information, help agencies improve their handling of internal complaints, and work with the Protected Disclosures Act Implementation Steering Committee to monitor and improve the scheme.

### Resolving and investigating individual complaints

Complaints about maladministration can be made directly to our office. When they are made by public sector staff about serious matters, we usually treat them as protected disclosures. We deal with each complaint impartially and, if possible, confidentially.

People can also complain to us if they have suffered reprisals from speaking out. Under the *Ombudsman Act*, we have the power to investigate any conduct that may be unreasonable, unjust or based on improper motives — such as punishing someone for criticising the agency. This means that we can investigate a complaint from someone who has suffered reprisals even if their original complaint was not technically a protected disclosure.

This year we received 75 complaints that we classified as protected disclosures (see fig 26). We completed one formal investigation and resolved 17 matters after making preliminary inquiries. The allegations were about a range of issues including inappropriate ministerial influence, improper use of resources and nepotism. See case studies 40 and 41. Case study 40 is a good example of a situation where, although the suspicions of the complainant may not have been confirmed, the department

was able to identify and improve deficiencies in its practices by listening to the complainant's concerns and handling the complaint fairly and professionally.

The number of protected disclosures we receive has decreased over the past five years. We hope this is because agencies have improved the way they handle staff concerns and more people feel confident that their concerns will be addressed directly and effectively if they raise them internally, rather than needing to turn to an external agency such as the Ombudsman.

However it is also possible that we are receiving fewer disclosures because people are not aware that they can make them to us. Research from the ICAC shows that knowledge of the PD Act has increased over the past five years among both staff and management. However in 2001–2002 still only 47% of staff surveyed said that they had heard about the PD Act before the survey.

## Providing advice and information

We are happy to give practical verbal advice to anyone contemplating making a protected disclosure, even if they wish to remain anonymous. We also provide advice to people on how a particular report of misconduct should be dealt with by their agency. Sometimes we hear about the same matter from different sources — the complainant and the person dealing with the matter. Case study 42 shows the different perspectives that these parties can have. Our role is to impartially provide practical information and confidential advice on how each party should proceed.

We also educate agencies about their obligations towards staff who make reports of misconduct and best practice in handling these matters. We have information about the PD scheme on our web site and we regularly distribute information through our email information line.

**Figure 26:**  
Protected disclosures received – five year comparison

	97/98	98/99	99/00	00/01	01/02
Oral	119	87	65	56	34
Written	97	113	78	97	75
Total	216	200	143	153	109

### Case study 40

An employee of the Department of Ageing, Disability and Home Care complained of concerns they had about funding for a person with a disability being allocated to a service that was not on the department's approved list of service providers. The employee also believed they had detected irregularities in the handling of expressions of interest from agencies interested in providing advocacy services for people with disabilities leaving large residential facilities.

At the complainant's request, we sent the complaint to the department for their assessment and response. We asked them for details of the steps they would take to investigate the complaint and their investigation findings, as well how they were going

to make sure there was no detrimental action taken against the complainant.

Although the department took eight months to investigate the allegations, we were satisfied with their response. They found that the allegations did not show or tend to show that the department had engaged in conduct that amounted to maladministration. This meant that technically the provisions of the PD Act did not apply. Nevertheless the complaint was dealt with in accordance with the department's PD policy and the complainant's identity was protected at all times.

However the investigation did find several administrative and managerial issues that needed to be addressed, including:

- poor record management — key documents were missing or inadequate
- poor contract management — there were inconsistencies in documented policies and reliance on verbal advice
- poor staff management — staff were not fully briefed on assigned tasks.

As a result of this complaint the department made several improvements including:

- centralising contract management
- revising their policy on contractors and consultants
- training more than 100 staff in contract management skills
- restructuring the Community Living and Development Unit.

### Case study 41

Last year we reported on our investigation of a complaint concerning the Educational Testing Centre (ETC) at the University of New South Wales. The complainant, then a senior manager at the ETC, alleged that nepotism and cronyism were rife at the ETC and the university had failed to protect her from bullying and harassment when her confidentiality was breached.

The complainant also made disclosures about serious financial mismanagement by the ETC, inappropriate contractual agreements for a major IT development and failure to follow tendering procedures. The Audit Office examined these allegations and issued a performance audit report in November 2001.

We focused our investigation on the allegations of nepotism, how the university handled the complaint and how it dealt with the complainant in terms of its obligations under the PD Act.

The university's initial internal audit found the allegation that 25% of the staff of the ETC were related to be sustained. It did not however examine in closer detail the nature of those relationships. Our investigation largely confirmed the internal audit finding but noted that most of the people covered were casual. The ETC regularly reacted to heavy workloads or urgent deadlines by recruiting relatives of staff for short periods of time. Despite the cyclical nature of the ETC's work, little or no evidence was found of a systematic approach to recruiting.

Of some concern was the evidence that there were significant family

relationships in relation to senior managers. Our investigation showed that at least six members of the immediate family of the then director were or had been employed at the ETC. This included his wife, a daughter and two sons, one of whom was employed on a permanent basis. In addition, his father-in-law and seven members of his family had been given casual employment for short periods of time.

It seemed to be common practice at the ETC to nominate people into vacant or newly created positions for considerable periods of time without advertising the position. It also appeared that a number of the people nominated were close friends or relatives of senior staff at the ETC.

Our investigation also found that the university did not follow its own guidelines for dealing with serious disclosures and the provisions of those guidelines were not sufficiently clear. A number of discussions do not appear to have been recorded in sufficient detail to provide adequate guidance to the officers dealing with the complaint.

The senior members of staff expressed confusion and lack of knowledge about the university's guidelines and their own obligations under them. Even when we gave the Chief Financial Officer (CFO) a copy of our provisional findings and recommendations, he indicated that he had never been informed that he had a role to play under the university's guidelines for handling protected disclosures.

The CFO was at the time the direct supervisor of the ETC. As he was unaware of the need to restrict his lines of inquiries to avoid identifying the complainant, he asked the ETC director about the allegations of

nepotism. He may have unwittingly given the director information that identified the complainant as the likely source of the allegations.

The university did take some action to address concerns about the ongoing treatment of the complainant by ETC staff. However this action was mostly in response to concerns raised by the complainant, rather than any active management of the protected disclosure.

We made several recommendations on how the university should improve its practices. These included:

- the need to amend and clarify its guidelines for handling complainants raising serious disclosures
- the need to implement a training program for senior staff on their responsibilities under these guidelines
- the need for the internal investigation of such matters to be more structured and, whenever possible, as independent as possible of the organisational structure under scrutiny
- the need to implement a training program to reinforce its code of conduct in relation to dealing with conflicts of interest and ethical issues, including the recruitment and supervision of staff and the allocation of work to those staff members.

The university has advised us that the recommendations in our final report have now been implemented.

### Case study 42

A secretary working at an area health service (AHS) contacted us for confidential advice. She alleged that there was a 'rampant' practice of specialists who ran both private and public practices using secretaries employed by the area health service to do administrative tasks for their private practices. She was concerned that none of the secretaries appeared to have been paid to do this private work. Her doctor had paid her a monthly sum to do the work but stopped after she voiced her concerns. She stated that although she had raised her concerns with the internal auditors, her doctor had not been disciplined. We advised her to ask the internal auditors for further information about what action they had taken or were planning to take, and if she was still dissatisfied, she could write to us with her complaint.

On the same day, the internal auditor of the AHS contacted us for advice. He told us that he was handling a complaint from a doctor's secretary who had alleged that there was a widespread practice of doctors using secretaries to do their private work. He advised us that staff specialists are employed under a contract that allows them 'reasonable' administrative support for their private practices. However he recognised that this had the potential to be abused and was planning to audit hospitals in the area health service to see how secretarial services were being used. He told us that he had explained the contractual situation to the secretary, but she had communicated to him her dissatisfaction with this response. We advised him that his planned actions appeared to be appropriate

and emphasised the need to treat the matter confidentially and to keep the complainant informed. He reassured us that he would do so. We did not hear from the secretary again.

### Case study 43

We were contacted by a government department that had been asked by a Ministerial office for advice. The matter concerned a state owned corporation (SOC) within the Minister's portfolio. An employee had gone directly to the Minister alleging mismanagement at a high level of the SOC. The Minister was understandably concerned and asked the CEO to investigate and provide a response to the allegations. The Minister told the CEO the name of the employee who had made the allegations. The CEO subsequently wrote to the Minister reporting that the matter had been investigated, the allegations were unsubstantiated and that they wished to take disciplinary action against the employee. Disciplinary action in the form of counselling was later taken.

The government department sought advice about how the Minister should respond. We confirmed that the employee had not technically made a 'protected disclosure' under the PD Act as the complaint had been made directly to the Minister. However as we were advised that the employee had made the allegations in good faith, we believed that disciplinary action was highly inappropriate. The purpose of the Act is to encourage employees who have genuine concerns about the way their agencies are functioning to feel safe to air those concerns with the appropriate parties. Although the Act does not currently provide protection for those who make a complaint to

the responsible Minister, we felt that there is clearly a public interest in Ministers having access to this kind of information.

Our advice was that the Minister should communicate to the CEO that he disapproved strongly of any disciplinary action against the employee. We also suggested that the Minister should ask for an undertaking that not only would this not happen again, but the CEO would make it clear to all staff that if they had any serious concerns about the way the SOC was functioning they should feel safe to contact the Minister directly.

### Case study 44

A constable at a metropolitan police station received a telephone call from someone who claimed to be a police officer. The caller warned the constable to 'watch out' for an officer who was soon to be transferred to that station. The caller stated, 'she put some of our blokes on paper and has caused nothing but trouble for them'.

The female officer named by the caller was attached to a regional station and had been an internal witness in proceedings against two officers who had allegedly asked her to sign a false statement to cover up an assault on a young person.

An investigation identified the caller as a senior constable at the regional station concerned. He attempted to justify his comments by stating that he was merely giving his opinion as a supervisor. He has now been charged with an offence under the *Protected Disclosures Act* for taking detrimental action against a whistleblower.

## Helping agencies handle internal complaints

### New guidelines

When an internal report of misconduct is made, agencies must consider the person who made the disclosure and anyone else who may be affected by the disclosure, particularly the person who is the subject of the allegation. The agency also needs to tailor its approach to the matter depending on the nature of the complaint.

We understand how difficult it is to juggle the need to be fair to those who allege misconduct and those who are accused. We are also aware of the risks involved when deciding whether to treat a matter as a disclosure about the operations of the agency or as a workplace grievance. Sometimes the line between a protected disclosure and a grievance is very grey.

This year we released the 4th edition of our Protected Disclosures Guidelines. These guidelines give agencies practical help on how to handle internal reports of misconduct in a consistent, fair and professional manner. They also include a model internal reporting policy.

### Internal reporting policies

An effective internal reporting policy is crucial to an agency's ability to properly handle internal complaints. The policy should outline who is responsible for what, what a person should expect when they report misconduct, what the difference between a 'protected disclosure' and a 'grievance' is, and what other options the person may have to deal with their concerns.

This year we have made significant progress with establishing and improving the internal reporting systems in universities in NSW. At the time of writing, it appears that all of them, except for Southern Cross University, had an internal reporting system for protected disclosures. We have given most of them feedback about the quality of their systems, but unfortunately some of them have been slow or have failed to respond to our advice. This is disappointing because deficient systems may make it difficult for universities to protect themselves from criticisms that they have not dealt fairly and properly with complaints from staff.

## Working with the steering committee

The Deputy Ombudsman chairs the Protected Disclosures Act Implementation Steering Committee (Steering Committee). It has representatives from the Independent

Commission Against Corruption, the Audit Office, the Department of Local Government, the Police Integrity Commission, the Internal Witness Support Unit of NSW Police and the Premier's Department. This year the Cabinet Office advised that it would no longer be represented on the Committee.

The Steering Committee aims to encourage the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector by monitoring the implementation of the scheme and improving procedures for making disclosures. It met five times this year and successfully lobbied the government for various changes to the PD Act. One important change was that people who make disclosures to the Director-General of the Department of Local Government about serious and substantial waste of public money in local government will be protected.

Changes were also made to the *Public Finance and Audit Act 1983* to allow the Auditor-General to determine how protected disclosures are to be handled.

This year the Steering Committee developed a brochure called 'Thinking about blowing the whistle? How to make a protected disclosure' which provides step-by-step guidance for public sector staff contemplating reporting misconduct. We sent about 25,000 copies of this brochure to over 200 agencies and were encouraged by the number of agencies that asked for copies to distribute to their staff.

## Protecting whistleblowers

### Who can I make a report to

When a person sees what they perceive to be misconduct in their workplace they may tell their friends, their family, their supervisor, their boss — or they may keep the information to themselves. The statutory schemes do not protect everyone. They aim only to protect people from reprisals in the workplace where there is a real risk, for example, if a person tells their CEO. The schemes only protect those who are trying officially to bring the agency's attention to the perceived problem.

The schemes also protect people from reprisals if they report misconduct to the relevant external watchdog agency — maladministration to the NSW Ombudsman, corruption to the Independent Commission Against Corruption, and serious and substantial waste of public money to the Audit Office (for State agencies) or to the Director-General of the Department of Local Government (for local councils).

Sometimes a complaint or a request for advice exposes a weakness in the current legislative schemes. For example, this year we provided advice about a matter where an employee reported his concerns to the Minister responsible for the public sector agency. He was then threatened with disciplinary action by the agency's CEO after the Minister asked the CEO to look into the matter. Because of the way the Act works, this threat was not considered to be action prohibited under the Act. Please see case study 43.

The responsible Minister has a duty and a right to know how the agency is functioning. If employees have serious concerns, particularly about senior management, they should not be discouraged from informing the Minister. The Steering Committee has written to the government requesting an amendment to the Act to extend protection to those who report their concerns to their responsible Minister. At the time of writing, the Committee had been advised that the government's view was that public sector employees should be encouraged to take up their concerns with the various external agencies if they are uncomfortable reporting matters internally. Those agencies will be in a better position to evaluate whether it is a matter that needs to be taken up at the Ministerial level, or addressed by the agency itself.

### Who can I make a report about

This year the Committee became aware of a case where a police officer reported misconduct by a correctional officer that he was working with through the NSW Police internal reporting system. The police officer was only protected from reprisals for making a disclosure about another police officer. When the correctional officer found out that his alleged misconduct had been reported, he took reprisals against the police officer who had no legislative protection to rely on.

The way the public sector works is changing and staff from different agencies often work closely together. For example, police officers and staff from the Department of Community Services work in Joint Investigative Teams to investigate allegations of child abuse. People should be protected if they make bona fide disclosures about the misconduct of any public sector employee, not just those who work for the same agency.

The Steering Committee has written to the government asking for the protections of the PD Act to be extended to those who make disclosures about people in other agencies. We also suggested that all such disclosures should be referred to the CEO of the agency where the

subject of the allegations works. We expect these amendments to be made next year.

### What if I suffer reprisals

People can complain to our office if they have suffered reprisals as result of having made an internal report of misconduct. The reprisals themselves may constitute improper conduct which we can investigate, but they may also be an offence under the PD Act.

The offence is that of taking 'detrimental action' against a person 'substantially in reprisal' for that person having made a protected disclosure in accordance with the Act. The Director of Public Prosecutions or NSW Police may prosecute a person for this offence which carries a penalty of 12 months imprisonment or 50 penalty units or both. In our experience, it has been extremely difficult to establish that this offence has been committed.

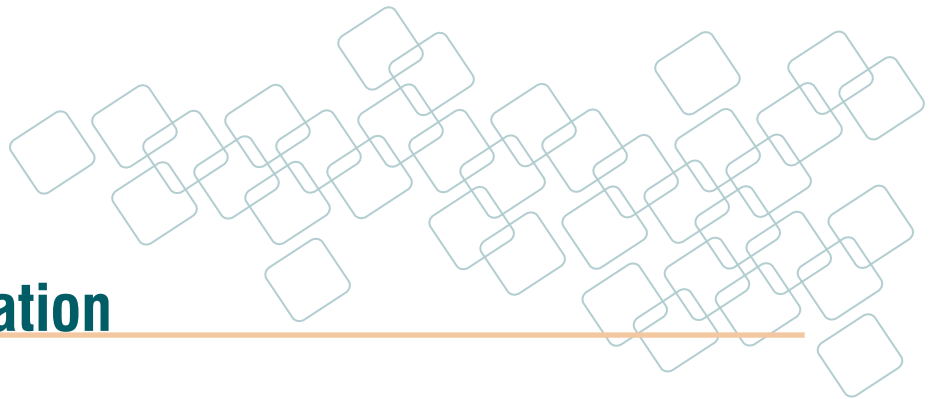
During the year, the Steering Committee lobbied the government to make:

- changes to the *Police Service Act 1990* (now the *Police Act*) to reverse the onus of proof in relation to proceedings for the offence of taking detrimental action against a whistleblower — so that the defendant must prove that the action was not taken 'substantially in reprisal' for the whistleblower making a disclosure
- changes to the PD Act and the *Police Service Act* to extend the statute of limitations for bringing proceedings for detrimental action to two years.

We were pleased that Parliament approved the legislation making these changes. This year the police prosecuted two officers for this offence. Although both prosecutions failed through lack of evidence, we hope that the changes to the legislation will help to deter people from taking reprisals against whistleblowers. Please see case study 44.

### A new name for the Act

One of the issues the Steering Committee will be looking at next year is the name of the Protected Disclosures Act. Similar Acts in some other jurisdictions have used the term 'public interest disclosure' to emphasise that the aim is to encourage public sector staff to come forward with information about problems with their agencies, for the good of the public. Our experience has shown that people often confuse personal grievances with protected disclosures.



# Freedom of information

We have a role under the *Freedom of Information Act 1989* (the FOI Act) to review the conduct of public sector agencies in relation to FOI applications. These applications are made by members of the public wanting to access information or amend personal information held by the agencies. We review how agencies handle FOI applications and the merits of the decisions they make.

Most of the complaints we receive are about an agency's decision to refuse access to particular documents. We have the power to recommend that the release of documents would, on balance, be in the public interest even if legally the agency is not obliged to release them.

We also provide guidance and assistance to agencies about their FOI decisions and processes.

We deal with FOI matters impartially and independently and try to help all NSW public sector agencies conduct their work in a fair, reasonable and accountable way. This is an area that can become highly politicised. The FOI Act has always been used by members of various interest groups and political parties to obtain information from government agencies and then use that information for political purposes. We are aware of this issue but we do not perform our functions for political purposes. Our sole purpose is to make sure that agencies comply with the provisions of the FOI Act and its underlying philosophy of accountable government.

## FOI complaints

We have changed our work practices over the past two years and finalised significantly more complaints. We have also increased the number of matters that have been completed to our satisfaction. This is usually because the agency agrees to release the documents we believe should be released or they agree to take some other form of positive action to address the particular problem.

## Formal investigations

This year we conducted nine formal investigations relating to 12 separate complaints. We discontinued four of these after the underlying issue had been resolved, but issued final reports on four others. One report concerned the refusal by the Department of Community Services (DoCS) to release copies of a performance report and performance review for its former Director-General. Our investigations are discussed below.

## Nature of complaints

Although the majority of complaints we received this year were about agencies refusing access to documents, the actual number of such complaints has reduced from 95 to 64 over the last three years. This year people also complained about a range of other matters including agencies following incorrect procedures and hiding documents (see fig 29). Although only a small number of complaints are about agency refusals to amend records, these numbers are increasing each year (from only three in 1999–2000 to 11 this year). This corresponds to an increasing number of complaints received in our police jurisdiction about the issue of identity theft.

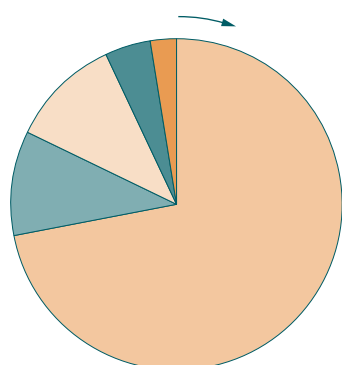
## Reviewing FOI policies and procedures

This year we investigated the FOI policies and procedures of Macquarie University and DoCS. We reported our preliminary findings about DoCS in our special report to Parliament. At the time of writing we had given Macquarie University a copy of our preliminary findings and outlined a number of deficiencies in their policies and procedures. Next year we intend to review the FOI policies and procedures of another two agencies that we receive a number of complaints about.

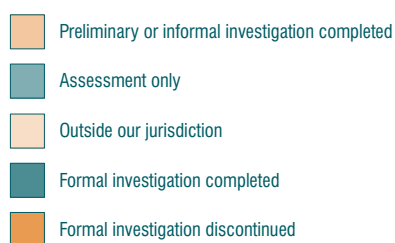
As forecast in last year's annual report, due to resource constraints this year we did not review FOI reporting by agencies.



Figure 27:  
FOI complaints received and determined



Complaints determined (written)



#### Complaints received

Oral	306
Written	138
Review	5
<b>Total</b>	<b>449</b>

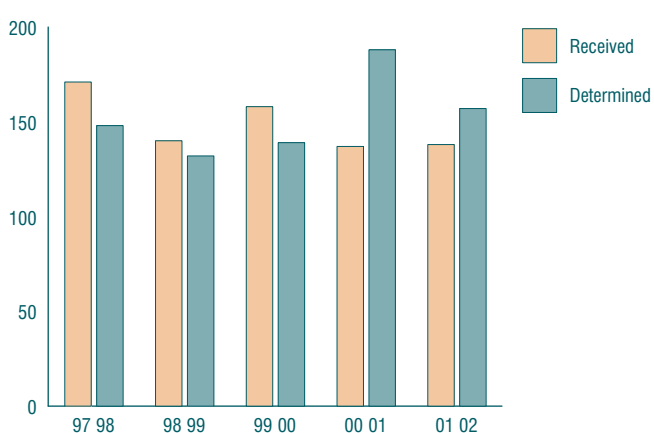
#### Complaints determined (written)

Preliminary or informal investigation completed	113
Assessment only	16
Outside our jurisdiction	17
Formal investigation completed	7
Formal investigation discontinued	4
<b>Total</b>	<b>157</b>

#### Current investigations (at 30 June)

Under formal investigation	2
Under preliminary or informal investigation	21

Figure 28:  
FOI complaints (written) received and determined – five year comparison



	97/98	98/99	99/00	00/01	01/02
Received	171	140	158	137	138
Determined	148	132	139	188	157

## Issues raised by complaints this year

### Release of documents to FOI applicants and the media

On a number of occasions during the year, different agencies released documents or information to the media before or at the same time as releasing the documents or information to the FOI applicant.

In all cases the applicants were members of Parliament from an opposition party. In at least two cases the applicants read about the results of their FOI application in the media before they received a determination from the agency. The media report referred to the applicant by name and reported that the information had been released as a result of their FOI application.

Our views on this approach, which we conveyed to the agencies concerned, are that:

- as a general proposition, we support openness in government and agencies should be applauded for decisions to make information public that they had previously refused to release

**Figure 29:**  
Subject of FOI complaints

Issue	Written	Oral	Total
Access refused	64	32	96
Agency inquiry	0	59	59
Amendments	11	4	15
Charges	5	8	13
Child abuse related	1	1	2
Documents not held	6	7	13
Documents concealed	7	13	20
Documents destroyed	1	0	1
Documents lost	0	2	2
General FOI	1	43	44
Information	0	1	1
Outside our jurisdiction	6	0	6
Other misconduct	0	1	1
Pre-application inquiry	0	69	69
Pre-internal review inquiry	0	38	38
Third party objection	5	11	16
Wrong procedure	31	17	48
<b>Total</b>	<b>138</b>	<b>306</b>	<b>444</b>

- FOI applicants have no entitlements, in the FOI Act or elsewhere, that would prevent an agency from using its discretion to release to other people (including the media) information that is the subject of a FOI application
- while it has been argued that disclosure under the FOI Act is in effect 'to the world', an agency should not assume that documents released under FOI will be given to the media by a FOI applicant or that this is the motive behind the FOI application
- if an agency decides to release information publicly (other than in response to a FOI application), the agency is either doing so for its own purposes or to inform public debate.

If an agency decides to release information to the media and a FOI applicant at the same time, they should tell the applicant and refund any money the applicant has paid. Otherwise the agency would be making one person pay a fee for information that was being made freely available to others. This argument becomes even stronger if the agency makes the information publicly available before it is released to the FOI applicant.

We intend to monitor closely the circumstances surrounding these types of cases.

## Interpretation of section 52A of the FOI Act

Section 52A of the FOI Act gives an agency the ability to review an FOI determination 'in accordance with a written suggestion made by the Ombudsman' or 'in accordance with a recommendation given by the Ombudsman'.

In a matter we investigated this year we made a written suggestion to the Attorney General's Department that it review its decision to refuse access to certain documents and release them. The department released 11 of the 12 documents. We suggested that the remaining document should be released, but the department advised that it had reviewed the determination under section 52A and had decided that the document was not within the scope of the original FOI application and would therefore not be released. Essentially the department was now saying that the document did not fall within the description of documents that the applicant asked for in his application, even though in their original determination they had decided it did.

We were concerned about this because the department seemed to be reviewing its determination in a way that was completely contrary to our suggestion. Our view is that an agency can only review a determination under section 52A in a way that is consistent with our suggestion or recommendation — the section does not give the agency any other power.

The Crown Solicitor's Office gave the department very different legal advice. They said that section 52A could be used by an agency to review a determination in a way that was not consistent with our suggestion or recommendation. The department and our office agreed to seek jointly the advice of the Solicitor General. The Solicitor General agreed with the Crown Solicitor's Office.

Section 52A of the FOI Act was originally inserted at our request to allow agencies to review a determination in response to a suggestion or recommendation we had made after carefully considering the issues. We did not anticipate that an agency would use the power to review a determination in a way that was inconsistent with our suggestions. We have asked for an amendment of section 52A to clarify this issue.

### Case study 45

If you want to build a house or extend an existing one, you may not be able to do this because of the location of drainage or other easements over your land. Often the only solution is to have the easements removed or relocated. As the owner, you are usually required to pay all costs associated with this work.

We received a complaint about a property that was bisected by a drainage easement. The owner had lodged a development application with Sutherland Shire Council to realign the easement to a more suitable location to allow some extensions to his home.

Before making a decision on the application, council wanted a detailed drainage report and catchment analysis, soil erosion measures and engineering plans for the pipe work. The owner met those requirements at a cost of \$10,000. Council then advised that, over and above the estimated \$45,000 to relocate the drainage line, approval for the realignment would also be subject to 'compensation' being paid to council based on the improved value of the land. Based on a 'before and after' method of valuation and a 'marriage value' of half the resultant increase in value, council required a payment of a further \$45,000 — a total of \$90,000 to relocate the easement.

The owner was advised that the requirement to pay 'compensation' was council policy. The owner was not aware that such a policy existed, so he asked for a copy. His request was refused on the basis that the policy was confidential. Council even refused access to the documents in response to an FOI application and did not publicly list the document as required under the Act.

We investigated this matter and made a formal report raising a number of concerns.

### Secret policy

Council was enforcing a policy that was for all intents and purposes secret. It is unacceptable and unfair for a government agency to adopt and implement a policy that imposes a tax, charge or fee on members of the public and then refuse to disclose the contents of this policy.

### Compensation

If people wanted to have an easement relocated, council was requiring them to pay 'compensation' over and above the actual costs associated with the removal or relocation. While council argued that this amount was to compensate them for the costs incurred in obtaining easements, the evidence indicated that the majority of drainage easements were obtained without paying any compensation. The easement in question was obtained by the council for the nominal sum of 10 shillings in 1960 (equivalent to \$1 when decimal currency was introduced in February 1966). In this sense, the use of the word 'compensation' was inappropriate and misleading. The policy was in fact based on obtaining a windfall gain from addressing problems caused by easements that restrict the development of land.

After our investigation the council agreed to:

- not require the owner to pay any compensation for the relocation of the easement
- identify other cases where compensation had been paid on the basis of the secret policy and refund all money paid
- either rescind their policy on the release and relocation of easements or amend it to address various concerns raised in our report.

We were pleased with council's cooperation during the investigation and its constructive approach to our recommendations.

### Case study 46

In March 2001 the Minister for Education and Training announced that he proposed to close Hunters Hill High School at the end of 2002. The Hunters Hill High School P & C Association began a public campaign against this decision. They also applied to the Department of Education and Training (DET) under the FOI Act for various documents about the department's actions and its consultation with the community and certain interest groups about the proposal to close the school.

While DET did give the Association access to various documents about the school, the Association complained to us that it was suspicious that not all documents it had requested had been identified in DET's determinations. We wrote to DET and it took them nearly five months to respond. After we received their response, we began a formal investigation. We found that DET had failed to identify all the documents that were subject to the Association's FOI application.

We also found that senior staff of DET had attended 39 meetings in 2000 and 2001 at which the future of the school was most likely discussed, but DET held no documents relating to these meetings.

At the time of writing we had provided our preliminary findings to the department for comment and hope to finalise our investigation and report later in 2002.

### Case study 47

The State Transit Authority (STA) refused access to documents containing information about graffiti, vandalism and violence in buses. The information requested included statistics, the most affected routes and strategies for dealing with these crimes. The applicant was a member of Parliament, the opposition's transport spokesperson. We found that there were significant weaknesses in STA's reasons for refusing access. Our preliminary view was that disclosure would not have prejudiced the effectiveness of the prevention strategies listed in the documents. These strategies had already been publicised, or were obvious, so the STA should not have claimed the information was exempt under the FOI Act. For example, disclosure of the fact that there was an organised police presence on buses would not have revealed anything that regular passengers did not already know. We put detailed arguments to the STA supporting our view that only two words from all the documents could validly be exempt. The STA has reviewed its decision and released the rest of the information.

### Case study 48

The Leader of the Opposition applied to the Department of Education and Training (DET) for documents that listed the number, cost and school district location of computers stolen from schools since 1995. The department refused access. It argued that disclosure would prejudice its security and surveillance measures. For various reasons in our view it was highly unlikely the disclosure of the information — one A4 page containing a table of the requested information — would have such an effect. The department remained strongly opposed to disclosure. We negotiated an outcome with DET — they agreed to disclose the document after deleting the names of the school districts and randomised the order of the districts on the table so they could not be identified alphabetically.

### Case study 49

A large government department refused access to hundreds of documents about a tender process. The applicant, who was an unsuccessful tenderer, complained to us. The department claimed that many of the documents were exempt under the internal working documents exemption clause. There was a lack of documentation on the department's FOI file to support their decision. The FOI Act requires a public interest test to be met before the internal working documents clause can be claimed. That test is difficult to meet if the documents were created in the course of making a decision that has been finalised before the FOI application was made. In this case the department had already let the tender. Our view was that it was unlikely the documents were all exempt under the FOI Act. We could have asked the department to make a page by page reassessment of all the hundreds of documents it had claimed as exempt, but instead we suggested that they meet with the complainant and try to resolve the matter. They did this and the underlying issues were satisfactorily resolved.

### Case study 50

The complainant made an FOI application to South Sydney Council for its contract with a company for the supply and installation of street furniture. The council refused to disclose the entire contract claiming release of the contract would harm the business affairs of the company. Although we asked the council informally for a copy of the contract, they would only give it to us if we used our Royal Commission powers. They were concerned they would breach a confidentiality agreement with the company that the contract should not be given to any third party unless they were legally obliged to do so.

After we reviewed the contract, we advised council that in our view most of it could be disclosed to the complainant. There were also other public interest reasons why the contract should be disclosed.

For example, the contract may have been affected by proposed local government boundary changes and could be inconsistent with council's Local Environmental Plan. The council met with the complainant and the company in an unsuccessful effort to resolve the matter. We then suggested that the contract be released with the exception of sensitive business information. We highlighted Premier's Memorandum 2000–11 which sets out those parts of government contracts with the private sector that should be disclosed. The council still refused to release any parts of the contract.

As our complainant was keen to appeal to the Administrative Decisions Tribunal, we discontinued our investigation to allow him to do so.

### Case study 51

The Total Environment Centre, an environmental lobby group, applied to the Sydney Catchment Authority (SCA) for documents relating to cracking in the creek bed of Wongawilli Creek south of Sydney. The cracking was alleged to have occurred as a result of mining by BHP at the Eloura Colliery. The applicant was concerned that the cracking could affect the capacity of the metropolitan catchment to adequately fill dams. They also claimed that BHP bulldozed and razed pristine bush in the area around Wongawilli Creek following the cracking of the creek.

The SCA released some documents to the applicant and consulted with BHP about the release of other documents relating to the cracking. BHP objected to the release and the SCA made a determination refusing access to the material. After the applicant complained to us, we formed the view that the SCA's determinations did not meet the requirements of the FOI Act.

We suggested that the SCA release the documents in the public interest, given the inadequacy of their determinations and the need to protect the environment. They agreed to release all the documents and give BHP its appeal rights to the Administrative Decisions Tribunal. This resolved the complaint.

## Access to legal advice

A common issue that arises in FOI complaints is an agency refusing access to documents on the basis that 'legal professional privilege' applies. The privilege can be claimed over legal advice obtained by an agency or other documents created for certain purposes.

A key fact often ignored by agencies, or possibly unknown to them, is that they have the discretion to decide whether or not to refuse access on the ground that 'legal professional privilege' applies. Just because it may apply to certain documents does not mean access must be refused. It may sometimes be necessary or appropriate to disclose legal advice, even if privilege may apply.

Over the years we have reported on this privilege being misused or relied upon in circumstances where it does not apply. In our view, it is unlikely to be contrary to the public interest to allow legal advice relating to an agency's affairs to be disclosed to interested parties if the documents affect the rights or interests of individuals or relate to the accountability of government.

## Documents affecting the rights or interests of individuals

When deciding whether to rely on legal professional privilege, agencies should remember that disclosing the advice may help affected people to understand why the agency conducted itself in a particular way. Also it might persuade a person that either the agency's conduct was not contrary to law or, even if the person believes the legal advice to be incorrect, that the agency was reasonable in relying on the advice.

Reports relating to damage or injury to members of the public that are prepared by staff of an agency should generally be given to anyone who suffered damage or injury if:

- the injury occurs on government property or while a person is in the custody or under the control of agency staff
- the person injured has been required or invited to be present on the property or in the care of agency staff
- the person suffers disadvantage or is vulnerable, eg, because of their age or their mental capacity.

Please see case study 54.

### Case study 52

The FOI applicant in this case was a former academic with a university who resigned after inquiries were made into his teaching practices. He claimed university management took action against him because of disagreements about his teaching style and to deflect questions about their own incompetent management.

He applied under FOI for all the documents about his employment and the university's inquiries about his teaching. He complained to us about the way the university dealt with his FOI applications. We made extensive preliminary inquiries and found that it had handled the matter poorly. Some of our concerns were:

- the determinations did not comply with the requirements of section 28(2)(e) of the FOI Act to give proper reasons
- the university was unable to properly identify all documents that were relevant to the FOI application

- they gave documents to an external organisation and did not keep copies
- the destruction of documents by the university may have breached relevant provisions of the *State Records Act 1998* and in any case was not good administrative conduct.

As a result of our inquiries, numerous documents were ultimately found and released by the university. We discontinued the matter after expressing our concerns to the university about its conduct.

### Case study 53

Five members of Parliament complained to us about a number of FOI applications for access to police rosters that had been refused.

NSW Police told us that they had determined each application on its merits and refused to release any rosters under the public safety and law enforcement exemption in Schedule 1 of the FOI Act. Before April 2001

the police had granted full access to rosters, but since then they have refused all such FOI applications.

We tried to resolve these complaints with NSW Police by proposing that the rosters be released after deleting the names of individual police officers and details of any covert or sensitive police operations. They would not agree to this proposal.

As police numbers, both overall and at individual local area commands and regions, are of public interest we were of the view that certain information from the rosters should be released. NSW Police also confirmed that they had no evidence that any security problems had arisen as a result of their releasing rosters in full to FOI applicants in the past.

We sent our preliminary findings on this matter to NSW Police in March 2002. Its response will be considered and a decision made about whether or not to prepare a draft report for the Minister for Police.

### ***Documents relating to the accountability of government***

It is usually in the interests of responsible and accountable government to disclose documents (or relevant parts of documents) relating to the affairs of an agency if the documents:

- contain information likely to contribute to positive and informed debate about issues of serious public interest
- set out factual or technical matters about an event, incident, locality or structure
- are reports of finalised investigations or inquiries, or inspections carried out by agency staff of events or circumstances that have resulted in damage or injury to the member of the public seeking access to the report
- reveal significant reasoning behind decisions made by the agency or its staff that affect or will affect a significant number of people
- show how and why an agency's policy that affects the rights or interests of members of the public was created
- will overcome any special disadvantages facing people making claims against the agency
- show how an agency has dealt with a complaint made by the person seeking access, and the outcome of the complaint
- contain the best or only evidence of matters that are being investigated or audited by a public sector watchdog body
- will assist or allow proper inquiry into possible deficiencies in the conduct of the agency or its staff — for example, by removing suspicion of significant impropriety or exposing significant impropriety
- will otherwise significantly contribute towards the public accountability of the agency or its staff
- consist of information that is already in the public domain or in the possession of the applicant.

### **Confidentiality agreements by regulatory bodies about unauthorised activities**

This year a matter we were investigating highlighted the problems that agencies, particularly regulatory agencies, can encounter if they enter into confidentiality agreements about their knowledge of unauthorised activities.

The matter raised the possibility that, as a result of certain confidentiality agreements, staff of a government department misled a Commission of Inquiry into the environmental effects of a mining proposal.

As part of a settlement of legal proceedings by the Mine Subsidence Board against a mining company, the Board and certain staff of the Department of Mineral Resources (DMR) entered into confidentiality undertakings about their knowledge of unauthorised activities by the mining company. For more details, see case study 55.

Because the confidentiality agreements covered all evidence of unauthorised activities, DMR's ability to properly perform its regulatory role was fettered. For example, the track record of a mining company in complying with the terms and conditions of approvals and mining leases is a relevant factor to consider when assessing subsequent applications for mining approvals. Also, the incidence of past breaches of conditions of mining leases or approvals is a relevant factor when considering how to respond to subsequent breaches.

The legal staff of the DMR also acted as legal advisers to the Board when it took legal action against the mining company. The interests of both organisations were in conflict — one wanted to recover the costs of damage resulting from subsidence in return for a confidentiality undertaking and the other should have been able to use the information about the cause of the subsidence to perform its regulatory role. This conflict affected the ability of the legal advisers to give independent advice to each organisation.

As the same legal staff were involved in negotiating and drafting the confidentiality undertakings and the Deed of Settlement, they were bound by professional ethics to keep all information covered by those agreements confidential. This would have stopped them from giving full and frank advice to any staff of the DMR who were to give evidence at the Commission of Inquiry, if that advice was about past dealings with and the compliance history of the mining company.

The confidentiality agreements also had an effect on the DMR's advisory role. For example, the DMR staff member who gave evidence at a Commission of Inquiry into another mining proposal put forward by the same mining company was apparently kept ignorant of the unauthorised works in question. This affected the evidence they gave to the inquiry about the track record of the mining company in complying with the terms and conditions of approvals and the causes of subsidence. It appears that the inquiry may have been unintentionally misled about a matter central to its terms of reference.

### Case study 54

If a child is injured in an accident at a public school, a full and prompt inquiry is usually carried out and an 'accident to school student report' prepared.

During the year we investigated four separate complaints about the refusal of the Department of Education and Training (DET) to provide access to certain 'accident to school student reports' on the basis of legal professional privilege.

From our investigations we found that DET prepares accident reports for a number of purposes. These include:

- 'to safeguard the teacher from the possible consequences of any legal action that might be initiated by parents following an accident' (from the Teacher's Handbook)
- to identify the cause of the accident and prevent similar incidents from happening again
- for the assessment of insurance claims
- to comply with statutory and management obligations to make full and accurate records.

The accident reports are generally kept in schools. Copies are not sent or communicated to DET legal staff unless a liability claim is made. We found that these reports are prepared as a matter of standard practice, not because anyone involved at the time anticipates litigation. We therefore believe that legal professional privilege does not apply as a matter of course to the 'accident to school children reports' or to similar kinds of reports.

The main reason accident reports should be made publicly available is that they are the best and most credible record of the accident and how it was caused. They are made contemporaneously and contain statements by witnesses on the spot. This information may help parents and children deal with accidents at school and give insights into a child's conduct. The reports may also provide evidence of wide system issues (such

as bullying) that require a specific response by parents and schools and enable proper explanations to be given to children who have suffered or witnessed accidents. Every parent or carer has a right to know what happens to their child at school, particularly when the child is injured in an accident.

The final report on our investigation included recommendations that DET:

- stop claiming legal professional privilege in relation to 'accident to school student reports' unless at the time the report was prepared it was clearly in reasonable anticipation of legal proceedings
- adopt appropriate policies and guidelines for staff to ensure that adequate information is given to parents and carers about the nature and causes of accidents in which children are injured at school.

### Case study 55

In the 1980s a company conducted mining operations that caused subsidence in the Chain Valley Bay region on the mid north coast of NSW. The company was at that time wholly owned by the then Electricity Commission of NSW, a public sector agency. The subsidence caused some damage to property in the area.

When the Mine Subsidence Board investigated why subsidence had occurred, they found that a number of authorisations had not been obtained. These unauthorised mining operations were a significant cause of the subsidence. They also found that some of the mining operations had not been in accordance with the authorisations that had been obtained.

The Board took legal action against the company, but withdrew this after the company agreed to rectify some of the damage caused by the unauthorised mining and pay some compensation. However, the rectification work did not directly address the detriment suffered by members of the public whose property had been damaged. One of the conditions was that the Board and the company would enter a confidentiality

agreement to keep absolutely secret any knowledge about or existence of the documents exposing the unauthorised mining. This agreement also bound the Board and the company to claim that the documents were subject to legal professional privilege. The confidentiality agreement was signed by the responsible Minister who also agreed that the company would not be prosecuted for the unauthorised mining.

A number of people who were affected by subsidence wanted to sue the company and tried to take legal action over a period of years. However, because of the confidentiality agreement, they had difficulty in obtaining information about the mining operations undertaken in the Chain Valley Bay region. When a member of the local community applied to the Department of Mineral Resources under FOI to see documents relating to the mining operations, the department claimed that the confidentiality agreement and legal professional privilege prevented them from disclosing the information.

Our view was that it was in the public interest for all the documents containing information about the unauthorised mining to be released to the FOI applicant. Firstly, the documents were the only available evidence of what had occurred. Because of flooding and safety issues, it was not possible to carry out further inspections of the mine to independently verify whether the operations were authorised or not. Secondly, being publicly-owned, the company had an obligation to conduct its operations in a transparent and safe way. Thirdly, while it is important for the department to regulate activities such as mining, their regulatory actions should not allow illegal operations to remain secret from the public and prevent people from exercising their legal rights.

The department reconsidered their original determination and disclosed all relevant documents.



Members of staff representing each of our teams meet regularly to discuss office projects.

A further problem is that the mine is now flooded. Therefore the only available evidence of unauthorised mining activities is in the reports and documents covered by the confidentiality undertakings. Private citizens who suffered loss or damage due to the subsidence were unable to access this information and therefore effectively denied the opportunity to seek redress through the courts.

To address these problems, we recommend that regulatory agencies and their staff should not enter into confidentiality undertakings that could affect their ongoing regulatory functions or any advisory role they perform. We also believe that legal advisers to regulatory bodies or their staff who are contemplating entering into confidentiality agreements about unauthorised activities should advise their client about the potential for such agreements to fetter the body's regulatory role and their ability to give full and frank legal advice to other staff.

If government agencies agree to share legal services, the agreement should explicitly state what will happen if a potential conflict is identified between the interests of each agency. Also if lawyers employed by one government agency perform legal services for another agency, they must be alert to any potential conflicts of interest.

Finally, if regulatory bodies have what is or is likely to be the best or only evidence of unauthorised or unlawful activities that have caused damage or injury to private individuals, they should be wary of entering into confidentiality undertakings that will effectively deny those people the chance to obtain redress through the courts.

### Access to contracts of employment for senior public sector staff

One of the documents that people often apply to access under FOI are the contracts of employment for senior public sector staff. Responses to these requests vary widely. The contracts may include:

- the remuneration for the position
- the benefits or advantages provided, under the contract, that are over and above the stated remuneration for the position
- the criteria that are to be used to measure the employee's performance
- the term of employment or appointment and any circumstances in which the employment or appointment can be terminated before this date by the employer or employee
- any express undertakings entered into by the employee or prohibitions or other requirements imposed by the employer, relevant to the performance of the employee's functions.

These contracts may also contain some purely personal information such as the person's residential address.

The question in these cases is usually whether the information in contracts of employment concerns the 'personal affairs' of the employee (clause 6 of Schedule 1 to the FOI Act). Our view is that the reference to 'personal affairs' should be read as having its ordinary meaning, that is matters of private concern to an individual or information that concerns or affects a person as an individual. We believe that written contracts for public sector staff generally concern their official duties or employment and therefore do not concern their 'personal affairs' under the FOI Act.

It is in the public interest that the terms and conditions of employment contracts of public sector staff are transparent and open to public scrutiny, except in exceptional circumstances. It is not in the public interest for information about the remuneration they are paid to be kept secret. At least the salary range applicable to someone at a particular grade or level should be open to public scrutiny.

This issue was considered by the General Purpose Standing Committee No 3 of the NSW Legislative Council in its inquiry into the contract of employment of the former Commissioner of Police. The executive summary of the report records the Committee's view that:

'While the Committee acknowledges there may be occasions when the public interest is best served by keeping certain matters confidential,



the Committee cannot see how the public interest is best served by keeping information about the remuneration of public officials confidential.'

The Committee went on to recommend that all reports and determinations made by the Statutory and Other Officers Remuneration Tribunal in relation to its initial, annual and special determinations, be made public. They also recommended that this should be given effect through changes to legislation as soon as possible.

Although various Ministers have expressed the view that contracts of employment should generally be disclosed, this is not set out in any government policy. In our view NSW government policy about the release of Senior Executive Service contracts should be clearly communicated to senior staff in, for example, a Premier's Memorandum and a Department of Local Government circular to councils. See case study 56.

### Case study 56

A former councillor on Manilla Council applied under FOI for the employment contract of Manilla Council's then general manager. Council gave him information about the general manager's total salary, which was public information anyway, but claimed that the remaining provisions of the contract were exempt under the *Local Government Act*. The councillor applied for an internal review under the FOI Act and was told that this could not be done because the general manager himself was the only person who could provide a response.

We made inquiries with the council. The general manager said that he wanted to get advice from the Local Government and Shires Association about whether the contract should be released. The Association's advice was that the whole contract was exempt under clause 6 of Schedule 1 in the FOI Act because it concerned the personal affairs of the general manager. The council therefore refused to give us a copy of the contract. They finally relented after we proposed to use our Royal Commission powers to obtain it.

After reviewing the contract we suggested that the whole contract should be released, except for the general manager's private address, because we felt there was no sensitive personal information in it. We began a formal investigation and recommended that the contract be released. The Minister for Local Government advised that he agreed with our view.

Despite this, the redetermination carried out on behalf of the council again refused access to the contract. This decision was based on three exemption clauses in Schedule 1 to the FOI Act.

Council also claimed that potential applicants could be discouraged from seeking employment as a general manager of a council if their contract of employment could be subject to public disclosure. No justification was given for this claim and, from our experience in this area, it would be a difficult claim to justify.

Our concerns went beyond our disagreement with the council's decision not to release the general manager's contract and the poor reasoning for that decision.

One concern was that the redetermination not to release the contract was made by an officer of another council. The issue had been referred to them by Manilla Council — a course of action for which there is no clear statutory basis under the FOI legislation.

Other more significant concerns were the general manager's involvement in the original decision-making process. On a photocopy of his letter to the Association he wrote an instruction to the council's FOI officer that the Association's advice not to release the contract would be followed. The instruction was followed by the words 'Then destroy this copy'. Although the FOI officer followed the instruction, he

did not destroy the document on which it was written.

We were also concerned because the general manager had a clear conflict of interest — it was his employment contract that was the subject of the FOI request. The FOI officer told us that he had initially decided that the contract should be released, but did not do so after he received the general manager's instruction. The general manager told us that at the time it did not occur to him that he had a conflict of interest — he was just trying to finalise a protracted and complex matter that concerned not only his contract but an issue across all councils. However on reflection he conceded that he should have attached more importance to the conflict of interest issue.

We were also concerned about the general manager's instruction to destroy the document. He said that the copy of his original letter had been retained and that his instruction to destroy the 'working copy' was to make sure that copies of the letter were not 'floating around'. This does not address the fact that the annotated document was no longer merely a copy of the letter, but contained instructions on how to handle the FOI application.

After careful consideration, we decided not to investigate the general manager's conduct formally. This was primarily because he was no longer employed by Manilla Council and so we wouldn't be able to make any practical recommendations.



## Workshops and training sessions

We run a number of workshops and training sessions for people from public sector agencies and agencies providing services to children. This year the following courses about complaint-handling were popular:

### ***Complaint handling for frontline staff***

This course provides a framework for dealing with customer complaints. Course components include analysing customer needs and strategies for dealing with various types of complainants, including angry ones.

### ***Dealing with difficult complainants***

This course is a specialised, advanced skills course providing a matrix for dealing with difficult customers and clients while meeting their needs. Participants are taught skills for analysis of client behaviour that is difficult to handle and effective communication skills for difficult circumstances.

### ***The art of negotiation***

This course covers practical skills involved in negotiations, including:

- looking at negotiation from many angles
- clarifying the needs of both parties
- dealing with unexpected negotiations
- overcoming blocks and feelings of disempowerment.

We conducted nine of these courses in Sydney and 10 in the regional areas of Singleton, Newcastle, Wollongong, Lismore and Tamworth. We had participants from NSW Fisheries, the Departments of Corrective Services, Land and Water Conservation, Fair Trading, Education and Training, Industrial Relations, Housing, Sport and Recreation, Community Services, a number of local councils, a number of area health services, electorate offices, the Energy and Water Ombudsman NSW, the Anti-Discrimination Board, ICAC, PIC and the Rail Infrastructure Corporation.

This year we also ran numerous information sessions and policy development workshops for almost 1,000 agencies providing services to children about their responsibilities under the *Ombudsman Act* — what they should notify, how they should respond to allegations and convictions of child abuse against employees. For more information about these workshops, please see 'Child protection'.



Sheila O'Donovan, senior inquiries officer, leads a training session.



# Scrutiny

We are responsible for keeping under scrutiny the complaint-handling systems and practices of the police and agencies providing services to children.

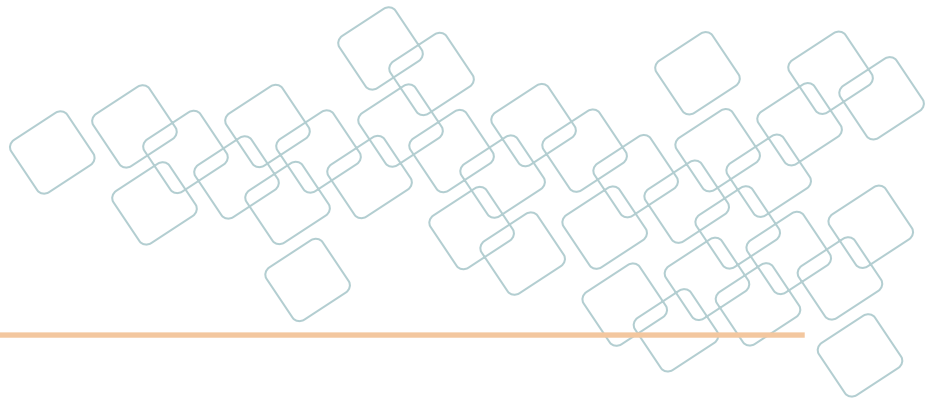
The police are responsible for dealing with complaints against their officers. Our role is to make sure that they deal with these complaints properly. Agencies providing services to children are responsible for dealing with allegations of child abuse against their employees. However, they must notify us of these allegations and we are responsible for overseeing the way they handle them. Our work in these areas is discussed in this section under 'Police' and 'Child protection'.

We monitor the decisions agencies make in response to individual complaints as well as the policies and systems they have to deal with these matters. For example, we look at how well agencies use the feedback from complaints to improve their operations and we analyse complaint patterns and trends to help agencies better understand that feedback. Our aim is to make sure that matters are handled in a fair, reasonable and transparent way and that agencies learn from the allegations or complaints they deal with.

We are also responsible for making sure that law enforcement agencies running covert operations involving undercover work and telecommunication interceptions comply with mechanisms designed to make them accountable for their actions. Our work in this area is discussed in this section under 'Covert operations'.

Finally, we are required to keep under scrutiny the operations of several laws, many of which give the police additional powers. For more details, please see 'Legislative reviews' in this section.

# Police



The scheme governing how police complaints are dealt with is set out in the *Police Act 1990*. It was introduced after the 1997 Wood Royal Commission into the Police Service. Essentially, local area commanders are responsible for handling complaints about their officers. They conduct all aspects of the investigation and management of complaints, including keeping complainants informed and seeking their views on the outcome. Complaints may reveal serious misconduct by an officer, but may also show that an officer is under stress, has made an honest mistake, is poorly managed or needs further training. By handling complaints at the local level, commanders can better manage their officers and develop a clearer understanding of the concerns of the community they are policing.

Members of the public can complain to the police, the Police Integrity Commission (PIC) or our office. Very serious allegations, such as perverting the course of justice, malicious wounding, accepting bribes and manufacturing prohibited drugs, are called category 1 matters and must be referred to the PIC. Its primary focus is to investigate and expose corruption. All other matters are called category 2 matters.

To maintain the integrity of the complaint-handling system, we scrutinise the handling of every individual complaint, except for about 1% of complaints that are dealt with by PIC. The police may investigate a complaint or attempt to resolve it informally. The level of scrutiny we provide depends on the seriousness of the allegations, the complaint history of any officer involved and the vulnerability of the complainant. If we closely monitor a complaint, our staff may be present at every stage of an investigation, including during interviews. We review the final report after each investigation and after alternative dispute resolution is attempted. If we are not satisfied that the complaint has been dealt with properly, we may ask for further information, further investigation or a review of the decision.

At any time while the police are handling a complaint, we may decide to investigate the complaint and the way it has been handled directly. We will usually only do this if we consider that the local area commander or investigators have failed to investigate significant allegations of misconduct properly or the management action taken is deficient. Before we finalise any findings of wrong conduct, we issue provisional findings and seek submissions from those who we propose to make an adverse finding about. We then make a final report to the Minister for Police. If necessary, we may make a special report to Parliament.

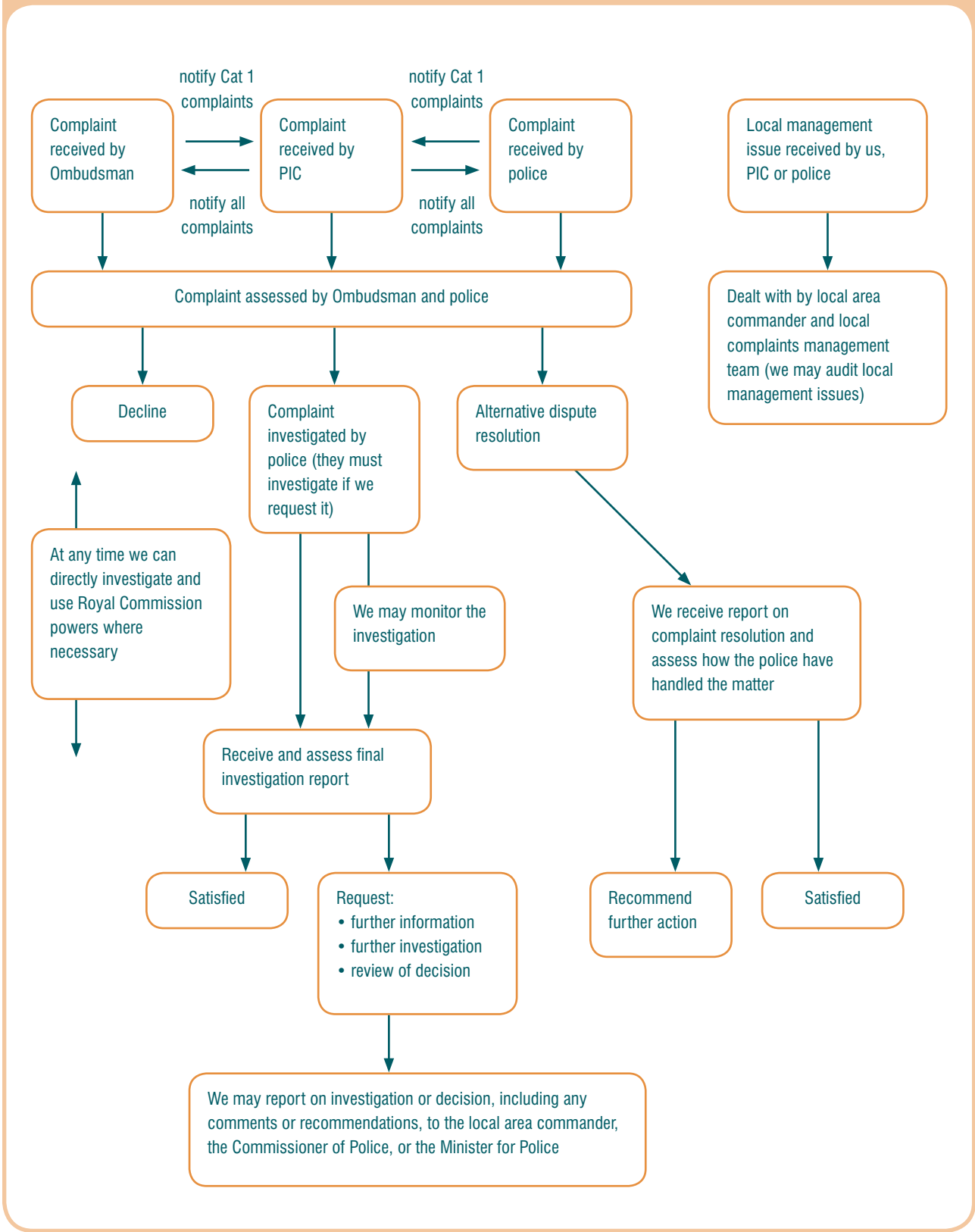
## Changes to our police team

Although much of the work of our police team involves scrutinising the handling of individual complaints, we also monitor the systems that the police have for managing complaints and look at systemic policing issues. We aim to help the police fix problems as well as identify them. The team is also responsible for keeping under scrutiny 10 laws giving police additional powers, with two new laws pending. This work is discussed in detail in 'Legislative reviews'.

In late 2001 the police team restructured to increase its focus on systemic policing issues and improve the coordination of the different legislative review projects. The team's restructure has allowed us to:

- adopt a more streamlined approach to our oversight of less serious police complaints and oversee serious misconduct matters more rigorously
- devote greater resources to investigations and projects targeting systemic policing issues
- directly investigate substantially more matters, particularly those where the police investigation was very poor
- improve the management of our legislative reviews

Figure 30:  
Police complaints



- identify and analyse a greater range of complaint-related information and improve the exchange of this information between our office and the police.

We reviewed the restructure in June 2002 and found very positive results. This year we conducted 22 direct investigations, compared to 14 last year, and successfully implemented 13 projects about systemic issues, such as officer morale, police relationships with community stakeholders and timeliness of complaint-handling. This is almost double the number for the comparable period the year before.

### Case study 57

Last year we audited all cases of police charged with drink driving offences in the period between July 1997 and June 2000, and found that these types of offences were not being dealt with in a consistent way. We recommended that police develop a detailed policy to ensure a consistent management response to these matters.

A recent case shows the need for continued vigilance in this area. The police stopped a driver for a random breath test and she turned out to be an off-duty senior constable. A probationary constable conducted the test and the senior constable tested positive for mid-range prescribed concentration of alcohol. The senior constable then spoke with the probationary constable who allowed her to leave the scene without taking any further action.

The senior constable then parked nearby and rang a friend, who was a sergeant, asking for help. The sergeant was on duty but he left his command in a police car to pick up the senior constable. He then drove her some distance to a family member's home. A duty officer noticed the sergeant was missing and asked him about this when he returned. After speaking with the sergeant, the duty officer told him to make a report about the evening but to leave out any mention of the senior constable's drink driving. The sergeant did so, though he later

denied that the duty officer told him to omit any reference to the positive breath test. That morning, the local area commander received both this report and a report by the duty officer. While writing his report, the duty officer thought better of covering up the drink driving issue. This meant that the two reports were inconsistent. The local commander asked the duty officer to explain the inconsistencies. The duty officer did not mention that he told the sergeant to make a false report (he later admitted doing so).

At this point, the local commander decided to treat the matter as a complaint. An investigator conducted a thorough investigation and made serious adverse findings about the conduct of the senior constable, the probationary constable, the sergeant and the duty officer. He also made adverse findings about other police who had a lesser involvement in the matter. The senior constable, the probationary constable and the duty officer admitted their actions in interviews. The investigation found that the sergeant lied several times when questioned about his knowledge of the drink-driving issue and his false report.

The police set up an internal review panel to discuss what management action to take. This panel recommended that the Commissioner decide whether to remove the four officers (probationary constable, senior constable, sergeant and duty

officer) from NSW Police. Despite considering all the evidence, the then Commissioner decided that he had not lost confidence in any of the involved officers.

The police told us they instead proposed to:

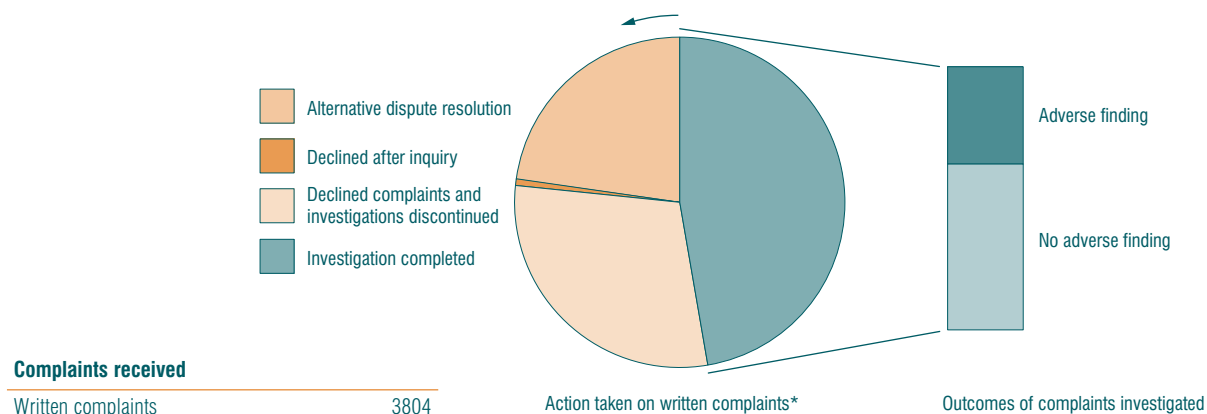
- formally warn the probationary constable and the senior constable
- place the probationary constable on a management plan
- formally warn the sergeant and place him under closer supervision
- defer the duty officer's next pay increment for six months and place him under closer supervision.

The senior constable had already been removed from plain clothes duties and the probationary constable's period of probation had been extended by another 12 months.

We do not believe that this proposed management action adequately deals with the serious misconduct.

We have asked for a full account of exactly how the management decisions were made and are still waiting for that information. In the meantime, NSW Police have told us that they are reviewing the action taken and the matter is likely to be brought to the attention of the current Commissioner.

**Figure 31:**  
Police complaints received and determined



**Complaints received**

Written complaints	3804
Oral inquiries	3354
Reviews	64
<b>Total</b>	<b>7222</b>

**Action taken on complaints\***

Alternative dispute resolution	1025
Declined after inquiry	27
Declined complaints and investigations discontinued	1321
Investigation completed	2128
<b>Total</b>	<b>4501</b>

**Current investigations (at 30 June)**

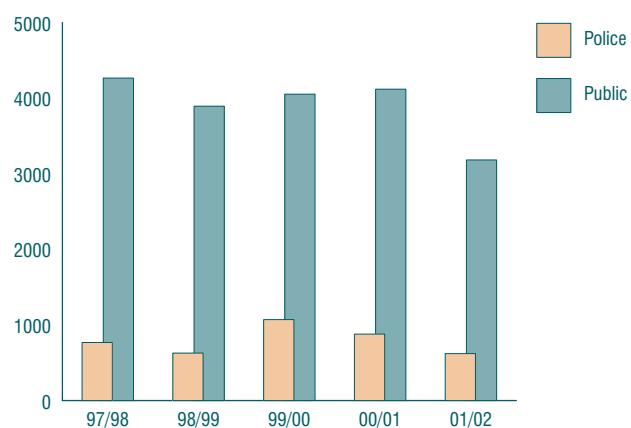
Under investigation	1168
Alternative dispute resolution in progress	148

**Findings**

	97/98	98/99	99/00	00/01	01/02
No adverse finding	229	537	1296	1487	1341
Adverse finding	397	435	649	1080	787
<b>Total Investigation completed</b>	<b>626</b>	<b>972</b>	<b>1945</b>	<b>2567</b>	<b>2128</b>

\* Complaints are dealt with by the police and scrutinised by the Ombudsman

**Figure 32:**  
Police complaints (written) received from police officers and members of the public – five year comparison



## How well are the police handling complaints?

The current complaints system was introduced in March 1999. As more than three years has passed, we wanted to provide the NSW public with a series of reports on how well this system was working. At the time of writing we had released three special reports to Parliament on 'Improving the management of complaints'. These were the result of work we had done, starting in early 2002, gathering and analysing information from a range of complaint-related sources. Our reports were released in March, August and September 2002. Each report focuses on a different aspect of the police management of complaints. The reports are called:

- Identifying and managing officers with complaint histories of significance
- Assessing police performance in complaint management
- Police complaints and repeat offenders.

Some of our findings were that:

- Most complaints are handled reasonably well — our audits of police investigations of serious category 2 complaints (such as alleged assault, culpable driving and drug use) found that 83% were handled adequately.
- The timeliness of police responses to complaints has improved significantly from the days of the former system that Justice Wood criticised as 'woefully dilatory'.
- Complainant satisfaction as reported by police investigators remains high, with police reports indicating that more than 70% of complainants were 'satisfied' with the way the police handled their complaint.

- In too many cases appropriate management action that could have been taken by local commanders in relation to officer misconduct was not taken, and the action taken was ineffective.
- There are deficiencies in the formal processes associated with firm disciplinary action (such as the loss of Commissioner's confidence, demotions and suspensions) that need to be remedied.
- The police could use complaints data more effectively to further improve their complaint-handling performance.

During 2001–2002, there has been a marked increase in complaint management training by NSW Police. They have introduced a five-day investigator training course for officers with key responsibilities for investigating complaints and a three-day course focusing on the effective management of complaints at the local command level. We have had significant input into these courses and are pleased that they include strategies and advice for dealing with complaints in a constructive way and minimising unnecessary adverse impacts of complaints on officer morale.

As an organisation, NSW Police is now much more open to acknowledging issues that need to be addressed. For example, local commanders are more accepting of the need to assess closely the risks associated with officers who have lengthy complaint histories. These risks are also being reinforced in police complaints training.

## Monitoring and auditing work

This year we looked more closely at significant systemic issues and at the way the police handled more serious complaints. For example, see case study 58.

On 1 January 2002, legislative amendments we recommended came into effect to remove the requirement that NSW Police advise us of every complaint they receive from members of the public. We were able to amend our class or kind agreement with PIC and NSW Police to allow minor matters, called 'local management issues', to be dealt with by the local area commander without the need to notify us. Instead of reviewing these matters individually, we now audit the police systems for dealing with them. This is to ensure that local commands are dealing with these matters appropriately and all serious allegations continue to be notified.

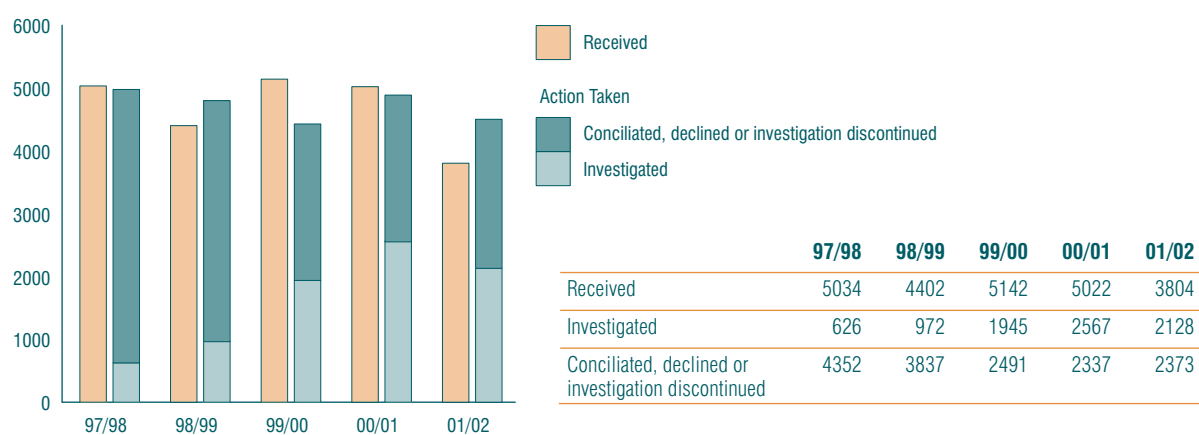
This change has had a significant impact on complaint numbers this year. In 2001–2002 we received 3,804 complaints compared to 5,022 in 2000–2001.



*Jo Flanagan, a senior investigation officer in our police team, has worked in the office for 10 years.*



Figure 33:  
Police complaints (written) received and determined — five year comparison \*



\* Note: Since March 1999 the figures have been affected by the legislative changes that reclassified some informal inquiries as investigations.

### Case study 58

In recent years, we have received several complaints about the consequences of identity theft. This is where a person being charged with an offence or issued with an infringement notice gives police another person's name and personal details.

It is more than providing police with an alias. It involves deliberately giving false information to avoid the consequences of breaking the law and has serious consequences for the person whose identity has been stolen. This person may have to defend a matter in court that they are not responsible for. They may lose their driver's licence, incur fines, attract media criticism and face problems when applying for a job if criminal record checks are done.

Recently a young man complained to us that police records were inaccurate because someone else had given the police his name and personal details. This had caused him significant problems such as:

- A Sunday newspaper mentioned him in a negative light — the newspaper article was based on information held by the police.

- Probation and Parole officers questioned him about a number of offences he did not commit.
- Centrelink demanded that he repay money he allegedly received while in prison, although he had not been in prison.
- The RTA disqualified him from driving for an offence he did not commit.

Most of these problems occurred after the complainant had already told the police about the identity theft and the fact that their records were inaccurate. After reviewing this case, we recommended that NSW Police should:

- correct their records about the complainant
- apologise to the complainant and compensate him financially
- review their policy about recording names and identification details
- comply with the spirit of the information protection principles in the *Privacy and Personal Information Protection Act 1998*.

In another case, a woman complained that someone charged with a number of thefts had used her identification

details. The complainant had to attend court to prove her innocence and the court dismissed the charges. This woman claimed that the police had ignored her request to have her record cleared. Her complaint was mentioned in Parliament and also featured on a current affairs television program.

NSW Police have advised us that they have now corrected their records about both of these complainants.

We are concerned that identity theft may be a growing problem, particularly with the increasing use of information technology. We have had a number of meetings with NSW Police to discuss strategies for dealing with this issue. They have told us that they will be introducing changes to their computerised records system which will allow amendments to be made where this problem arises. The police are also developing guidelines outlining when it is appropriate to make such amendments. We will continue to monitor this issue.

We measure overall trends in complaint performance and closely scrutinise how police deal with particular issues, such as complaints relating to suspect targeting, policing of speeding offences and drug and alcohol use by officers. For example, we use trend analysis to track complaint performance across the state in relation to:

- the time taken to deal with complaints
- the use and success of alternative dispute resolution
- complainant satisfaction levels
- the numbers of deficient investigation per local area command
- the outcomes of complaints, including any management action taken in response to issues identified.

In addition to tracking rates of complainant satisfaction — as reported by police — we have initiated an independent survey of complainants to verify the accuracy of police data. We will report independently on these statistics in due course. We have also encouraged NSW Police to develop standard practices across the state for checking the level of complainant satisfaction. Our own surveys have shown high levels of complainant satisfaction for matters resolved informally, with more than 80% of complainants satisfied or very satisfied with the process.

This year we conducted 2,623 audits, up from 1,443 last year. Case study 59 is an example of our auditing work.

**Performance indicator**

**Number of audits**

Target	00/01	01/02
1900	1443	2623

**Auditing turnaround times**

We monitor complaint turnaround times on a statewide and regional basis and have seen a sustained improvement over a number of years. In 2000–2001, police finalised 70.7% of all complaints within 90 days. Although this declined to 62.8% this year, it is still a vast improvement on the pre-1999 complaints system.

This year around 93% of all complaints were finalised by the police within 12 months, compared to over 96% of complaints handled in 2000–2001 being finalised within 12 months.

In a further audit of delays, we identified over 250 files where the police had not provided us with satisfactory progress reports for more than six months. We issued investigation notices to the region commanders responsible for these matters, asking for an explanation for the apparent delay. Our audit showed that the most common causes for the delays were:

- administrative error
- failure to reallocate cases when investigators were on long term sick leave
- the misplacing of files transferred between various commands
- delay in the quality review process.

The fundamental reason for most delays was that particular regions did not have systems to monitor investigations properly.

In response to our audit, the police promptly finalised most of the matters brought to their attention. They also indicated that they hope to use their new complaints database and the recently formed complaint management teams at local commands to better monitor and scrutinise the quality of investigations.

**Case study 59**

Our audits of a particular remote local area command showed that it was receiving a large number of complaints of assault and use of unnecessary force by officers. A high number of these involved young people and Aboriginal people. There were also delays and deficiencies in the handling of a number of these complaints.

In October 2001, the Assistant Ombudsman and the local area commander met to discuss these issues. The commander recognised the problems and agreed to a number of initiatives including appointing and training a select number of police to investigate the more significant matters. We agreed to monitor and provide ongoing feedback on complaint trends and the quality of investigations

and outcomes. We also provided training for the officers selected.

Since our intervention we have noted a significant drop in the number of assault-related allegations. We are continuing to monitor closely the handling of complaints received to evaluate the success of the commander’s initiatives.

We will continue to monitor and analyse complaint turnaround times and track significant delays. Our aim is to reverse the recent deterioration in turnaround times and bring to attention those investigations in which there are unacceptable delays.

### Auditing serious category 2 complaints

In 2000–2001, we conducted a comprehensive audit of 330 serious category 2 complaints to find out how well they were being investigated. These complaints included allegations of assault, dangerous driving, drug use, inappropriate access of information and firearm offences. The review focused on whether the inquiries conducted were sufficient considering all the circumstances of the complaint. We wanted to identify systematically common issues and solutions that could be applied in future investigations. This year we reported the results of our audit to NSW Police.

The majority of the complaints we reviewed — 275 matters or more than 83% — were investigated in a satisfactory manner. Some of the investigations were found to have been conducted to a very high standard.

We found that 55 complaints, or about 16%, were dealt with in an unsatisfactory manner that may have affected the outcomes of the investigations. The problems included not pursuing lines of inquiry, not checking the complaint histories of officers involved, not identifying key issues, poor quality interviews and failing to interview officers and other witnesses.

NSW Police has accepted our audit results as a benchmark to measure future performance of investigators and commands in dealing with these kinds of complaints.

### Monitoring the integrity of systems for enforcing speeding laws

This year we issued a special report to Parliament on the integrity of speed testing by police. We had been monitoring a major police investigation, Operation Sibiu, which highlighted problems in how police undertook speed checks, the accuracy of some police speedometers and testing procedures. We will be issuing a further report to Parliament on this issue in the upcoming year.

### Monitoring management outcomes

We closely monitor the use of various management actions to address police misconduct. There is a gradual trend towards commanders using a greater variety of management actions in relation to police misconduct, but 'management counselling' is still the preferred option. Fig 34 shows the other options available to commanders.

Despite some improvement in recent years, reforms aimed at fostering a shift from 'punitive' outcomes to a more open 'managerial' approach to dealing with misconduct still have some way to go. In July 2000 we commissioned an independent consultant to conduct an audit of management outcomes relating to officers found to have engaged in misconduct. The audit excluded matters where 'reviewable' sanctions were considered — such as removal under Commissioner's confidence proceedings — and focused instead on those involving 'non-reviewable' matters.

The auditor found that local commanders continue to rely too heavily on 'counselling'. His report advocated a shift to people management and skills development and recommended that a targeted program be introduced to promote coaching, mentoring and supervision skills.

This year the employee management branch of NSW Police commissioned the same auditor to conduct a second audit of non-reviewable management outcomes to see if there have been any changes in the quality of management outcomes since the first audit. We await the results.

**Figure 34:**  
Common management outcomes over all regions

Outcome	98/99	99/00	00/01	01/02
Management counselling	46.5%	43.0%	43.3%	40.2%
Training – command	11.3%	12.0%	12.8%	12.1%
Training – officer(s)	5.2%	5.9%	6.6%	6.9%
Change in policy or procedure	8.3%	10.8%	8.7%	9.3%
Supervision increased	6.0%	5.5%	5.2%	6.3%

**Figure 35:**  
Officers criminally charged

	98/99	99/00	00/01	01/02
No of complaints leading to charges	89	70	76	71
No of officers charged	103	72	80	73
Total charges laid	122	134	129	121
Officers charged following complaints by other officers	63 (61%)	41 (57%)	52 (65%)	40 (56%)

## Increased scrutiny of more serious matters

This year we focused more of our resources on complaints that allege serious misconduct. Case studies 60 and 61 are examples of some matters involving serious allegations that we scrutinised this year.

We use information from our audits to inform our oversight of individual cases. Please see case studies 57 and 62, which highlight how we can use our oversight powers to focus on deficiencies in police practice in a particular area.

This year 71 complaints resulted in criminal charges against 73 officers. More than half of the criminal charges were laid as a result of complaints made by fellow police officers. See figure 35. This figure shows the confidence that many officers have in the complaints system.

### Case study 60

A senior sergeant attached to the warrant index section was suspected of improperly using the warrant system and inappropriately deleting warrants for unpaid fines. An investigation found that he had removed approximately 1,500 warrants from the system over eight months. The value of these warrants was estimated at more than \$220,000. The investigation could not establish a clear motive for removing the warrants but the officer was found guilty of intentionally altering data on a computer system and has left NSW Police.

### Case study 61

A police officer was accused of working in the security industry while on sick leave and using police equipment while fitting surveillance devices in his private employment. Investigators seized a number of items of police property associated with surveillance work from the officer, including a time lapse video recorder. The officer was found to have accessed police premises and taken the items without

permission while he was on extended sick leave. He has been charged with stealing offences. We are continuing to monitor the case.

### Case study 62

A woman complained about the way the police dealt with a request for help when her mentally ill adult son became violent.

A mental health team visiting the young man's family house decided to leave the house soon after they arrived because the man's behaviour was aggressive and threatening. However the man then chased them outside, assaulted the team leader and tried to kick in one of the windows of their car. The team drove straight to the police station. The man pursued them and rammed their car with his own several times. When the team arrived at the police station, they urged the police to arrest the man. However, the police did not do so until over three hours later.

The police investigating the complaint found that the delay was justified because the police on duty had needed time to gather evidence and assemble

officers for the arrest. However we disagreed with this finding. There were already sufficient grounds to suspect that the man had committed an offence when the matter was first reported. Also, the need to assemble more police did not seem to have played a part in the delay.

After we issued our provisional findings, NSW Police recognised the problems in both the police response to the incident and the investigation of the complaint. They also apologised to the parents and the mental health workers and gave advice and guidance to the supervising police officer.

In our final report we recognised the generally positive response by NSW Police to our provisional findings. However, we recommended that all the involved officers, not just the senior officer, should receive advice and guidance about the delay. We stressed that this was for educative rather than punitive reasons. We are awaiting a reply to our final report.

## Direct investigations

We have invoked our direct investigation powers in significantly more cases this year compared to previous years. Direct investigations enable us to look closely at both general policing practices and complaint investigations.

This year we used our 'Royal Commission' powers in two matters to require officers to give evidence on oath. In one matter we required an investigator and local commander to answer questions about their investigation into an alleged conspiracy to spray youths with capsicum spray (see case study 63). In another matter, we required a police officer to answer questions about whether he assaulted a young man and then tried to influence the evidence another officer gave to police investigating the youth's complaint.

We have used direct investigations to target investigators and local commanders who fail to deal appropriately with serious

complaints. Our aim is to make these officers more accountable, as they are central to the integrity of the complaints system. This year we completed a number of investigations into the timely management of complaints. We are also investigating how different commands are managing 'local management issues', particularly customer service concerns. These no longer need to be notified to us, so we want to make sure that they are still being dealt with effectively.

We also directly investigated management decisions taken in relation to a senior constable who was accused of aggravated sexual assault. We found that poor communication between the local command, the police academy and central police branches meant that while senior managers were raising concerns about the senior constable being at the academy at all, his contact with student police officers was being increased. Procedures to manage officers accused of serious misconduct are presently being reviewed by NSW Police.

### Performance indicator

#### Direct investigations completed

Target	00/01	01/02
14	14	22

#### Interpretation

This year we completed 50% more direct investigations than our target.

### Performance indicator

#### Investigations directly monitored

Target	00/01	01/02
20	28	10

#### Interpretation

With some complaints we feel the police need to be scrutinised more closely by directly monitoring their investigation. This year it was not necessary to monitor as many complaints as we had anticipated.

### Performance indicator

#### Reports recommending changes to law, policy or procedure

Target	00/01	01/02
70%	71%	63%

#### Interpretation

At the end of each formal investigation we issue a report containing recommendations for improvement. This year 63% of our reports recommended changes to law, policy or procedure.

### Performance indicator

#### Recommendations implemented

Target	00/01	01/02
80%	100%	96.6%

#### Interpretation

After we make recommendations for improvement, it is important to see how many of them were implemented by the police. We cannot force them to make our recommended changes but if they do not, we can report our concerns to Parliament. This year over 96% of our recommendations were implemented, which was well over our target.

### Case study 63

In August 2000 police were called to a stabbing incident at a petrol station in outer metropolitan Sydney. A standoff developed between police and a number of young men and eventually eight of the young men were arrested. On the way to the police station, police trucks pulled off to the side of the road and officers sprayed a number of young men in one truck with capsicum spray. The police claimed that they pulled over because the young men were 'playing up' and using their mobile phones to contact friends. An internal witness later came forward and alleged that a number of the officers had agreed, before leaving the petrol station, to pull over and spray the youths on the way back to the police station.

The initial investigation, approved by the local commander, found that three police officers had conspired to spray the youths. Because the young men would not agree to be interviewed by police, the investigator did not find that an assault occurred. He did find that one of the officers attempted to influence the evidence of a police witness.

An internal quality review of the investigation by the region commander found that a re-investigation was required for several reasons. The conduct of some officers who were directly involved in the spraying incident was not considered, key evidence was not examined and contradictory evidence was not put to police. The re-investigation was of a high standard — all available evidence was considered and officers and others were properly interviewed.

We were concerned about the poor quality of the initial investigation into these serious allegations. We used our 'Royal Commission' powers to require the investigator and local commander to explain their investigation and found that it was seriously flawed. For example, an affidavit for a listening device was misleading and the investigator spoke to some officers about the allegations before formally interviewing them. The

investigation report was unbalanced and inaccurate. We were left with the overwhelming impression that the entire investigation was premised not on finding out what happened on the night of the incident but on protecting the internal witness from having to give evidence in criminal proceedings against other police officers.

We recommended supervision and monitoring of any further involvement of the investigator and commander in internal investigations. We also recommended that police investigators inform internal police complainants that if they witness criminal conduct by other officers in the course of their duties, they can expect to be called to give evidence in criminal proceedings. NSW Police have accepted these recommendations.

### Case study 64

Our work in bringing communities together to try to resolve concerns about the policing of homeless people continued this year with a project in Byron Bay. We were approached by the Byron Shire Council to help them find a solution to problems they faced in dealing with homeless people living in the foreshore area of the bay. We agreed to facilitate a meeting of interested people including community groups, police, council rangers and members of the local Aboriginal community.

People expressed differing views but there was a lot of good will at the meeting. The key resolution was to establish a working group to develop appropriate ways of responding to homeless people in the area. The working group consisted of police, council workers, health workers, members of the local community and Aboriginal representatives.

Since then there have been a number of positive face-to-face discussions between council rangers, police and the homeless people in the park. Council, police and community groups have continued to meet to resolve any problems that arise.

### Case study 65

Several people complained about the conduct of police during the Reclaim the Streets protest in March 2000. A community legal centre represented most of these people. The complainants claimed that police officers had assaulted participants in the protest, used excessive force and failed to identify themselves. They also claimed that an officer had drawn a weapon and that police horses had been used inappropriately.

The complainants did not want to pursue any criminal action but asked police to take management action regarding the officers involved. They also wanted changes to various policies about demonstrations.

The police tried to resolve the matter through alternative dispute resolution. Two meetings were held, with our staff acting as independent facilitators. As a result of the first meeting, the police agreed to introduce and promote some policy changes and take management action regarding the officers involved.

At the second meeting, it became clear that some of the agreed outcomes had been unrealistic and could not be adopted. Nevertheless, the meeting was a useful forum for the parties to clarify a number of issues. These included the reasons behind the policies on demonstrations and the obstacles to reforming them, such as Occupational Health and Safety considerations. The police also reported to us within an agreed two month timeframe about the management of the officers involved.

The presence of Ombudsman staff at the meetings was important in a number of ways. It seemed to remove much of the distrust both parties held about the process and helped ensure that they focused on relevant issues where there was a real likelihood of reaching agreement. Finally, it facilitated communication between the parties and helped make sure that the outcomes of the meetings were clearly understood.

## Review of procedures for removing officers from NSW Police

This year we decided to review the Commissioner's procedures for removing officers found to have engaged in serious misconduct. Our review focused on:

- outcomes regarding officers considered for removal from NSW Police
- the time taken to complete each stage of the process
- procedural problems and other issues identified by the Industrial Relations Commission.

We prepared a briefing paper for senior management outlining our concerns that:

- the present mandatory nomination guidelines are flawed, in that some police officers are nominated for removal even though their actions are not serious enough to warrant removal from NSW Police
- decisions not to proceed with some nominations are poorly documented
- there are still endemic delays in the process of nominating and removing officers.

The Police Commissioner has set up a working party to look at the way these serious cases are handled. The working party has consulted the Police Association and our office about ideas for improving both the quality and speed of these decisions. We are encouraged by drafts of proposed changes to the process.

## Resolving disputes

Our independence allows us to act as an 'honest broker' in resolving disputes between parties in conflict. Case studies 64 and 65 are examples of how we have used our independence to resolve disputes effectively or bring about changes to systems and practices to avoid future problems.

We not only try to resolve community-police conflict, but also conflicts within NSW Police and between NSW Police and other agencies. Well-managed and accountable informal resolutions can often save considerable resources and lead to better outcomes.

Many complaints made by police over the years have been investigated formally when an informal outcome-focused approach would have been more productive. Case study 67 demonstrates our role in identifying complaints made by police officers that can be best handled by informal resolution.



*Kate Owens, an investigation officer in our police team.*

We are always looking for new ways to deal more effectively with challenging complaints. In June this year, the Assistant Ombudsman (Police) convened a conciliation meeting with senior managers to resolve a complaint about the conduct of an investigation into an undercover police operation. The complaint included concerns that information was leaked and the wrong conclusions reached. The complainants were also concerned about a number of broader issues raised by the investigation. As a result of the meeting, senior police recognised the legitimacy of many of the concerns raised and developed strategies to address them.

A single day spent by all involved parties at our office meant that a task force of several police officers established to look into the allegations was unnecessary. In addition, participants stated that the meeting provided a meaningful resolution of many of the matters raised — an outcome unlikely from any formal investigation. We have spoken to the Commissioner and other senior managers about identifying further opportunities to resolve appropriate complaints in this way.

### Performance indicator

#### Complaints where alternative dispute resolution was attempted

Target	00/01	01/02
25%	25%	22.8%

#### Interpretation

We encourage the police to use alternative dispute resolution techniques where possible, and we audit the results. This performance indicator shows the percentage of complaints that were resolved in this way this year.

### Case study 66

A woman complained about the circumstances in which police strip-searched her 16 year old son in a busy department store. The woman was present in the store at the time, but police did not try to inform her or arrange for her to be present during the search.

Under current legislation, the police have the power to strip search a person without arresting them, if they reasonably suspect that the person has stolen something. In this case, the police suspected that the young man had stolen a CD. There is no legislative requirement for a support person to be present and no policy requiring police to consider obtaining a support person. This is in contrast to what happens if the police want to strip search a person under 18 years old who they have arrested. This person has the right to have a support person present during any investigative procedure, including a strip search. In fact a young person cannot waive their right to a support person in these circumstances.

We met with the police about this matter and suggested that they introduce a policy requiring police to consider obtaining a support person when a young person is strip searched before arrest. We acknowledge that in some cases, for example if the police suspect the young person is hiding a weapon and may use it against them, it may not always be reasonable to expect police to delay a strip search and find a support person. The police are currently amending their major policy document that covers this issue.

The introduction of this amendment should help improve community relations and satisfy a general community expectation that parents will be contacted when strip searches are conducted on their children.

### Case study 67

A police officer complained that a more senior colleague had bullied and harassed her over a number of years, resulting in her taking extended sick leave.

After reviewing the handling of this complaint, we were concerned that the officer's supervisors did not deal with the problem promptly when it first came to their attention. There was evidence that the internal complainant had tried to resolve the problem informally by approaching several different senior officers and asking them to speak to the officer about his behaviour. It seems that supervisors took no action until a formal written complaint was made. Once the complaint was made, the police conducted a formal investigation that did not deal adequately with the workplace issues. There was a real risk that the complainant may go on long term sick leave.

We contacted the employee management branch of NSW Police and asked them to work through some of our concerns with the local area command. We also suggested they develop strategies to ensure that the working relationships of the complainant were improved on her return to work.

The officer who was the subject of the complaint is currently on sick report due to an injury and it is not known whether he will return to work. The employee management branch has advised us that the superintendent at the station concerned has agreed to place this officer under closer supervision if he does return to work. The superintendent has also reinforced the message to supervising staff that grievances about harassment must be dealt with promptly and effectively before they have the chance to escalate. The complainant has now returned to work and has indicated she is satisfied with the outcome of her complaint.

### Case study 68

An Aboriginal man complained that police had wrongly arrested and detained him. He stated that he and another man had been sitting in a car one evening when a police vehicle pulled up next to them. Both men ran from the scene when they saw the police. The complainant stopped running when the police called out

to him to stop. He claimed that the police pushed him and abused him for running away, calling him a 'little black bastard'. He was then handcuffed and thrown head first into the back of the police truck. When he protested that he had done nothing wrong, the officers said, 'We don't care'. The complainant said he was bleeding from an injury to his head and had lacerations from the tightness of the handcuffs. The police apparently believed that a wanted man had also been in the vehicle and initially mistook the complainant for the wanted man.

The complainant stated that the officers said they would drive him home. He overheard the police radio confirming that he was not wanted for any offence. The police later told him that they were going to take him 'up the bush' and give him 'a hiding'. Eventually they stopped in a remote location, took the complainant from the back of the vehicle and told him to start running. The complainant feared that they might try to shoot him. It took him about an hour to walk back to his cousin's home. He had no shirt on and bare feet. The police officers later claimed that the complainant was arrested and driven from the scene to avoid further breaches of the peace. They appeared unable to explain why they had driven him to a remote location rather than to his home.

The police have conceded that no breach of the peace had occurred and that the officers falsely imprisoned the complainant. They recommended that the officer principally responsible for the unlawful detention be considered for dismissal and that the other officer receive a Commissioner's Warning Notice. Criminal charges were not considered because the complainant was reluctant to pursue the matter. We are concerned that the police do not appear to have considered whether there is a need to compensate the complainant and will continue to monitor this matter closely.



## Assessing police concerns about complainants

### Repeat offenders who make complaints

After repeated concerns raised by police about the potential for criminals to misuse the complaints system, we began a review of complaints related to this issue. We wanted to find out whether officers were the subject of malicious complaints from serious and repeat offenders and whether the threat of false complaints was deterring officers from policing those offenders.

We analysed every complaint received in 15 local area commands over a six-month period and found that:

- only seven of the 251 people that police were actively targeting in those commands had complained about their treatment
- a check of all complaints lodged in the 13 years since 1989 found that only 12.7% of the 251 people targeted had ever complained
- 18.7% of the 423 complaints about police in the six-month review period were made by 'known offenders' — that is, people with two or more criminal convictions in the past five years
- issues relating to arrest, charge and other custody situations accounted for 20.8% of the complaints about police made in the review period.

These results show that very few convicted offenders complain about the conduct of police, despite the very high levels of recorded contact that they have with police officers.

However, our review did find that most of the 15 commands analysed had a small number of difficult or challenging complainants who had made numerous complaints and inquiries.



*Joanne Scott, an investigation officer in our Aboriginal complaints unit (3rd from left, back row), with participants in the Eden Community Development Employment Program.*

Most were not repeat offenders and were not associated with repeat offenders, despite having frequent contact with police. Only some commands appeared to have effective strategies to deal with these complainants.

Our findings were published in our special report to Parliament entitled 'Police complaints and repeat offenders'. The report included recommendations that police develop consistent strategies for responding to difficult or challenging complainants. We also suggested that immediate steps should be taken to dispel the myth among many police officers that if they actively target serious offenders they are likely to have complaints made against them.

### Supporting officers who make honest mistakes

Over the years we have stressed the need to make it clear to police officers that honest mistakes will not prejudice their careers. We believe the community supports the view that officers should be encouraged to admit honest mistakes without the fear of being punished or damaging their career prospects.

We have had discussions with NSW Police and are confident that the current Commissioner understands the importance of this issue. He has established a working group which is close to finalising a policy to deal with this issue.

## Commitment to key stakeholders

### Expanding our work with key community groups

We frequently meet with a broad range of community groups and government agencies that have an interest in improving policing. Our legislative review work has significantly increased the number and range of agencies that we work with.

We continue to work closely with Aboriginal communities and their local police across NSW. Staff from our Aboriginal complaints unit have visited groups in Nowra, Wollongong, Eden, Bega, Batemans Bay, Tamworth, Coonabarabran, Dubbo, Bourke, Brewarrina, Broken Hill, Ivanhoe, Orange, Cowra, Albury, Moree and Nambucca Heads. We also attend and directly observe interviews connected with a number of the more serious complaints made by Aboriginal people. Unfortunately we still see some disturbing examples of police mistreatment of Aboriginal people (please see case study 68).

Over the next 12 months we plan to extend the range of community groups we meet with and look for opportunities to bring police and these groups together to solve jointly community concerns about policing in NSW.



*Philomena Janson, police team assistant, joined the office almost 20 years ago.*

### Working with police to improve complaint outcomes

It is important for us to work with police at all levels of the organisation to develop constructive solutions to the problems identified by complaints. The Ombudsman has regular meetings with the Police Commissioner and our staff visit police stations, attend region and local command training days and workshops, and are involved in interagency forums that include police.

An effective mechanism for high-level exchanges of views and information about complaints is a joint standing committee consisting of senior managers from NSW Police and this office. Both the Ombudsman and the Commissioner recognise the importance of this forum and have been active in supporting several key initiatives. These include joint efforts to develop complaint performance indicators that measure outcomes not processes and sharing sensitive information relating to officers with significant complaint histories.

The success of our work with the police is reflected in their willingness to take action on serious or entrenched concerns. These include:

- developing a fair and consistent approach to managing officers with significant records of complaints
- proposing changes to improve the use of 'Commissioner's confidence' provisions to remove officers who have engaged in serious misconduct
- acknowledging the need for performance indicators to track measurable improvements in complaint-handling outcomes
- strongly supporting our input into police training.

In the coming year, the Ombudsman and Assistant Ombudsman (Police) are planning to visit a number of local commands to consult officers on recent changes to the complaints system. These visits will also give us a chance to dispel some of the myths about the complaints system and explain our role in making sure that the system works fairly for everyone involved.

### Identifying and managing risks

When managed effectively, information from complaints can provide valuable insights into the potential risks presented by particular issues, locations and officers. Our analysis of complaint trends helps us understand the strengths and weaknesses of particular local commands. The introduction of the new C@ts.i complaint case management system should help improve the quality of available information about each local command.

We have also begun to analyse our records and other data to profile complaint-handling issues affecting individual local commands. As well as identifying poor performance, we are looking at the work of commands that are performing well to identify initiatives that can be adopted elsewhere.

### Using complaint data to identify risks posed by individual officers

We review the complaint records of officers with serious substantiated complaints against them or patterns of particular types of complaints. So far we have reviewed records relating to more than 200 officers who may present a significant risk. This includes officers found to have engaged in criminal behaviour and other serious misconduct.

It is also important that we take into account complaint information that shows that officers are not properly investigating complaints against fellow officers (please see case study 69) and poor management decisions arising from complaint findings.

Complaints and related information may often indicate that officers are not dealing well with stress. In June this year, the Assistant Ombudsman (Police) spoke to officers at the Police Association's conference about our work on failures in the systems for assessing and supporting officers showing obvious signs of stress. He asked union delegates for feedback on the NSW Police initiative of including specific responsibility for monitoring staff welfare in the formal job responsibilities of all supervisor and commander positions. Union delegates said that commanders and other supervisors were now playing a much more active role in supporting officers under stress. However, a number of the

### Case study 69

A senior sergeant worked as a police prosecutor until 1996 and then undertook other duties including investigating complaints about police misconduct. Since then we have reviewed at least six serious complaint investigations handled by the officer and criticised the way those complaints were handled. We were concerned that there were extensive delays and significant omissions in his investigations. Initially the officer's problems were attributed to his lack of skills and he was provided with additional training. We were then advised that his heavy workload was to blame. He was counselled and closely supervised.

Because of the number of deficient investigations conducted by this officer, we recommended that all of his current investigations and his workload should be reviewed and any other appropriate management action taken. Senior police managers have acknowledged our concerns and are currently developing a strategy to address the issues raised.

### Case study 70

A police officer accidentally damaged a police vehicle while reversing it. However when he reported the damage to his supervisor, he said that an unknown vehicle had caused the damage. He also gave false information on the insurance claim form.

He later approached his supervisor again and told him the truth about what had happened. He apologised for his actions and said that he had been under a great deal of stress when he made the false report. On the same day he had discharged his firearm accidentally while putting it away and he said that his state of mind had caused this to happen.

The police investigated the matter and, in an interview, the officer said he had been under stress trying to deal with:

- the birth of a new baby
- having to travel for around 3.5 hours to and from work each day

- worry about his own physical health and a family member
- difficulties in meeting study commitments.

He also said he had been worried about losing his job as a Highway Patrol officer if he reported the true cause of the damage. He had recently been involved in a minor collision and received a warning that he had to improve his driving.

The investigating officer believed that stress had played a major part in the officer's conduct. The police asked the DPP for advice about whether to charge the officer with making a false report. The DPP advised against this, as any prosecution would rely on an admission not made under caution and it appeared the officer had been suffering mental distress at the time of the incident. Instead the police decided to:

- issue a warning notice to the officer
- suspend his driving certification
- reassess his driving at the School of Traffic and Mobile Policing
- monitor his work performance for six months
- reduce his rank
- defer his salary increment for six months.

However the police did not tell us whether they planned to assess the officer's wellbeing and provide appropriate support given the difficulties he was experiencing. We were concerned about this and have asked the police to tell us how they plan to address this issue.

### Case study 71

A police officer was charged with aggravated indecent assault, assault occasioning actual bodily harm and wilful and obscene exposure after an incident in a club while off-duty.

A woman working at the club alleged that the officer and another man had grabbed her breasts and that the officer had then picked her up and slammed her against a hard surface in the bar area, causing bruising on one

of her legs and on her buttocks. She also said the officer exposed himself to her during the same incident.

When the matter went to court, the magistrate dismissed all the charges against the officer but noted that he would have been convicted of attempted indecent assault had that charge been laid. The magistrate expressed reservations about the truthfulness of several defence witnesses and commented that the officer and his co-accused were 'not to be believed on their oath'. He also said that 'throughout these proceedings there has been the permeating odour or undercurrent of coverup and deceit'.

In light of the magistrate's comments, the officer's managers have asked the employee management branch to set up an internal review panel to address the question of how best to manage this officer. We will monitor their decisions closely.

### Case study 72

Two intoxicated, off-duty probationary constables became involved in an incident that resulted in one officer (A) being charged with common assault and offensive behaviour and the other officer (B) being charged with offensive behaviour. Evidence to support the charges included an allegation that A had grabbed a woman on the buttocks. It was also alleged that a fight involving the officers and onlookers had started after the onlookers had protested about the offensive conduct towards the woman.

Officer A pleaded not guilty and the magistrate dismissed the charges against him. Officer B pleaded guilty to offensive behaviour but, instead of recording a conviction, the magistrate placed him on a good-behaviour bond for six months.

The police investigation report did not examine the officers' evidence in court. We asked the police for a copy of the transcripts of the evidence in both hearings, but they told us they didn't have any copies.

We were not satisfied with this response so we obtained the transcripts from the court.

delegates who were supervisors said that they would benefit from training and specialist advice on how best to support staff positively. Case studies 70 and 72 show how certain complaints can highlight the need for active intervention.

### Using evidence from legal proceedings

In cases where police officers have been criminally charged, we have noticed a tendency of some local commanders to only examine whether an officer has ultimately been found guilty. This approach ignores the fact that in some circumstances significant management action may still be necessary even if the verdict is 'not guilty'. Please see case studies 71 and 72. We propose to discuss with NSW Police what measures need to be put in place to guarantee that commanders carefully consider the evidence of criminal proceedings as part of deciding what management action should be taken in cases where officers have been charged with crimes.

Evidence presented at civil proceedings can also bring to light serious misconduct, as case study 73 shows. It is critical that police managers also assess court findings in these cases.

### Managing officers who are the subject of criminal charges

A related issue is the need for local commanders and other officers with supervisory responsibilities to consider carefully what should happen when officers have been charged with criminal offences but the outcome is still pending. Case study 74 shows why it is very important for local commanders to consider risks to the community, to NSW Police and to the officers who have been charged when deciding how they should manage these officers.

We discovered that A had told the court that he had not grabbed the woman and that it was B that did this. It seems likely that the police were unaware of this new allegation, having failed to monitor the court proceedings. A also said he had not taken part in the fight and that he had tried to stop B from fighting. The magistrate accepted his evidence.

We also discovered that while B pleaded guilty to offensive behaviour, his lawyer told the court that his behaviour was to a large extent explained by a depressive illness that had led to his excessive drinking on the night in question. The illness was caused by work stress arising from a critical incident in which a violent, mentally ill offender had bled on a cut on the officer's hand and also by concern for the health of a family member. The magistrate criticised the officer's conduct but accepted that it was out of character. Again, it seems that the police were unaware of the welfare issues affecting the officer and therefore unable to take them into account when deciding how to manage him.

We found that the police had failed to take all relevant material into account when deciding whether to conduct

further inquiries into the incident and what management action to take. We recommended that they take steps to ensure that when criminal proceedings are taken against a police officer, the officer's supervisors monitor the criminal proceedings and consider any relevant evidence, submissions and findings.

The police acknowledged the validity of our concerns and pointed to several initiatives that should promote the more effective management of complaints. However it appears that there is still no clear policy requiring police managers to take into account evidence, submissions and findings in court proceedings when deciding how to manage an officer. We have recommended that the police consider revising their current guidelines for managing complaints to make this clear and audit current matters in which police officers are subject to criminal proceedings.

### Case study 73

In 1994 a car crash occurred near the house of the complainants, a man and a woman. A police officer arrived at the scene and a witness told him that a person had run from the passenger seat of the car to the complainants' house. After hearing this, the police officer approached a man who was gardening out the front of the house and asked him about the accident.

The man told the officer he knew nothing about the accident and a hostile exchange took place. The officer returned to the police station and then came back to the house with two other officers. They told the man he was under arrest for assault. The police officer who originally spoke to the man later told the court that the man had assaulted him by holding a garden knife up to his face and threatening him.

The police subsequently charged four occupants of the house with assaulting police, resisting arrest, assault occasioning actual bodily harm, hindering police in the execution of their duty and violent disorder.

The man charged with assault complained that his arrest was unreasonable and that police used



*Terry Chenery, an investigation officer in our Aboriginal complaints unit.*

excessive force when arresting him and seriously injured his shoulder. A woman complained that police hit her across the back with a baton, did not tell her why she was under arrest, used excessive force in her arrest and dragged her from the house to the street with her upper body exposed.

The Local Court later dismissed all the charges against the occupants of the house and the magistrate expressed concerns about the police involved. In civil proceedings against police before the District Court, the judge made findings against the three police officers involved. The judge ordered police to pay the occupants' costs and awarded damages, including exemplary damages, to the occupants. On further appeal, the Supreme Court allowed the appeal and substantially increased the damages. The police then sought leave to appeal to the High Court, but this was denied.

We were concerned that the police seemed to believe that no management action against the officers was warranted despite the decision of the District Court. They wrote to us arguing that management action was not appropriate as the matter was 'now over five years old'.

We have since urged NSW Police to reconsider the question of what management action to take. We have asked them to review the findings of the District Court carefully and decide whether those findings should be accepted. We pointed out that the District Court judge's findings against the three officers cover dishonesty and fabrication in giving evidence before the court, unlawful assault, trespass to property and false imprisonment. The alleged dishonesty in District Court proceedings is much more recent than the original incident, having occurred during the hearing itself.

The Commissioner of Police has now advised us that he has asked his court and legal services section to review the matter.

### **Case study 74**

A police officer ran a swimming school for children and worked as an instructor at the school. He also worked as a 'Community Safety Officer' as part of his policing duties.

The mother of a young girl who was a student at the swimming school complained that the officer had indecently assaulted her daughter while away at a swimming

competition. She alleged that he had inappropriately rubbed moisturising cream on the child's body, including her genital area.

After investigating this allegation, the police asked the DPP for advice about whether to charge the officer with indecent assault. The DPP advised against this because, based on the available evidence, there was little likelihood of a conviction.

The police have told us they initially placed the officer on restricted duties, although he has since been returned to full duties. He was allowed to continue with his swimming business after he submitted a 'risk management plan' making certain changes to how it was run. A female coach was to be employed to work with the young girls who attended the school and the officer's practice of accompanying children to swimming competitions with no assistance was to be restricted.

We are waiting for a final report from police about the complaint. We plan to monitor how they manage the officer in light of their risk assessment of the officer, both in his policing work and his work at the swimming school.

# Child Protection

The Ombudsman has a role under the *Ombudsman Act 1974* to monitor and oversee the investigation of child abuse allegations against employees of government agencies and certain non-government agencies. The agencies we oversee are mainly those that provide services to children such as schools, child-care centres and out-of-home care service providers. Our work is central to making sure that allegations of child abuse are taken seriously and handled in a way that improves the care and protection of children in NSW.

Our role was established as part of the government's response to the findings of the Royal Commission into the NSW Police Service (the Royal Commission) in 1997. The Royal Commission also looked at paedophilia in NSW and found that there had been a lack of commitment, cooperation, coordination, liaison and oversight by various agencies in preventing and dealing with the abuse and neglect of children.

Under the present scheme, all allegations or convictions relating to child abuse by employees of agencies specifically designated in the *Ombudsman Act* (even if the alleged child abuse did not take place in the workplace) must be reported to the Ombudsman. In addition, all other government agencies must notify us of any allegations of child abuse by employees if the abuse arises in the course of employment. These notifications must be made within 30 days of the agency receiving the allegation or becoming aware of the conviction.

Agencies also have a responsibility to handle child abuse allegations appropriately and report the results of any investigation to the Ombudsman in a timely manner. This gives us the opportunity to help agencies improve the way they deal with child abuse allegations and increases our understanding and knowledge of the risks that children face when they receive services.

Our responsibilities include:

- overseeing and monitoring investigations of child abuse allegations against employees
- conducting direct investigations into those allegations if appropriate
- scrutinising systems agencies have for preventing child abuse and handling allegations of child abuse
- handling complaints about the way agencies have dealt with child abuse allegations
- assessing and analysing trends and patterns of child abuse in the workplace
- developing policies, procedures and guidelines for effectively managing child protection investigations
- conducting education, training and liaison activities to improve the understanding and knowledge of agencies about their obligations under the scheme.

## What kinds of allegations must be notified?

In the *Ombudsman Act*, 'child abuse' is defined as:

- assault (including sexual assault) of a child, or
- ill-treatment or neglect of a child, or
- exposing or subjecting a child to behaviour that psychologically harms the child.

This definition applies whether or not the child has consented to the behaviour.

A 'child abuse allegation' means an allegation of child abuse against a person or an allegation of misconduct that may involve child abuse. The Act is clear that all such allegations must be notified to us. We need to have a complete picture of the types of child abuse allegations that are being made throughout NSW so we can better understand and improve the environment in which children receive services. It is also important for us to scrutinise the way agencies handle all child

abuse allegations, whether they are serious or not, to make sure that they have the appropriate processes and investigative skills. Regrettably a small number of parties have disputed the need to report what they characterise as 'minor matters'. Case study 76 illustrates the importance of all allegations being notified, even those that appear to be minor. Our inquiries into that matter revealed a number of problems with the way the agency handled the investigation and have led to improvements.

We have found that agencies are generally clear about the behaviours that constitute an allegation of physical or sexual assault or misconduct that may involve child abuse. However, there appears to be some confusion about the meaning of ill-treatment, neglect and behaviour that is psychologically harmful.

## Neglect

We receive only a few notifications of allegations of neglect but receive a significant number of inquiries, particularly from independent boarding schools, about the difference between allegations of neglect and complaints of negligence.

'Negligence' is a tort, which is a civil not a criminal wrong. It is generally defined as a breach, by an act or omission, of a duty of care (duty to avoid causing foreseeable harm) where the breach causes injury to a person that can be quantified, remedied or ameliorated by the payment of damages to the injured person.

'Neglect' is a term that has been commonly used in child welfare legislation and involves the failure to provide the basic physical and emotional

### Case study 75

An independent school notified us of serious child abuse allegations involving the conduct of a teacher outside school. The school is required to notify us of child abuse allegations against its employees irrespective of whether the alleged behaviour occurred inside or outside the workplace.

The allegations concerned the sexual abuse of two young people over a number of years. The alleged offender came to know the young people and their family through their involvement in the same social group. At the time the allegations were made, the emotional state of one of the young people was such that the parents were reluctant to allow him to be interviewed by the police. It was clear from talking to the parents of the other young person that he would make a statement to police in the future. The police decided not to pursue the matter at that time.

#### Our investigation

We decided to investigate this matter after discussions with the school about the difficulties it might have in conducting the investigation. We conducted preliminary inquiries with the previous employer of the teacher and were able to identify two other matters involving the alleged sexual assault of boys by him. The

previous employer advised us that they had been unable to substantiate the allegations due to insufficient evidence.

We gathered and reviewed all available documentary information surrounding the alleged activities of the employee and interviewed a number of witnesses.

Our information included:

- the personnel and investigation file of the previous employer
- DoCS notifications and investigation reports concerning five young children
- information from the Commission for Children and Young People (CCYP) relating to the 'prohibited employment' and criminal record check of the teacher and the risk assessment CCYP completed
- information from the Director of Public Prosecutions (DPP) including copies of all documentation that related to a previous court case against the teacher, copies of all documentation provided to the DPP by the police that formed the police 'brief of evidence', and the employee's personnel file from his current employer.

Our review of the information raised a number of concerns about the activities of the teacher. The evidence

suggested a pattern of behaviour dating back to the mid 1980s involving the alleged sexual assault of young boys. We identified the names of 20 alleged victims as well as the possibility of other victims linked to the teacher's local church. The pattern of offending appeared to be well established.

We were concerned about the way in which the employee had explained the earlier charges against him to employers. When he was appointed to his current position, he gave the school a letter that misrepresented the circumstances of the previous charges. When he described the matters to the CCYP, it seems he misrepresented the court proceedings by indicating that the magistrate had found the matters to be vexatious when in fact the magistrate found that there was a prima facie case against him.

We approached the police to take over this investigation after we had reviewed the material and the parents of the current victims indicated that they were prepared to make a statement. We were concerned that if we proceeded any further with the investigation we might compromise any possible prosecution of the employee. The police continued the investigation using the extensive evidence we had collected and the employee has now been charged.



Members of our child protection team discuss current matters.

necessities of life. It includes safety from harm, which may be the provision of appropriate and adequate adult supervision.

Although an agency that fails to provide a safe environment for children in their care may not be considered to have been negligent, they may nevertheless be considered to have neglected the children involved. We must be notified of all allegations of neglect, not just allegations of negligence. Case study 77 is an example of an allegation of neglect that we handled this year.

### Psychological abuse

From the notifications we have received, it appears that most agencies are now able to identify conduct that constitutes psychological abuse. Several schools made notifications involving such allegations this year.

### Case study 76

We received a notification and final report from a non-government agency about their investigation of an allegation of the 'smacking' of a child in long-term care by his foster father. Following the agency's investigation the foster father expressed regret to the child. The allegation initially appeared to be relatively minor.

During the agency's inquiries, the foster father admitted he had hit the child with a piece of wood 'a few times on the upper back and shoulder' and that some two-way shoving and pushing also occurred. The agency also described the placement as having been tenuous for some time with 'a number of incidents' involving the child, his sibling and the carers. Another issue the agency faced was the potential for vulnerable children in care to understate abusive behaviour. The child initially denied that the incident involving the piece of wood had occurred. It was only when the worker told him that the foster father had admitted the behaviour that the child agreed the incident had occurred.

We were largely satisfied with the way the agency had handled this matter. However, we were concerned that the family's caseworker had also

been responsible for investigating the matter. We felt that the person's conflict of interest had the potential to influence how seriously the agency dealt with the allegations, given the current lack of placements in the substitute residential care sector. We suggested that these investigations should be conducted by someone not involved with the family concerned.

### Case study 77

We were notified of allegations of psychological abuse and neglect of a student (X) by an independent school employee.

The school employed an independent investigator to investigate. The process was constrained because criminal proceedings were underway against another student who had allegedly sexually assaulted X.

The investigation found that neither the allegation of psychological abuse nor the allegation of neglect was sustained. We agreed with the finding about the allegation of psychological abuse, but were unsure about the finding about the allegation of neglect. We looked into whether or not the employee had neglected his responsibility to protect X from further abuse by the alleged offender (the

other student) while the criminal matter was proceeding. The way the school handled the matter was affected by advice from DoCS that until the criminal matter ended the school should not investigate the alleged sexual assault nor take any action against the other student. However, this should not have prevented the school from undertaking a risk assessment and taking actions to protect X.

We found that the allegation of neglect was sustained because the employee had failed to provide a safe environment for X in the time between the report of risk of harm to DoCS and the time it took DoCS to investigate the matter. We asked the school to review its finding and to communicate those findings to X's family and the subject of the allegation. The school is considering our recommendation.

### Case study 78

We were notified of a complaint by an ex-student of a high school that he had suffered psychological harm as a result of an inappropriate relationship he had formed with a female teacher while he was a student there.

The school investigated and found that the teacher had behaved



For a matter to involve an allegation of psychological abuse, the following must be present:

- a description of persistent and targeted behaviour eg scapegoating, humiliation or verbal abuse — although in rare cases the alleged behaviour may be a single incident which is extreme and harmful to a child
- possible signs of harm eg refusal to go to school, sleep disturbances, anxiety, physical symptoms, and
- an alleged causal link between the behaviour and the harm.

See case studies 78 and 79.

### Misconduct that may involve child abuse — including grooming behaviour

The obligation of agencies to notify us of allegations involving misconduct ensures that

such behaviour, which may not constitute child abuse but may be part of a pattern of abusive behaviour, is investigated thoroughly. Some of these behaviours include inappropriate touching, inappropriately singling out a particular child for special attention or gifts, undressing in front of a child or talking about sex in an inappropriate context.

Many of the allegations we receive under this classification involve 'grooming behaviour' which is recognised by child protection experts as the first stage of child sexual abuse. It is often used by offenders to build a child's trust and test their boundaries before involving the child in sexual activity. Our educational initiatives together with increasing community awareness have helped agencies recognise and act on behaviours that may constitute 'grooming', before they lead to child sexual assault. Case study 80 is an example of a matter involving allegations of misconduct constituting grooming behaviour.

inappropriately with the student over a period of time. The teacher's conduct breached professional teacher/student boundaries. The ex-student, witnesses and a report by a psychologist provided evidence that the student had suffered psychological harm. The psychologist confirmed a link between the harm suffered by the student and the relationship that had developed with the teacher.

The allegation of psychological harm was sustained and a comprehensive risk assessment was conducted to find out if the teacher posed any current or future risks to children. We agreed with the school's actions in this matter.

#### **Case study 79**

We were notified of a complaint by a parent that her nine-year-old son's teacher threatened to throw him out of the window if he did not keep quiet. It was alleged that the teacher had humiliated him and at times ignored him, causing the boy to experience sleep disturbance and to self-inflict injuries because he did not want to go to school.

The school investigated the matter thoroughly and found that the allegations were unsubstantiated.

The boy's behaviour could not be attributed to the teacher's classroom strategies. When interviewed, the boy said he did not believe that the teacher would throw him out of the window. He did believe that the teacher did not like him, that she did not reward him and often ignored him. The investigation found evidence to the contrary — he had received a number of achievement awards from her. The teacher stated that she did ignore the boy and other students at times because she had found this to be a positive behaviour management technique in curbing inappropriate behaviour.

The investigator found that the boy had harmed himself after an incident had made him angry with school friends and too scared and embarrassed to return to school. The incident was not related to the teacher. Counselling was provided for both the child and his teacher following the investigation.

#### **Case study 80**

We were notified by an independent boarding school of an allegation that a teacher had taken a student on an extended outing without the permission of the school or the student's parents. The teacher

allegedly bought the boy a gift and gave him a large amount of spending money during the day. It was further alleged that the child had later been driven to the teacher's home where the teacher told the child that he preferred him to other students and that he loved him. The student indicated his distress at these advances and asked to be dropped off near his friend's house. The teacher took him there.

The school undertook a risk assessment and interviewed the appropriate people. It also offered counselling and support to the student and his family. The teacher resigned during the investigation. At the end of the investigation, the school notified the Commission for Children and Young People that allegations against the teacher had been investigated. This information will be considered in any future background check of the teacher if he seeks paid employment working with children. We were satisfied with the school's investigation but felt that recording their finding as a sustained 'indecent assault' was incorrect. The teacher's actions constituted misconduct but they did not meet the legal definition of an indecent assault. We asked the school to review its finding.

## What we do and how we do it

### Assessment

As well as receiving notifications of child abuse allegations and overseeing how agencies deal with those allegations, we receive complaints from people who have concerns about the way an agency has handled a child abuse investigation. In deciding how to handle a complaint, we look at whether or not the matter is one that should have been notified and whether or not the complainant has tried to resolve the matter with the agency concerned. Generally we are an office of last resort and will usually only deal with a complaint if the agency itself has been unable to resolve it. We give reasons if we decline a complaint.

Sometimes agencies notify us of matters that, on closer assessment, are not required to be notified. For example, the matter may:

- involve allegations against a person who is not a current employee of the agency
- involve allegations about a person who was not a child (that is under 18 years old) at the time the alleged behaviour occurred

- not involve the kind of behaviour defined in the Act as child abuse.

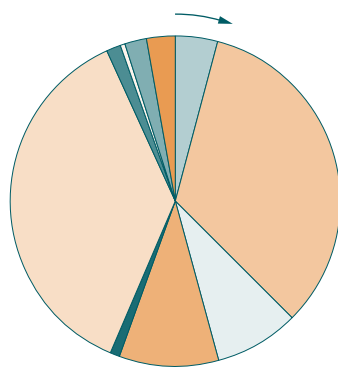
In these cases, we advise the agency that we have received the notification but will not be scrutinising how they deal with the matter. The file will then be closed. Last year we assessed 62 notifications as being outside jurisdiction and declined 32 complaints (see fig 36).

For notifications of matters that are reportable, we do a risk assessment to determine whether the agency has identified and taken appropriate action to manage any risks. We consider:

- the risk of further abuse or intimidation of the child, other children or witnesses
- the risk to the agency and to the employee who is the subject of the allegation
- the risk to the investigation of the allegations
- the risk of a breach of confidentiality or of any conflict of interest of the investigator.

We also decide if we should oversight or monitor the agency's investigation or investigate the matter ourselves.

Figure 36: Child protection notifications and complaints received and determined



Notifications and complaints determined (written)

- Outside jurisdiction\*
- Overseen
- Assessed
- Monitored
- Class or kind notification assessed
- Investigation
- Notifications (involving police officers) assessed\*\*
- Complaints declined
- Preliminary inquiries
- Complaints finalised

\* notifications may be outside jurisdiction because they do not involve a child, an employee or 'child abuse' as defined in the Ombudsman Act

\*\* notifications involving police officers are dealt with by the police and overseen by our police team in the same way as other allegations of police misconduct

#### Notifications and complaints received (written and oral)

Written notifications (not involving police officers)	1458
Written notifications (involving police officers) **	115
Written notifications (involving police officers but outside jurisdiction)*	115
Written complaints	70
Oral inquiries	661
Reviews	4
<b>Total</b>	<b>2423</b>

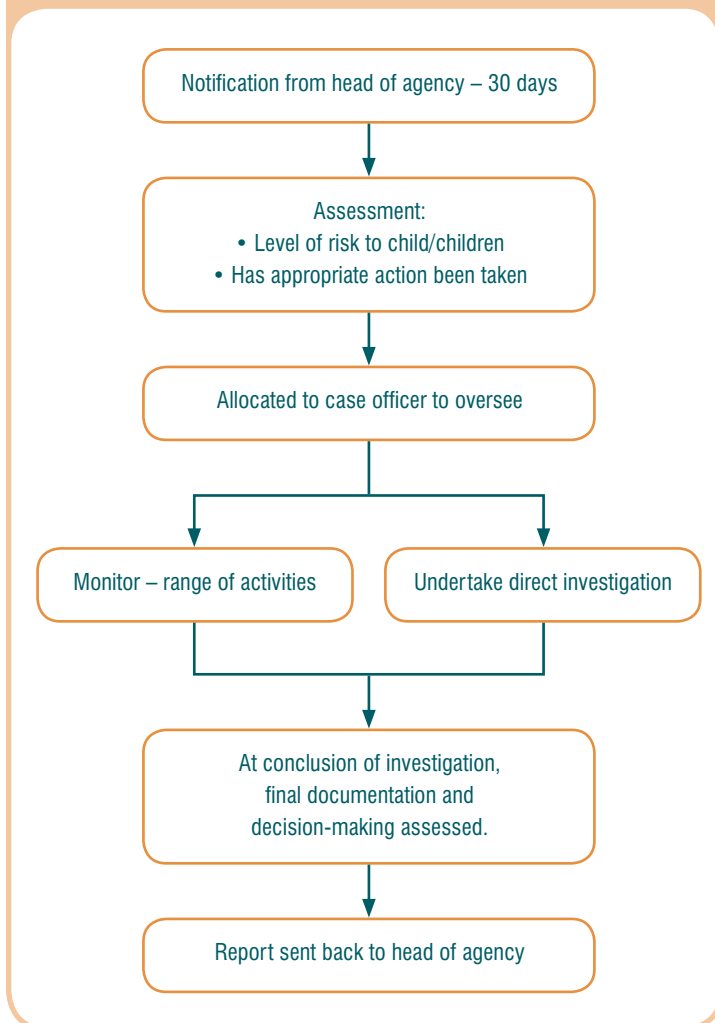
#### Notifications and complaints determined (written)

Outside jurisdiction*	62
Assessed	500
Class or kind notification assessed	124
Notifications (involving police officers) assessed**	146
Preliminary inquiries	14
Overseen	551
Monitored	21
Investigation	7
Complaints declined	32
Complaints finalised	42
<b>Total</b>	<b>1499</b>

#### Current

Notifications being monitored	97
Notifications being investigated	16

**Figure 37:**  
Child protection notifications



Child abuse allegations against police officers are dealt with by NSW Police in the same way as other allegations of misconduct. Our child protection team assesses the final reports of investigations into these kinds of allegations against police officers. Other matters that may initially appear to involve child abuse allegations are scrutinised by our police team if, for example, they do not involve a child under the age of 18, the abuse did not occur in the course of the officer’s duties or the description of behaviour does not constitute child abuse (such as wrongful arrest).

**Oversight**

If we are satisfied with the agency’s initial response and the alleged behaviour is relatively minor, we oversee the matter. This is our lowest level of intervention.

Agencies must provide us with the report and any supporting documentation at the end of their investigation. On average it takes four months for agencies to complete these investigations. Some complex matters take longer to conclude because the agency is awaiting the outcome of a criminal investigation or a decision from the Industrial Relations Commission or the Administrative Decisions Tribunal.

In some cases, agencies complete an investigation within 30 days and send the notification to us with the final report.

We assess the material we receive and give the agency written advice about the adequacy of the investigation and the action taken. Case studies 81–84 illustrate some of the matters we consider when reviewing investigation reports and the feedback we give agencies.

**Performance indicators**

**Average time taken to assess notifications**

Target	00/01	01/02
5 working days	10 days	5 days

**Interpretation**

Our child protection team aims to assess notifications within an average of 5 days of receiving them. This year we met our target.

**Average time taken to assess final investigation reports**

Target	00/01	01/02
30 days	33 days	30 days

**Interpretation**

Our child protection team aims to assess all final investigation reports to determine whether or not allegations have been handled satisfactorily within 30 days. This year we met our target.

**Class or kind determinations**

The Ombudsman has the authority to exempt certain classes or kinds of child abuse allegations from the full notification requirements of the *Ombudsman Act*. We have class or kind agreements with the Department of Education and Training (DET) and the Catholic Commission for Employment Relations (CCER) which allow certain kinds of less serious child abuse allegations to be reported by monthly schedule. We have completed two audits of the matters reported by schedule and found that the majority of them have been dealt with satisfactorily.

In our first audit, we clarified with DET that their obligation was to report all allegations of child abuse, not just allegations that had been found to have substance. We also found that the CCER did not have a system in place to record inquiry calls or discussions with principals about notifiable matters.

### Case study 81

A school notified us of allegations against a teacher in NSW who had been detected publishing child pornography in a European country. The police of that country contacted NSW Police who began an investigation.

The police found out that the alleged offender was a school teacher and notified the school of the allegations. The school's investigator liaised with police to ensure effective coordination of the school's investigation and the police's investigation of the criminal aspects of the case. The police searched the teacher's home and found evidence to support charges of publishing child pornography and possession of a prohibited substance. The teacher subsequently pleaded guilty to these offences. The school conducted its own internal disciplinary investigation and the teacher has since been suspended from teaching duties.

We were informed subsequently that the teacher was arrested at his workplace in the presence of other staff and students. We made further inquiries into the reasons why the arrest was so public. The school told us that although it may not have been appropriate for the teacher to have been arrested in such a public way, it actually prompted students to make new allegations of sexual abuse against the teacher. Additional criminal charges of indecent assault have now been laid against the teacher.

### Case study 82

An allegation was made that a number of behaviour management interventions used by a worker at a child care centre were inappropriate. For example, it was alleged that the worker pulled a 2 ½-year-old child off a clothes stand by grabbing the child's arm, causing the child to fall and scream. The child's nose was bruised and cut. It was also alleged that the worker grabbed a three-year-old boy by the arm and lifted him over the stairs so he would go outside. When the boy wriggled the worker let him go, causing him to fall down the stairs.

The child was injured and screamed. The worker involved failed to record or report either incident to centre management.

We advised the centre that we had identified the following deficiencies with their investigation.

- The investigation was not documented properly — for example, the interview with the subject of the allegations was not recorded and she was not asked to provide a written submission.
- The centre failed to inform the parents of the incidents, the allegations or the centre's response.
- Management had reservations about finding the allegation sustained because of their positive relationship with the employee.
- The centre failed to report the incidents to DoCS.

The centre also had inadequate child protection policies and procedures. We are considering reviewing their child protection policies and procedures in the future.

### Case study 83

We were notified of an allegation that a youth worker in a juvenile justice centre hit a detainee with a broom after she had misbehaved. We made repeated requests for the Department of Juvenile Justice to send us their final report on this matter and were told finally that the matter had never been investigated.

The worker moved interstate after the allegation was made and was not interviewed. The department intended to reopen the matter if the worker returned to work. The victim does not appear to have been interviewed nor was another youth worker who was a witness.

The matter was not raised with the worker when he later returned to work with the centre and he is now the subject of further allegations.

We were concerned about the department's failure to deal with the initial allegation promptly. We also believe that they should have

conducted some aspects of the investigation even in the absence of the youth worker. For example, the alleged victim and any other witnesses could have been interviewed. This would have helped the centre assess risk and find out if there were any systemic issues that the matter raised. The youth worker should also have been interviewed about the matter when he returned to work.

### Case study 84

A juvenile justice centre notified us of an allegation that a casual youth worker had used excessive force while restraining a detainee. The investigation concluded that the youth worker had pushed the detainee against a brick wall causing him to hit his head on the wall, lose consciousness and have a fit. The Department of Juvenile Justice found that the youth worker's actions breached the department's policy on the use of force.

Because the youth worker was employed on a casual basis, the matter could not be managed using the formal disciplinary scheme. However, the youth worker was asked to show cause as to why he should be offered further shifts.

In his response the youth worker stated that he had reacted to a threat to his safety instinctively and that, during the five years that he had been employed as a casual youth worker, he had not received any training. He was therefore not familiar with the department's policies on the use of force and had not been trained in the use of physical restraint or in managing difficult behaviour. The youth worker was given a formal warning and received the appropriate training.

We had discussions with the department about whether the many casual youth workers they employed were receiving adequate training. The department undertook to conduct an audit of all staff at the centre to identify training needs. We will continue to track this issue.

Our second audit reviewed compliance by DET and CCER with recommendations we made after our first audit. We found that most of them had been met in principle and there were significant improvements in matters reported by schedule.

We have discussed with DET and CCER how effective and appropriate our class or kind agreements are. Both agencies seem satisfied with the present arrangement and have not sought any changes during this year. We will consider any requests made to change the agreements.

## Monitor

Sometimes we may decide to directly monitor an investigation. This year we monitored 97 investigations. When we monitor, we take a more active role than when we oversight. We may ask the agency to provide us with regular progress reports and copies of records of interviews conducted. We may be present as an observer during an interview if necessary. We still assess the final report to determine whether the investigation has been conducted properly and appropriate action has been taken. We generally monitor notifications if:

- the allegations involve sexual abuse of a child
- the allegations are of a serious nature
- the situation potentially involves high risk to children or other parties



*Greg Williams, legal officer in our child protection team.*

- the agency has not identified or tried to mitigate potentially high risks to children or others
- the investigation has been going for more than four months, the agency has not provided a reasonable explanation for the delay and has a history of delayed responses
- the allegations concern a staff member employed at a senior level or in a unit where one of its functions involves the investigation of child abuse allegations against employees.

See case studies 85 and 86.

## Investigate

Sometimes it is necessary for us to become directly involved in a matter. The Act allows us to investigate child abuse allegations, and the way an agency has handled the investigation into those allegations, directly. In most cases our direct investigation focuses on systemic issues rather than the conduct of individuals. We can decide to investigate a matter directly at any time but we will generally only investigate if:

- the agency indicates or we decide that it lacks the capacity to investigate the matter adequately
- there is a significant conflict of interest preventing the agency from properly investigating
- we receive a final report from an agency that indicates wrong conduct by that agency.

When we have completed our investigation we prepare a statement of provisional findings and recommendations. To afford procedural fairness, we send our statement to the head of the agency for comment. We consider the agency's response and then issue a draft report to the responsible Minister. He or she is given the opportunity to consult with us about the report before it is published as a final report. Final reports are sent to the head of the agency and the Minister.

This year we conducted 16 direct investigations. We completed seven of them and are consulting the responsible Ministers about the remainder. We only make special reports to Parliament if we believe the agency will not comply with our recommendation or where our report raises issues of significant public interest.

Case studies 87–91 are examples of some of the matters we decided to investigate this year.

### Case study 85

A member of the public complained to us about the way an independent school handled child abuse allegations against an employee who was a religious leader and acting principal. The complainant believed that the school's actions had not been appropriate because of the employee's position within the school and his standing in the broader community. It had been alleged that the employee had hit and thrown objects at children, used inappropriate restraint and had touched students inappropriately.

We met with the head of the school board, who is responsible for reporting child abuse allegations received by the school, to brief him about the school's obligations to notify us and to request a formal notification about these allegations. We decided to monitor the investigation because of the seriousness of the allegations, the number of allegations made, and the relative inexperience of the school and the independent investigator in handling child abuse allegations.

Throughout the investigation we kept in regular contact with the school's investigator to obtain progress reports. We also provided him with advice on investigation planning and information gathering and observed some of his interviews with staff at the school. We gave feedback to the school after the investigation had been finalised. The investigation highlighted the need for the school to develop specific child protection policies and procedures and we have offered to help them with this process.

### Case study 86

DoCS notified us about a number of serious allegations of physical assault and sexual abuse involving Aboriginal children in a foster placement. The foster carers lived in a remote and isolated community.

Although the allegations related to all seven children in the foster placement, the department only interviewed two. It failed to raise specifically the concerns about sexual abuse

with the children they interviewed and concluded that the physical punishment of the children in the placement was 'lawful chastisement'.

Given the serious nature of the allegations, we decided to monitor the case. We raised numerous concerns with DoCS about the way the matter had been investigated including its failure to interview children who were notified as being at risk, specifically investigate the allegations of sexual abuse, and conduct a risk assessment on the carers.

The department reviewed the matter and has decided to re-investigate all allegations involving the foster carers.

### Case study 87

We conducted an investigation into the adequacy of the systems within DoCS for preventing child abuse against children and young people in out-of-home care and for dealing with allegations of child abuse against departmental foster carers. Our investigation included the recruitment, training and support of foster carers.

We reviewed DoCS' policies and procedures and included five case studies of investigations conducted by the department into allegations of child abuse made against foster carers. We found that their systems for preventing child abuse against children and young people in departmental foster care were inadequate.

We informed DoCS that they need to:

- make sure that foster carers are authorised
- provide appropriate training for foster carers
- adequately supervise and monitor out-of-home care placements
- develop adequate case plans for children placed in out-of-home care placements.

We also found that their systems for investigating child abuse allegations against foster carers were inadequate and recommended that they need to:

- undertake risk assessments throughout the investigations

- ensure that foster carers the subject of allegations of child abuse are afforded natural justice and procedural fairness throughout the investigations
- record their decision-making processes throughout the investigations
- comply with their responsibilities to notify us of allegations of child abuse.

We will monitor the department's compliance with our recommendations.

### Case study 88

We decided to investigate directly a matter concerning allegations made against two foster carers employed by DoCS. We were concerned about the department's failure to finalise this matter and its inability to address serious systemic issues raised during the investigation.

The original allegations concerned two young foster children who were diagnosed by medical practitioners as suffering from psycho-social growth failure while in the care of the foster carers. The allegations raised serious concerns about the level of supervision and case management of the placements.

We were also concerned about the department's apparent failure to revoke the authorisation of the foster parents to continue to foster in NSW and elsewhere and the lack of risk assessment regarding the natural children of the foster parents.

We had further concerns about the conduct of one of the foster parents during her time as a DoCS district officer. We found that she may have altered departmental case management files and misrepresented her academic qualifications. We have prepared a statement of provisional findings and recommendations for the department's response.

### **Case study 89**

We investigated the consistent failure of DoCS to forward its notifications to us within the requisite 30-day period. We found that approximately half of the notifications since May 1999 had taken longer than 30 days and nearly a quarter took over nine months to notify. We also found that DoCS failed to define adequately the processes involved in investigating allegations against its employees (both paid and unpaid) and failed to inform adequately its employees, including foster carers, of the department's responsibilities to notify us.

We have made a number of recommendations and have asked DoCS to report back to us on the implementation of these recommendations.

### **Case study 90**

We investigated DoCS' conduct in its investigation of child abuse allegations against a senior member of staff who had allegedly abused their own children. We suggest that, when allegations are received that relate to an employee's conduct outside their work, agencies should consider the potential risks that the employee poses in their employment and use this information to make a decision about that person's capacity to continue in that role. This assessment should include factors such as the type of work that the employee does, the nature of the allegations and the outcome of the investigation.

In this case, we considered that DoCS failed to coordinate different aspects of its inquiries, did not keep adequate records of its decisions, and did not address the potential risks that the staff member posed to other children and clients. We made a number of recommendations in relation to our findings and have asked DoCS to report back to us on the implementation of these recommendations.

### **Case study 91**

We decided to investigate a small independent school in relation to its conduct when investigating an allegation of sexual abuse of a student by an employee. The matter related to behaviour that allegedly occurred outside the school. When we received the notification, we found out that the school was registered under the name of the person who was the subject of the allegations. During our investigation, we discovered a number of other students who had alleged physical and psychological abuse by the employee and another teacher at the school. These allegations raised serious concerns about the systems in place to prevent and respond to allegations of child abuse within the school.

We assessed that the school's initial response to the allegation and the subsequent investigation were inadequate. We were particularly concerned about poor documentation, which indicated that the investigation had been conducted in a manner that was not impartial or objective and did not maintain confidentiality within the school community.

The school also failed to undertake an initial risk assessment and take appropriate risk management action to protect other children in the school during the investigation. The principal allowed the employee to resign when faced with the allegation but shortly afterwards he returned to his teaching position. The head believed that as the alleged sexual assault occurred outside work there was no reason to take any further action. Once we began our investigation, the head of agency informed us that the employee had resigned again. However we understand that he was reinstated at the beginning of the year.

We liaised with DoCS to ensure all relevant children were interviewed. We then approached the child protection enforcement agency (CPEA) with the evidence we had obtained and asked them to take over the investigation, as this was a matter that could proceed

to criminal charges. This investigation is still in progress.

### **Case study 92**

We decided to investigate DET's handling of multiple allegations of child abuse against a teacher after assessing the final documentation about the matter. At the same time, we received a complaint from the teacher who was the subject of the allegations. The teacher raised concerns about the department's findings and the fairness of the investigation process.

Our investigation found a number of deficiencies in DET's handling of the allegations, including making incorrect findings about several of the allegations and providing incorrect information to parents of the alleged victims. For example, DET had found initially some of the allegations were sustained and informed the parents of the victims, but when it subsequently changed its findings to 'not sustained' it did not contact parents to tell them. We also found several systemic issues that affected the handling of allegations. For example, some allegations were made to and handled by the school and other allegations were made to and handled by DET'S central investigation unit, and DET did not properly coordinate these investigations or make sure that the individual investigators knew of all the allegations. We have asked DET to address these issues.



Marie Smithson, investigation officer, Judith Grant and Birgit Cullen, assistant investigation officers in our child protection team.

## Complaints

We handle complaints about the way an agency has investigated a child abuse allegation against an employee. Many complaints relate to matters that should have been notified to us. If we have not already received a notification from the agency concerned, we ask for one.

Complaints are a useful source of information for ensuring that agencies have met their obligations. They may also provide us with information about an agency's complaint-handling practices. This year we received 70 complaints. We declined 32 matters and finalised 42, including some matters carried forward from the previous year. Complainants were mostly employees who were the subject of an allegation or parents of alleged victims. Employee complaints generally related to a lack of procedural fairness. Parents generally complained about poor investigative practice, agency delays in finalising matters and poor information sharing by agencies.

Case study 92 is an example of a complaint we handled this year.

## Auditing policies and systems

The *Ombudsman Act* requires us to look at the systems agencies have in place to prevent child abuse and to handle allegations of child abuse. We do this in several ways including auditing policies, systems and investigative practices.

### **Auditing council child protection policies**

Last year we reported on our audit of local council child protection policies which we started in July 2000. We decided to do this as many councils were unaware of their obligations under the Act or had inadequate child protection policies. The project is now over halfway through and will be completed in the first quarter of 2003. It has provided us with an excellent opportunity to talk to councils about their child protection obligations.

The standard of council child protection policies has improved. We have noticed that the best policies are those that are 'owned' by a designated council employee who takes responsibility for researching and developing the policy. Councils are increasingly showing a solid understanding of their reporting obligations and employment screening requirements.

There is still some confusion about the legislative definitions relating to 'risk of harm' and other terminology. Some councils also believe that their child protection policies only apply to those employees in child-related employment. This is not the case. We have worked with a number of councils this year to help them resolve these issues.

### **Auditing CCER systems for handling allegations of child abuse**

When we checked turnaround times for receiving final reports from agencies, we found that CCER was not providing final reports within a suitable timeframe and decided to audit its systems.

We visited CCER and checked each file that had been open for over 12 months. We analysed and classified those matters requiring further update, an investigation, or matters that could be closed. As a result of the audit we identified a number of concerns about the tracking of files and correspondence, the provision of final reports, inadequate or incomplete risk assessments from schools and the poor quality of some supporting documentation.

CCER has improved its systems in the last year and has now employed a consultant to review its processes and systems for handling child abuse allegations.

### **Auditing systems for preventing child abuse in schools for special purposes**

Schools for special purposes (SSPs) provide services to children who are relatively vulnerable because of the disabilities or behavioural difficulties that they have. Over the last three years, we have received 27 notifications relating to child abuse allegations against employees in SSPs. We decided to look into the quality of systems for preventing and reporting allegations of child abuse in a number of government and non-government SSPs. We analysed their policies and procedures, conducted a site inspection and interviewed staff and parents.

We were interested to find out about:

- policies and procedures, to see if they addressed the vulnerability and challenges of children with special needs
- staff training programs, supervision and support



- the systems for receiving, handling and recording allegations of child abuse and any action taken in response.

Our audit revealed a number of systemic issues that affected the safety and protection of children in these schools including:

- an increasing number of children attending SSPs who have high support needs and exhibit aggressive behaviours — this has created a higher risk environment for students and staff
- an increasing number of children requiring medical intervention such as tube feeding — this has caused problems when it is performed by untrained staff
- lack of additional staff available to supervise classes while the teachers aide tube feeds a child — this creates risks of potential accidents both to other children and to the child being assisted
- increasing levels of support needed for personal care
- increasing number of assaults on staff
- lack of understanding about the types of behaviour that needs to be reported.

We will discuss these issues with the individual agencies concerned to help them improve the way they handle child abuse allegations in the future.

#### **Auditing investigative practices**

We decided to audit a large non-government agency from which we had received a number of notifications but which seemed to have problems with its investigation processes. Some of the specific issues were:

- delays in finalising matters
- lack of documentation of investigation planning and interviews
- a misunderstanding about their role in investigating child abuse allegations particularly when DoCS was involved, and
- the absence of procedural fairness when dealing with the subject of the investigation.

We asked the agency to provide the required policies which we assessed before we made our site visits. These included visits to the central office and a number of service outlets. Members of staff were responsive to our presentation about their reporting obligations and our role in child protection. When we finish the audit we will give the agency a report with recommendations and will monitor its compliance with those recommendations. We have also offered to provide training in risk management and investigative practices.

#### **Tracking agency compliance with our recommendations**

An important part of our work is following up to what extent agencies have complied with our recommendations.

This year we were pleased to receive a report from DET telling us that it had conducted risk assessments of staff members in compliance with recommendations we made in our May 2000 special report to Parliament about their conduct. We were satisfied with their response.

In contrast, following an investigation where we found that DoCS had mismanaged their investigation into child abuse allegations against a child care worker and allowed the child care centre to operate unlicensed after the worker left, DoCS took several months and many requests from us to comply fully with our recommendations. One of the main problems with their investigation was that they had recorded a finding of 'confirmed' in relation to the allegation against the child care worker after only interviewing the child concerned. We recommended that this record be corrected to more accurately reflect the fact that no proper investigation was actually undertaken. Despite the then Minister's advice that she would be consulting with the then Director-General and was treating the matter very seriously, and despite our request that DoCS report back to us on their compliance within two months of our final report, it took seven months before they complied substantially with our recommendations.

#### **Performance indicators**

##### **Reports recommending changes to law, policy or procedure**

Target	00/01	01/02
90%	100%	100%

##### **Interpretation**

At the end of each formal investigation we provide a report to the agency concerned containing recommendations for improvement. We aim to recommend changes to law, policy and procedure in 90% of our reports. This year we exceeded our target.

##### **Recommendations implemented**

Target	00/01	01/02
80%	92%	93%

##### **Interpretation**

At the end of each formal investigation we provide a report to the agency concerned containing recommendations for improvement. We aim to recommend changes to law, policy and procedure in 90% of our reports. This year we exceeded our target.

## Education and training

There is an ongoing need for us to provide information and training to agencies about their reporting obligations, investigative practices, risk management and child protection policies. This is particularly the case where turnover of staff means a loss of knowledge and expertise in handling child abuse allegations or new organisations are established.

We address these needs through presentations and workshops, by participating in conferences and by producing relevant educational materials.

### **Workshops and presentations**

This year we ran 31 child protection policy development workshops for 791 participants from 655 agencies. We also gave 25 presentations to 494 participants representing 263 agencies. In total we reached almost 1,000 agencies across NSW. We are particularly interested in helping regional and rural communities that have fewer support and training opportunities. During the year we visited Dubbo, Queanbeyan, Bega, Batemans Bay, Cooma, Coffs Harbour, Ballina, Grafton, Wagga Wagga, Griffith, Bathurst, Taree, Port Macquarie and Armidale.

The issues covered at our presentations included:

- confusion between the roles of key agencies such as the CCYP, DoCS and our office
- the impact of investigation delays on employees
- concerns about the cost of suspending an employee on full pay after an allegation of child abuse is made against them
- the possibility of industrial action following the termination of an employee deemed to present a high risk to children
- maintaining confidentiality in small towns
- the conflict of interest for small 'privately' owned child care centres when investigating allegations against employees or dealing with allegations against the owner or director.

When we were in regional areas, we also organised presentations for DoCS management, child protection officers and disability services staff. These sessions were aimed at clarifying the roles of our office and DoCS and focused on:

- the differences in the definition of 'child abuse' between the *Children and Young Persons (Care and Protection) Act 1998* and the *Ombudsman Act*
- the problems for agencies that may occur when there is a significant delay in DoCS' response to a Helpline report about an allegation of child abuse against an employee

- DoCS internal reporting procedures — this included discussion of the role of the Professional Conduct Unit in departmental investigations.

### **Fact sheets**

We developed a number of fact sheets that we use in our workshops and include in feedback we provide to agencies on the quality of their investigations. These publications can be found on our website and are listed in the publications list at the end of this report.

## How agencies are performing

Over 7,000 agencies have to notify us of child abuse allegations against their employees. As discussed above, all allegations of child abuse against employees must be notified to us so that we can develop a clear understanding of the number and nature of child abuse allegations being made in NSW, and see how well agencies are handling these allegations. We are still in the process of making sure that all agencies know about their reporting obligations and understand what 'child abuse' is. Once we are confident that all notifications that should be made are actually being made, we will be able to better track how well initiatives for reducing child abuse are working.

Currently we use information from our notifications to inform our activities. We analyse trends in the nature of allegations received and trends in agency compliance with their obligations to see which agencies and sectors may need to be more closely scrutinised, monitored or investigated and which ones may have a greater need for education and training.

We have recommended to some agencies that they undertake similar analysis of their own data to inform their risk management process and to improve their systems for preventing child abuse.

### **Notifications and complaints received**

In 2001–2002, we received and assessed 1,758 notifications and complaints, and answered 661 oral inquiries about child abuse allegations. See fig 36. We also received and assessed final reports of investigations carried out into 716 notifications and 69 investigations completed by the police and 694 final reports of agency investigations that were of allegations notified in 2000–2001.

### Agency reporting patterns

The number of oral inquiries has dropped this year (from 939 to 661). In contrast, there has been a general increase in notifications and complaints received compared to last year (up from 1,435 to 1,758). See fig 39. This is most notable in the smaller sectors, such as independent schools, agencies providing substitute residential care and child care centres, where we have focused more of our investigation, auditing and educational activities. We continue to receive most of our notifications from government schools. See fig 38.

Agency reporting patterns are important to track because they give us a basis on which to compare the numbers and types of allegations that similar (and different) agencies are reporting. We can also compare what individual agencies

are reporting from year to year. This information can help us decide if we need to provide more guidance to particular agencies or sectors to help them properly fulfil their reporting requirements and their obligation to handle allegations appropriately.

### Department of Education and Training

Last year we reported on our investigation into the way DET responded to child abuse allegations. Over the past year we have seen significant improvements in their investigation practices, largely due to the establishment of a specialised child protection investigation directorate, which is responsible for investigating child abuse allegations against employees.

We continue to meet on a regular basis with departmental staff to discuss systemic issues and specific cases. Some continuing issues of concern are the failure to make clear findings following investigations. We will continue to work with the department to improve its practices.

Figure 38: Notifications by agencies

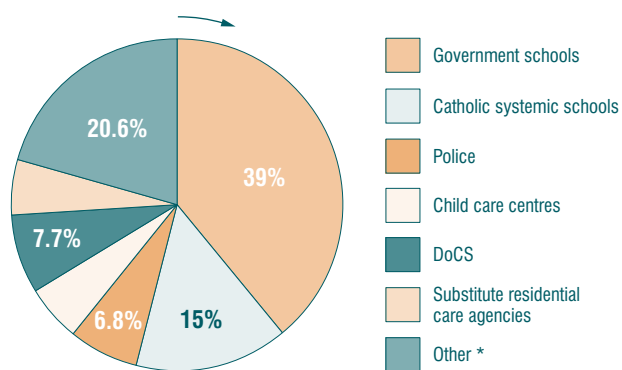
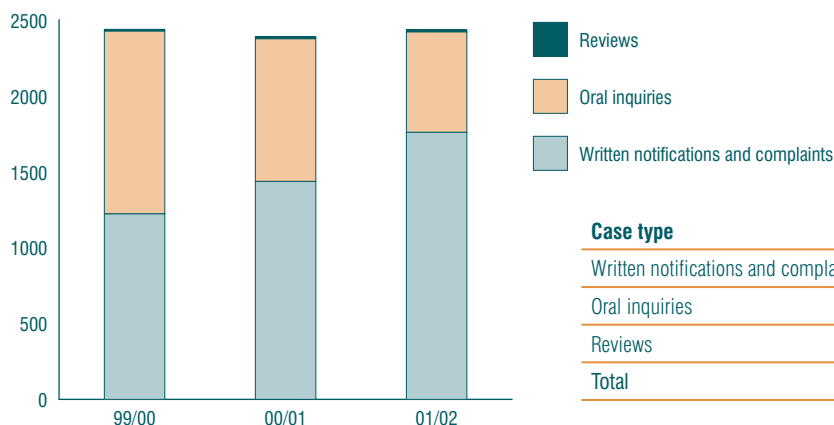


Figure 39: Complaints and notifications received – 3 year comparison (including police)



## Catholic Commission for Employment Relations

The Catholic Commission for Employment Relations (CCER) is the 'head of agency' for all Catholic systemic schools, most Catholic independent schools and Catholic agencies providing substitute residential care. This means that under the *Ombudsman Act* it is responsible for reporting allegations received by those Catholic organisations. Over time we have developed an effective relationship with the CCER. We have regular meetings to discuss problems and recommend solutions. The CCER has demonstrated a willingness to respond to our recommendations. As discussed above, following our audit of its delayed files, it employed a consultant to review its processes. We have seen significant improvements in the number and timeliness of its notifications and the quality of its investigations. There was an increase this year in the number of notifications from Catholic schools (up from 185 to 252).

The CCER has provided training for Catholic independent schools to raise their awareness of reporting obligations and investigative practices. These schools have also set up a child protection support network to assist in the conduct of investigations. The network also encourages the use of an independent and trained investigator from another college to carry out child abuse investigations. We expect these initiatives to improve the way Catholic agencies report and handle child abuse allegations in the future.

## Other independent schools

There has been a 30% increase in the matters notified from independent schools not within the Catholic system. The types of matters notified are generally consistent with those reported across the education sector.

This year we ran a series of 16 workshops for principals of independent schools in conjunction with the Association of Independent Schools (AIS). The workshops were held in metropolitan Sydney and rural areas and over 200 principals attended. It is likely that the increase in matters notified was partly due to attendance at these workshops. The workshops covered the following topics:

- our role in child protection
- obligations of agencies to report and handle allegations of child abuse properly, and to have in place systems to prevent child abuse
- responding to allegations of child abuse made against employees
- risk management issues
- strategies to prevent child abuse occurring in the workplace.

A small number of principals have come to our attention as openly resisting their reporting obligations. We will proactively audit these schools in the coming year to see if there have been any unreported allegations, whether allegations have been properly handled and the quality of their systems for preventing child abuse.

## Department of Community Services

In April 2002, we tabled a special report to Parliament outlining our concerns about DoCS. A number of issues remain of concern. We have recommended that DoCS addresses concerns we have about the issues outlined below. We will monitor their response to our recommendations.

### **Reporting child abuse allegations**

Although there has been a significant increase in the number of matters notified to us this year, we are still concerned that the department is not reporting all instances of abuse of which it becomes aware. We recently received information about allegations of abuse in a foster care placement that DoCS had not notified to us. On our request, DoCS made a notification that mentioned a number of other victims and multiple prior allegations against the carer. Only one such allegation had previously been reported to us. We will be monitoring DoCS closely on this issue.

### **Information sharing**

Under section 248 of the *Children and Young Persons (Care and Protection) Act*, DoCS may share information about the safety, welfare and well-being of a child or a class of children with certain agencies such as schools, hospitals and government departments. There appears to be some confusion about the operation of section 248. Agencies trying to deal with child abuse allegations against their employees at the same time as DoCS is investigating have often found it difficult to obtain information from DoCS about the employee. This causes significant delays for agencies in finalising matters. The response from DoCS is generally inconsistent and is indicative of either inadequate policies or poor adherence to policy. We have suggested that DoCS improve its policy about the use of section 248 and ensure that the policy is followed.

### **The foster care program**

We are concerned about inappropriate placement decisions in foster care. In one placement, a young child was placed with an Arabic speaking family and by the age of three years had lost the capacity to speak English, her native language. In another case, foster carers in their early 60s were caring for six children under seven despite only being authorised for a short-term placement for a sibling group of two. This placement is on a rural property with dams and machinery.



*Sophie Woods, research officer in our child protection team.*

### **Retractions of child abuse allegations**

There have been cases where DoCS has taken no further action when an allegation of sexual abuse against a foster carer has been retracted, despite the availability of other lines of inquiry. Retraction is not uncommon in cases of abuse and needs to be handled expertly. In some cases, DoCS also failed to complete risk assessments even though there were other children in the placement and there had been previous child abuse allegations against the carers.

### **Agencies providing substitute residential care**

There was considerable variance in the quality of the investigations and the level of understanding of our role among agencies providing substitute residential care. We were concerned that this may mean that some allegations were not being notified to us. To address our concerns we:

- wrote to 155 services that have never contacted us and gave them information about their reporting responsibilities
- reviewed and provided feedback to agencies about their child protection policies
- ran a number of policy development workshops
- audited the systems of some agencies
- gave advice to agencies about investigation processes.

Possibly as a result of our work, we received 43% more notifications from these agencies this year than last year, and the quality of responses to allegations improved. Reporting is also more consistent across the sector and more agencies are contacting us when they have problems with

an investigation. Some of the particular problems these agencies continue to face that have an impact on the care and protection of children are:

- information sharing and coordinating investigations with DoCS
- general under-resourcing of the substitute care sector and an increase in administrative demands resulting in increased pressure on services
- managing the dual role of employer and service provider to children and young people.

### **Health agencies**

The Department of Health is a large and complex agency with approximately 100,000 employees and a significant number of volunteers. This year we received 18 notifications from the department and some area health services (AHS). Many of these involved convictions of employees that relate to carnal knowledge or allegations of sexual abuse.

We found that many of the investigations into the notifications received were documented inadequately. We have reviewed the department's child protection policies, provided feedback about investigations and strengthened relationships with the department's staff records management unit and the various area health services.

The NSW Ambulance Service provides clinical care in emergency situations to the community and has almost 3,000 staff of which 2,640 are ambulance officers. In the last three years, we have received six notifications.

### **Councils**

There are 172 local councils in NSW. Many councils run child care centres and family day care schemes. The majority of notifications received from councils relate to allegations against employees working in services to children.

To make sure that councils are aware of their reporting obligations and have adequate systems for preventing child abuse and handling allegations of child abuse, we plan to continue our audit of child protection policies and provide information to councils that provide services to children and have never made a notification.

Councils have told us that they sometimes have communication difficulties when investigative agencies, such as DoCS or the police, are also involved in responding to child abuse allegations against a council employee. There is also some confusion about the requirement to notify allegations against council family day carers. The fact that the carers are self-employed does not affect the council's statutory reporting obligations.

## Department of Corrective Services

This year we received only four notifications from the Department of Corrective Services. Initially the department did not provide much documentation, making it difficult to assess properly how the matters had been dealt with. However, we are pleased that the department recently has begun to provide more information about how it has handled matters that are notified.

Through regular liaison with the department, we are also clarifying what we expect from the department in assessing and managing the risk that certain employees may pose to children during their employment. Although the department usually takes appropriate action to manage the risk, we are encouraging them to formalise the process and clearly record any risk assessment conducted of an employee who is the subject of a child abuse allegation.

## Other agencies

We have also seen significant increases in the numbers of notifications reported from child care centres (more than doubled) and the Department of Juvenile Justice (more than doubled).

We are concerned about delays in the notification of allegations and the finalisation of investigations by the Department of Juvenile Justice. Approximately a third of notifications were reported outside the 30-day statutory timeframe and there was a much higher turnaround time for completion of matters than in any other agency. The Director General has undertaken to correct these problems.

## Systemic issues

### The role of a support person

In most child abuse investigations it is good practice to offer employees and other witnesses the opportunity to have a support person, such as a family member or union representative, present at an interview. The person is there to be supportive and to be a witness to the interview. It is not their role to advocate or participate in the process of obtaining evidence. Some support people confuse their roles, so we are working with unions and agencies to improve understanding of the role of a support person. See case study 93.

### Investigation findings

We require agencies to advise us of the findings of every investigation they complete into an allegation of child abuse. We prefer findings to be reported as 'sustained' or 'not sustained' to indicate whether or not there is evidence supporting the allegation. These findings do not in themselves constitute or necessarily lead to disciplinary proceedings. However if there is evidence supporting an allegation, one possible outcome may be that disciplinary proceedings will be taken against the employee.

The DET has obtained legal advice that the *Ombudsman Act* does not require the department to conduct any investigation except for disciplinary purposes under the *Teaching Services Act 1980* and the *Education Teaching Service Regulation 2001*. On the basis of this advice the department's approach has been to investigate allegations but not report any finding of 'sustained' unless it intends to proceed with disciplinary action against the employee concerned.

We are concerned about this advice and the DET's approach as it appears to be contrary to the purpose and intent of the *Ombudsman Act*. We are currently discussing the matter with the DET. If these discussions are unsuccessful we will consider what further steps we need to take to ensure that the DET deals with child abuse allegations properly. See case study 94.

### Findings made by DoCS

As one of the key agencies in the child protection system, any findings made by DoCS after it has investigated a report of child abuse or neglect against a person are generally taken very seriously by the person's employer, particularly if the employer has obligations under the *Ombudsman Act*.

When DoCS completes an investigation, it records a finding of 'confirmed' or 'not confirmed'. Until recently, this decision has reflected DoCS' view



(l-r) Judith Grant, Frances Anggadi, assistant investigation officer in our police team, and Jan Coughlan, executive assistant in our child protection team.

of whether or not the alleged incident occurred. However, DoCS has now advised us that the focus of its child protection investigations is to find out if a child or young person is at risk of harm (either from the behaviour of others or from their own behaviour), rather than determine whether or not an alleged incident has occurred. It appears that DoCS uses the term 'confirmed' to mean a number of things ranging from 'the child is at risk generally', 'the child is in need of services', 'the child is at risk from their own behaviour' or 'the child is at risk from others'. DoCS does not specify which meaning is given to the word when it reports the results of its assessment to us or other agencies.

This raises a concern because DoCS is no longer making a clear decision about what occurred or did not occur. It is then difficult for an agency

whose employee has been investigated to decide whether the employee's conduct was appropriate and to then take appropriate action, without undertaking further inquiries.

We believe that because many agencies do not understand what DoCS means when it reports its findings, they may take inappropriate action or make an inaccurate risk assessment. We are also concerned that DoCS staff do not understand this change. In one case, a staff member advised us that the findings 'confirmed' and 'not confirmed' are open to interpretation and, from a range of investigations undertaken by DoCS, we know they are used to indicate a range of different issues.

We have raised our concerns with DoCS and recommended that the issue be clarified. See case study 95.

### Case study 93

The Independent Education Union (IEU) contacted us for information about the advice we had given to the CCER about its investigation of child abuse allegations against a teacher. We advised the union that we were not able to provide any information about the investigation.

The union told us that it had received a letter from CCER stating that we were monitoring the investigation and advised us that it was acting on behalf of the teacher. The union felt that it was entitled to information about our involvement in the investigation and that our decision not to provide information was unfair and contravened industrial relations law.

We advised the union of our functions, powers and processes, especially section 34 of the *Ombudsman Act* which restricts our ability to provide information to external parties.

We also advised the IEU that if the teacher had any concerns about the handling of the investigation and was not satisfied with the agency's response to his concerns, he could make a complaint to us. If we received such a complaint we would consider the issues raised.

### Case study 94

We received a notification from DET in August 2001 concerning an allegation that a secondary school teacher had purposely thrown a basketball at a female student's head. In its investigation report, the department stated that the student's allegation was 'not supported due to insufficient evidence'. In contrast, its final letters to the teacher and the student's parents stated that the evidence suggested that the incident 'may have occurred in a way similar to what was alleged'.

It is essential that final investigation reports accurately document the investigative process and record both the outcome and any decisions made concerning the employee. An agency could be perceived as denying an employee procedural fairness if it does not inform him or her of the outcome. We have written to DET asking for clarification of the results of the investigation as soon as possible.

### Case study 95

DoCS investigated an allegation that an unnamed DoCS worker had sexually assaulted a child with intellectual disabilities. At the end of its investigation, it recorded its view that it was not possible to determine whether or not the alleged assault had occurred. However, a decision of 'confirmed' was recorded because there were concerns about the child's ability to protect himself from abuse.

DoCS then identified a worker who had been in contact with the child, suspended the worker without pay and conducted a disciplinary inquiry which took eight months to finalise. At the end of the inquiry, DoCS decided that there was no evidence that the allegations were true but took a further two months to tell the employee of its decision.

We were concerned about the delays and the possibility that the employee had been identified wrongly and asked DoCS to review its handling of this matter. We also asked DoCS to reconsider its decision to record an outcome of 'confirmed' because this may infer that there was some evidentiary basis for the decision. DoCS has since acknowledged its poor handling of this matter and has amended its finding to 'not confirmed'.

## Risk assessment — child abuse and computer technology

Our role includes keeping under scrutiny agencies' systems for preventing child abuse by their employees. It is important that agencies are kept informed of the different ways that child abuse can be perpetrated, so that they are better able to notice warning signs of conduct such as 'grooming behaviour'.

Recent notifications have brought to our attention the use of electronic communication as a method through which some forms of child abuse may be pursued. The rapid growth in personal computer technology and internet usage has increased the number of possibilities for communication with children. The internet has the capacity to provide easy and often private access to children and increased opportunities for soliciting them. Children can also be more easily exposed to offensive and/or inappropriate material.

Many schools have integrated the use of computers into their curriculum. Our office has recognised the need for schools to develop and enforce policy guidelines for computer and internet use. Agencies need to ensure that all employees are aware of any such policies and the role of policies in risk management and preventing child abuse. It is a criminal offence in NSW to possess or publish child pornography and any allegations of this nature should be notified to the police. See case studies 96 and 97.

## The use of independent investigators

Some agencies use independent external investigators to conduct investigations of child abuse allegations against their employees when they do not feel confident conducting their own investigation. We acknowledge that this can sometimes be appropriate, such as when the allegation involves the head of the agency or another senior staff member. However it is important to be careful when choosing an external investigator. They must have the requisite skills to conduct a child protection investigation. We have had concerns about the quality of some final reports from external investigators so have provided agencies with feedback on what qualities they should look for when choosing an investigator.

## Concurrent investigations

Some agencies are confused about their role when DoCS and the police are also investigating a matter involving a child abuse allegation against an employee. We have seen cases where agencies have relied on DoCS' findings to conclude their investigations even though a DoCS finding of 'confirmed' does not have one definite meaning (discussed above) and DoCS may not have interviewed the subject of the allegation. Fig 40 outlines the respective roles of each agency involved.

### Case study 96

We received a notification about an allegation that a high school teacher had sent a female student inappropriate text messages to her mobile telephone. The text messages were of an explicit sexual nature and directed personally to that student. The student was aware that the text messages had been sent from the teacher's mobile telephone number and reported this matter to another teacher.

The school began an investigation and reported the matter to our office and the police. The police have begun an investigation under the *Crimes Act 1914 (Cwth)*. The school is liaising with the police in conducting their investigation. After a short-term risk assessment, the student was moved out of any classes with that teacher.

Schools may need to have protocols about the use of mobile telephones within the school that apply to both students and teachers. This case highlights that any private electronic communication between students and teachers may need to be regulated and covered by the school's code of conduct.

### Case study 97

The police informed a local council that they were investigating one of their employees. It was alleged that the employee had downloaded and stored inappropriate pornographic images on a work computer and used the council's internet connection to email a known overseas paedophile. One of the images that was allegedly downloaded was considered possibly to be child pornography.

The police investigation led to the arrest and charging of the council employee. The council notified us and conducted its own investigation with the assistance of the police. Inquiries were made about when the computer was accessed, under which password and whether the employee was working or had access to the computer at the times when the material was downloaded.

The council had clear guidelines for using email and the internet and their investigation found that the actions of the employee, on the balance of probabilities, was a breach of those guidelines. A recommendation was made that the employee was not to be re-employed by council as a contractor or employee.



**Figure 40:**  
The obligations of agencies when a child abuse allegation involves an employee

Agency	Employer	DoCS	Police
<b>Role</b>	Risk assessment and management action	Child protection	Criminality
<b>Responsibilities and decisions made</b>	<ul style="list-style-type: none"> <li>Decides the risk posed by the employee in his or her current role.</li> <li>Takes any management action needed to ensure the safety of children.</li> <li>Provides procedural fairness to the employee.</li> <li>Liaises closely with DoCS and police to ensure a coordinated approach and obtain information to help make a proper risk assessment and decide on appropriate management action.</li> </ul>	<ul style="list-style-type: none"> <li>Decides whether it will investigate an allegation of child abuse after assessing the perceived risk of harm the alleged offender poses to children.</li> <li>May take a more active role in managing the case if the matter is more serious.</li> <li>May not interview the employee.</li> </ul>	<ul style="list-style-type: none"> <li>Decides whether the case has a criminal element that warrants investigation or further action.</li> <li>In more serious cases, may take a more active role in managing the case (employer may be asked not to investigate).</li> <li>The police investigation may lead to charges and prosecution.</li> <li>The police are not responsible for workplace risk assessments</li> </ul>

## Analysing trends and patterns

Our work involves analysing the information we receive about allegations of child abuse in the workplace. We use this information to help agencies with their risk management and child protection strategies. Information about the types of abuse and the age and gender of both alleged victims and alleged offenders helps us identify occasions of risk. We have also found it useful to look at the context in which child abuse occurs.

### Types of abuse

Most notifications we received this year concerned allegations of physical abuse. See fig 41. Allegations about female employees most commonly involved allegations of serious physical abuse (such as hitting and kicking) of younger boys in schools. Allegations about male employees most commonly involved allegations of less serious physical abuse (such as pushing or shoving) of older boys in schools.

Almost half of the allegations of physical abuse involved allegations of a less serious nature that DET and CCER notify by monthly schedule. More serious allegations of hitting and kicking accounted for 41% of allegations of physical abuse.

We have had discussions with agencies about circumstances leading up to physical assaults and encouraged them to take steps to prevent this type of abuse. Physical abuse allegations are more likely to be preceded by resistant, disruptive or challenging behaviour of children. The response of some employees faced with this behaviour is to engage in power struggles that

culminate in a physical assault. A more effective regime for managing disruptive behaviour needs to be developed and implemented in schools, child care centres, foster care placements and juvenile detention centres.

### Misconduct and sexual abuse

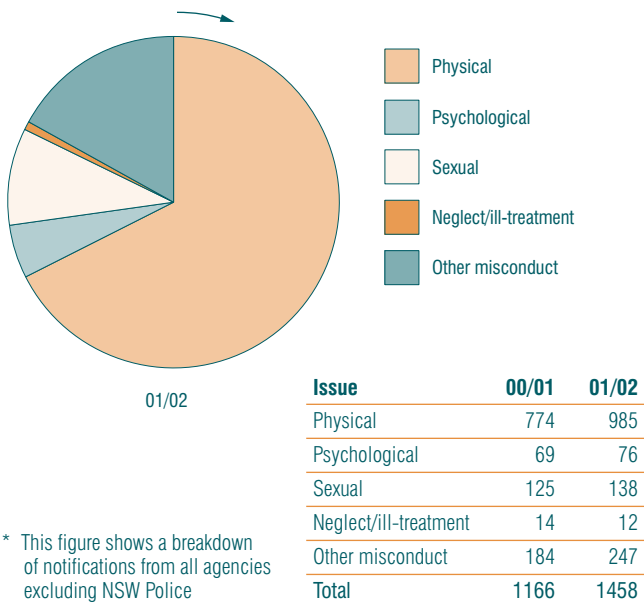
'Grooming' plays a critical role in the majority of incidents of child sexual assault and the relatively high proportion of these types of allegations remains a concern. This year we have been involved in numerous discussions with agencies about their role in identifying and addressing 'grooming' behaviours in an attempt to prevent sexual abuse.

Of the notifications involving allegations of misconduct that may involve child abuse, 23% involved allegations of inappropriate touching, 22% inappropriate comments and 16% inappropriate relationships with children.

### Independent schools

Independent schools reported proportionally less allegations of physical abuse (59%) than other schools (69%). See fig 42. A higher percentage of notifications received from independent schools were about allegations of misconduct that may involve child abuse (22%) compared with other agencies (14%). This may be a positive sign that independent schools are being told about 'grooming' behaviour and dealing with those allegations early on, thereby avoiding those relationships progressing to the stage where more serious forms of abuse occur. Another factor could also be that a number of independent schools are boarding schools, which may provide for more opportunities for 'grooming' behaviour.

**Figure 41:**  
Breakdown of notifications by primary allegation \*



### Alleged victims

The gender and age of alleged victims are important vulnerability indicators and should be considered by agencies in their risk management processes.

In 54% of allegations, a boy was identified as the sole alleged victim, whereas in 29% of notifications a girl was identified as the sole alleged victim. In 66% of allegations of physical abuse, a boy was identified as the sole alleged victim and in 58% of allegations of sexual abuse, a girl was identified as the sole alleged victim. Over half of the allegations were about girls aged 12–17 years and almost a third were about girls aged 2–7 years old.

Children aged 12–14 were identified as the alleged victim in most allegations of physical abuse. This year there was an increase in the number of allegations of physical abuse of children aged only two years old.

See figs 43 and 44.

### Alleged offenders

The proportion of notifications involving male employees is less than in previous years (58% compared to 65% last year), with a corresponding increase in the proportion of notifications involving female employees.

Women were the alleged offenders in 56% of notifications of allegations of more serious types of physical abuse. Men were the alleged offenders in 61% of notifications of allegations of more minor forms of physical abuse.

Men were the alleged offender in 73% of notifications of alleged misconduct and 88% of notifications of alleged sexual abuse. See fig 45.

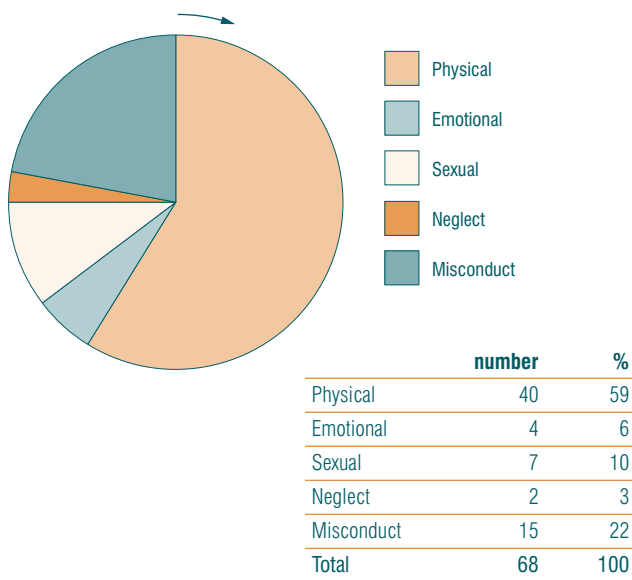
Most child abuse allegations are made against school principals and teachers. This is not surprising given the large number of employees involved in teaching. Foster carers are the second highest employee group represented in the figures.

### Agency findings

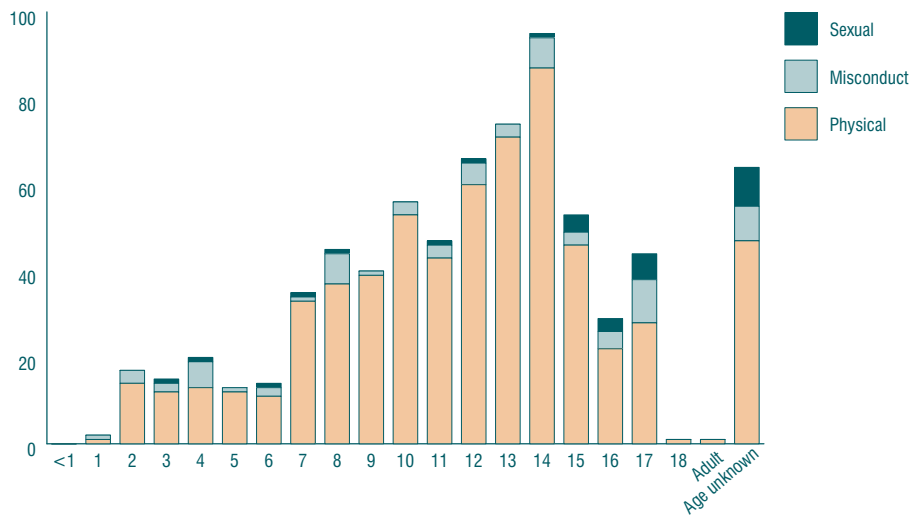
This year we did an analysis of the number of findings made by agencies that we found to be reasonable. We restricted our analysis to agency findings in relation to allegations of physical abuse because most notifications we receive are of allegations of physical abuse.

We found that agencies' findings were reasonable in over 70% of investigations. We found the findings to be unreasonable in 10% of matters. No findings were made in 20% of investigations.

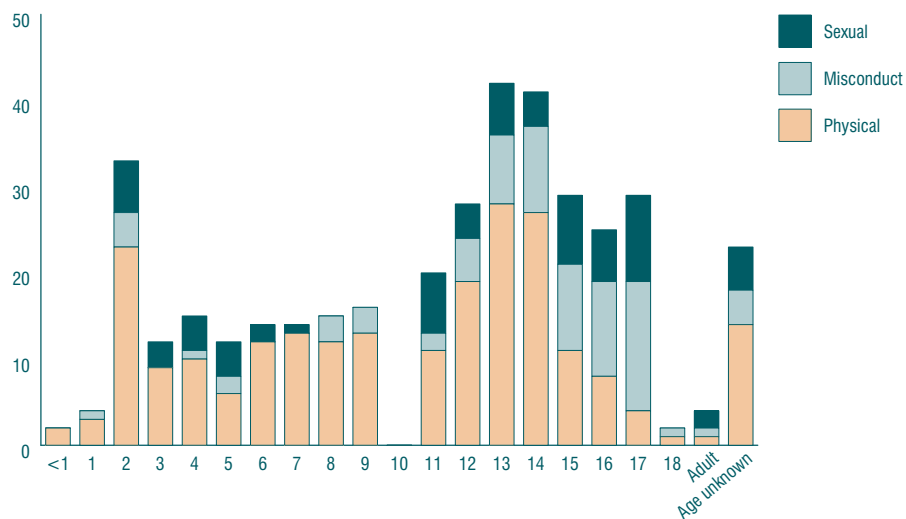
**Figure 42:**  
Non-Government schools reporting by abuse type



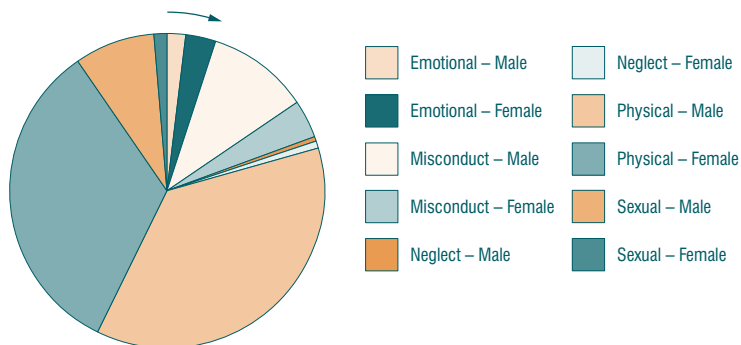
**Figure 43:**  
Age of alleged victims (male) and abuse type



**Figure 44:**  
Age of alleged victims (female) and abuse type



**Figure 45:**  
Sex of alleged offenders by primary allegation



## Legislative reviews

Since 1998, the NSW Parliament has given our office the responsibility of monitoring selected, and often controversial, new laws. Our role is to conduct independent and balanced research into the operation of the laws. We look at how well they are working and focus on identifying any inequities, practical difficulties or systematic injustices that may result from their implementation. The reports of our findings are made public by tabling them in Parliament.

We currently have review roles under 10 pieces of NSW legislation.

- *Crimes (Forensic Procedures) Act 2000*
- *Child Protection (Offenders Registration) Act 2000*
- *Police Powers (Vehicles) Act 1998* — as amended by *the Police Powers (Vehicles) Amendment Act 2001*
- *Children (Criminal Proceedings) Act 1987* — as amended by *the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*
- *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001*
- *Police Powers (Drug Premises) Act 2001*
- *Police Powers (Internally Concealed Drugs) Act 2001*
- *Police Powers (Drug Detection Dogs) Act 2001*
- *Firearms Amendment (Public Safety) Act 2002*
- *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*.

We also have two pending reviews under the *Summary Offences Amendment (Places of Detention) Act 2002* and *Crimes (Administration of Sentences) Amendment Act 2002*.

These projects are resource-intensive and require good planning and a lot of work. We prepare a specific plan for each Act under review and use a range of research approaches.

Our review strategies include:

- inspecting and analysing police records eg COPS data, information from the Infringement Processing Bureau and intelligence records
- interviews and focus groups with stakeholders and members of the public
- issuing discussion papers and considering submissions
- analysing relevant complaints
- examining court transcripts
- directly observing the use of the powers under review
- surveys of relevant stakeholders and practitioners eg prison inmates, lawyers and local area commanders
- examining legislation and practice in other jurisdictions
- reviewing relevant literature and research studies.

If appropriate, we make recommendations to improve the practical operation of the laws, clarify their meaning, and ensure they are implemented fairly. If we can help to fix a problem during our review, we will do so. We are careful to make sure that our recommendations are soundly based on our research findings. As with much research, it is not always possible or wise to draw definite conclusions from the available evidence. We hope that by putting our findings in the public arena we will contribute to an informed debate by the community and the government, and provide a basis for future research and decision-making.

## DNA sampling and other forensic procedures

The *Crimes (Forensic Procedures) Act 2000* regulates the circumstances in which police can carry out forensic procedures on suspects, volunteers and people convicted of serious indictable offences. This law has the potential to change radically the way that police investigate crime. Our role is to scrutinise how police use the powers provided by the Act.

Some of the forensic procedures covered by the Act are:

- taking DNA samples eg saliva, hair or blood sample
- taking prints eg finger, hand, toe, foot
- taking other samples eg swabs from hands or finger nail scrapings
- taking photographs eg of tattoos or wounds
- external examinations eg of a person's body for injuries or distinguishing features
- taking impressions and casts eg dental impression.

The Act sets out how the forensic material may be used and how and when it must be destroyed. It also outlines the rules for the participation of NSW in the National DNA Database.

In December 2001 we released a discussion paper inviting the community to comment on the DNA sampling of serious indictable offenders in prisons. The responses we received raised issues such as:

- the potential for DNA samples to be contaminated by police during collection
- how well inmates and detainees understand the information they are given by police about taking samples and the DNA database
- whether inmates and detainees are being given the opportunity to communicate with lawyers of their choice
- the extent to which any force used to obtain DNA samples is reasonable.

To scrutinise these concerns and the initiatives taken by police to address them, we used a variety of research methods including obtaining information from people who are most affected by the legislation. We conducted focus groups with the police testing teams, correctional officers and prison welfare staff. At the time of writing we had also contacted all managers of juvenile detention centres for their feedback. We obtained information from the laboratory contracted to process the samples for police (the Division of Analytical Laboratories) and examined police records about the DNA sampling of serious indictable offenders.

We interviewed almost 200 inmates immediately after police had asked them to provide a DNA sample. The aim of these interviews was to find out:

- how much notice the inmates/detainees received about the DNA sampling
- the type of information they received
- whether they understood the information provided

### Case study 98

Through our research activities, we became aware that a DNA sample had been lost. When the police applied to the court for an order allowing them to take a new sample from the suspect, the magistrate refused to grant the order. The magistrate said that, under the Act, the loss of a sample was not one of the grounds for police to carry out a second forensic procedure.

The police investigated the circumstances surrounding the loss of the sample. The sample was never found, but the investigation identified several problems in the system of handling, recording and securing

exhibits at the local area command concerned.

Following the investigation, the police introduced changes such as:

- better training for probationary constables
- a lockable refrigerator for DNA samples
- improved security for the keys to the exhibits room
- counter-signatures on exhibits records.

During the investigation, the police discovered that there were some errors in a police officer's statement to the court about how and when the

sample was lost. However there was no evidence to show that the officer deliberately misled the court about how the sample was lost.

Changes to the Act early this year, which have not yet commenced, allow orders for repeated procedures if the sample 'has been lost or is for any other reason not available for analysis'. The Act was also amended to make it an offence for a person to knowingly give false or misleading information in an application for an order to take a forensic sample.

The security of forensic samples will be a key focus of our audits of police records and applications for court orders.

- if they had access to legal advice and interview friends
- why they did or did not give their consent to the request by police for a DNA sample.

We reviewed video recordings of DNA samples being taken from over 250 serious indictable offenders and examined issues such as:

- the questions that inmates and detainees asked about the process
- the answers they received
- the extent to which inmates and detainees appeared to understand the information provided
- whether any use of force was reasonable
- the type of interaction between the testing teams and the inmates/detainees during the procedure.

When amendments were made to the Act by the *Crimes (Forensic Procedures) Amendment Act 2002*, our review period was extended to 2004. The next phase of our review will focus on forensic procedures carried out on suspects and volunteers and will include comprehensive audits of police records. We will also continue to monitor the use and destruction of DNA profile information and the exchange of DNA information between police in NSW and other jurisdictions.

## The child protection register

The *Child Protection (Offenders Registration) Act 2000*, which came into effect on 15 October 2001, requires people convicted of certain offences against children to register with police on their release into the community. They have to give police personal details such as the names they use, their address, and motor vehicle and employment details, and advise police of any changes to those details. The length of time they have to report these details varies depending on the type of offence and their conviction history. For adults it can be from eight to 15 years or for life in certain circumstances, while young people will have reporting periods of between four and seven-and-a-half years. The legislation created offences for failing to comply with the reporting requirements and for providing false information. Police will maintain the information provided on a register.

Only certain police will have access to the information on the register. Unlike some similar laws in the United States, there is no provision for the community to know that any particular person is on the register. Whether the community should be notified about people on the register was one of the matters that was debated when the legislation was introduced.

### Case study 99

There was initially some difficulty in determining whether NSW police could lawfully take DNA samples from inmates who had been convicted of serious offences in other jurisdictions. The legality of taking samples from these inmates depended upon factors such as whether the other jurisdiction had a similar law permitting a DNA database, when that law was passed and when the sample was taken from the inmate.

The relevant NSW Police policy stated that:

*Until legal advice is available, no serious indictable inmate who is in custody within a NSW Correctional facility solely on the conviction of an offence from another state, will be forensically tested. This includes Commonwealth offences.*

We received complaints from a number of prisoners from whom police had taken a forensic sample. They said that they had been convicted of a Commonwealth or ACT offence at the time of the DNA sampling and complained that there was no authority for their samples to be taken by NSW Police.

We asked the police to investigate these complaints and to provide us with answers to the following questions:

- Which (if any) inmates had DNA samples taken contrary to the policy?
- Had the samples been destroyed and, if so, the date of destruction?
- What advice had been given to inmates who had been wrongly sampled?

- What steps had been taken to prevent future errors in identifying serious indictable offenders?

NSW Police acknowledged that they had taken 28 DNA samples from prisoners who had been convicted of a Commonwealth or ACT offence, but also said that these inmates had been sampled during the confusion about the law. The Division of Analytical Laboratories had destroyed each sample taken without authority in February 2002 and the police had informed all the complainants of the situation in writing.

In June 2002, the *Crimes (Forensic Procedures) Amendment (Corresponding Laws) Regulation 2002* came into effect. This regulation made it clear that NSW police are entitled to take DNA samples from prisoners in NSW who have been convicted of serious indictable offences in other Australian jurisdictions.

We have put in place a detailed plan for our two-year review. We will be looking particularly at issues of concern that were raised in Parliament or by community groups when the legislation was introduced. For example, we plan to review:

- confidentiality issues and how and why information on the register is accessed
- whether it is appropriate for young offenders to be included on the register
- whether there are adequate provisions to ensure that young people and those with intellectual disabilities are able to understand their obligations and comply with them.

We will also look at whether appropriate offences have been included in the legislation — the offences that lead to registration include murder, kidnapping, sexual and indecency offences, and offences relating to child prostitution and child pornography. For example, Parliament debated the issue of whether it was appropriate that young people convicted of an offence in relation to an underage but consensual sexual relationship could end up on the register. Similar concerns were raised about the potential registration of women convicted of killing their children, where this was a result of post-natal depression with no sexual element to the offence.

Although the register is to be managed by the police, the legislation provides for a range of other agencies to notify people of their obligations to register. These agencies include the courts and the Departments of Corrective Services, Juvenile Justice and Health. Our review will look at the involvement of these agencies and how information is passed between them and the police.

We have already conducted some interviews with police. These have highlighted some issues that need further consideration, including the impact of the legislation on police workloads and resources and the action police are taking to monitor people on the register. The legislation does not address this issue and some police have raised concerns about the lack of clear guidelines.

## New powers for police to question passengers in vehicles

The *Police Powers (Vehicles) Amendment Act 2001* came into operation in January 2002. We are monitoring the new powers until October 2002. These powers allow police to question passengers about their identity and the identity of others in a vehicle if they suspect that the vehicle has been used in connection with an indictable offence.

So far, it appears that the new powers have either not been used widely or that the use of the powers has not been recorded by police. We plan to examine more closely the issue of accurate record-keeping as well as the education and training of police officers. We also plan to invite submissions from organisations with an interest in the implementation of the new powers.

## Transfer of young people in detention to adult correctional centres

The *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001* came into operation on 25 January 2002, amending section 19 of the *Children (Criminal Proceedings) Act 1987*.

Before this amendment, if a court imposed a term of imprisonment on a person who was under 21 years old at the time of sentence, the court could order that the entire sentence be served in a juvenile justice centre rather than an adult correctional centre. There were no restrictions on the court's discretion and the order could still be made even if the person was not convicted until he or she had already turned 21.

In late 2001, concerns were raised in Parliament that it was inappropriate for people convicted of serious offences to serve their sentences in juvenile justice facilities. It was claimed that some detainees who remained until 'well into their twenties' in such facilities might adversely influence the younger less serious offenders. It was also suggested that the Department of Corrective Services was better resourced to manage older offenders.

Section 19 of the Act was therefore amended to provide that young people convicted of 'serious children's indictable offences' must be automatically transferred to adult correctional centres when they turn 18, unless the court is satisfied that there are special circumstances or their sentence or non-parole period ends within six months of their 18th birthday.

All young people serving sentences for an indictable offence must be transferred to a correctional centre at 21, unless their sentence or non-parole period ends within six months of their 21st birthday.

The amendment is not retrospective and therefore only applies to sentences and orders made after the Act came into operation. It is expected that around 10 to 20 detainees will be affected by this legislation each year.

Our review of the operation of section 19, as amended, will be for three years. Over that time, we will monitor closely each detainee affected by the legislation, collect information from both Juvenile Justice and Corrective Services policy and operational staff, and consult with the wider juvenile justice community about the effects of the legislation. There have been four detainees affected by the legislation so far.

## Non-association and place restriction orders

The *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* came into effect in full on 22 July 2002 and we will be monitoring its impact for two years. The Act changes various legislation relating to sentencing, bail and sentence administration. A court may now, when sentencing an offender for an offence that is punishable by imprisonment for six months or more, make a 'non-association order' — an order prohibiting the offender from associating with a specified person or persons. As an alternative or in addition, the court may make a 'place restriction order' — prohibiting the offender from visiting a specified place or district. These types of orders may also be made as a condition of bail, parole, leave or home detention.

There are a number of limitations on these orders:

- when imposing the order as part of the sentencing process, the court is only to make the order if it is satisfied that it is reasonably necessary to do so to ensure the offender does not commit any further offences
- orders must not be made for more than 12 months
- a non-association order cannot specify any member of the offender's close family
- a place restriction order cannot specify any place that is the offender's home or the home of the offender's close family, the offender's workplace, any educational institution at which the offender is enrolled or any place of worship the offender regularly attends.

We have been observers in a working party with agencies involved in implementing the legislation. This has provided some insight into issues that may arise in the making of these kinds of orders. So far, it appears that some key issues of our review will be the impact of these orders on young people, Indigenous peoples and communities, and rural communities. We also plan to look at the circumstances in which the orders are made, how they are enforced by the police and whether the information given to offenders and people on bail adequately informs them of how the order restricts their behaviour.

## Drug houses

We are reviewing the operation of a significant addition to drug law in NSW — the *Police Powers (Drug Premises) Act 2001*. This Act, which came into effect in July 2001, was introduced to give police increased powers to shut down so-called 'drug houses', referred to as 'drug premises' in the Act. The main intention of the law is to disrupt the 'supply end' of illicit drug markets. While the impetus for its introduction came from the Premier's Cabramatta Anti-Drug Strategy, the law applies throughout NSW. Extensions to the 'move on' provisions in the *Summary Offences Act 1998* were also enacted. These give police the power to issue directions if they have reasonable grounds to believe that a person is in a public place to buy or sell prohibited drugs.

We have collected information about instances where the powers were used by the police and have also had discussions with police officers about their use of the legislation. This will continue over the two-year review period.

Various concerns have been raised in Parliament and other forums about the legislation. One such concern is that the definition of 'drug premises' is too broad. The criteria used to define 'drug premises' include the existence of external fortifications and the presence of syringes or people affected by drugs on the premises. To investigate how the definition is applied, our review will examine documents such as search warrant applications and police intelligence reports to assess the evidence police relied upon to decide that premises were 'drug premises'. Video recordings of searches conducted under the Act will provide an additional source of information and will also help us monitor how the law has been enforced.

A key part of our review will be to determine the demographic profile of those charged and convicted under the legislation. For example, concern has been expressed that police may disproportionately target young people who play a





Our legislative review team: (l-r) Juliet Dimond, Katie Hall, Rosemary Kusuma, Emma Koorey, Violeta Brdaroska.

minor, but more visible, role in illicit drug markets and may therefore be more vulnerable to arrest. In addition, the law's potential to impact upon drug supply has been questioned in Parliament amid concern that the legislation may target drug users disproportionately. People have also raised concerns about the potential implications for harm minimisation policies and public health initiatives. We have already had some discussions with legal centres and public health service providers to canvass some of these concerns. We also plan to examine police data and court transcripts and consult with other key stakeholders such as local health authorities and user groups.

## Internal searches for drugs

The *Police Powers (Internally Concealed Drugs) Act 2001* came into operation on 1 July 2002 and will be monitored by our office for two years. The legislation establishes a regime for carrying out 'internal searches' on people who are suspected of swallowing or otherwise internally concealing a prohibited drug for the purposes of supply. An internal search includes the use of X-rays and other forms of medical imaging, but does not include a search involving intrusion into a person's body cavities.

Internal searches can be conducted with the informed consent of the suspect or by order of an eligible judicial officer. The search may only be done by a medical practitioner or other appropriately qualified person.

Searches may be conducted on any person who is over 10 years old. During parliamentary debate, the fact that children who are so young can be searched was raised as a major concern. Our review will look into the numbers of young children searched and the circumstances and results of the search, both in terms of any drugs found and any intelligence obtained by police. We will review the care of these young people while they are in police custody and the application of the safeguards set out in the Act.

The health and safety of people subjected to searches is also important and we will seek expert opinion about any risks involved. We will look at police records and check the age, ethnicity, Aboriginality, gender and criminal history of people searched to see if any patterns are emerging in the police use of the new powers. We will also consult with police about the effectiveness of the new powers and any practical issues of concern to them. These, and other community consultations, will ensure that our review includes a wide range of perspectives about the implementation of the Act.

## Sniffer dogs

The *Police Powers (Drug Detection Dogs) Act 2001* came into operation in February 2002 and is being reviewed for two years. The Act regulates the use of dogs by police officers to detect prohibited drugs. Police can use drug detection dogs *without a warrant* in relation to any person at, leaving, or entering sporting events, parades or concerts, bars and clubs, and other venues where alcohol is sold and consumed. The dogs can also be used to detect drugs on people on, entering, or leaving public transport on specified routes. Police can use drug detection dogs *with a warrant* if they have a reasonable suspicion that people in a public place may be committing a drug offence.

The use of drug detection dogs in public places has been the focus of much public attention over the past 12 months. A range of concerns have been expressed both to this office and in the media about the use of the dogs. Some of these concerns are that:

- the use of the dogs does not target dealers of 'serious drugs' and tends to catch drug users
- fear of being caught with drugs may cause drug users to consume all their drugs at once, rather than staging their consumption over a longer period — this may increase health risks for drug users
- the legislation is used to target the gay and lesbian community and young people by the choice of venues in which the new powers are used, such as nightclubs and on public transport
- being sniffed by a dog, and possibly searched on the street by police, is an unreasonable imposition on the civil liberties of members of the public.

To assess these concerns we have been liaising with community groups and individuals with an interest in the use of the drug detection dogs. We have also personally observed police operations using the dogs and will continue to do so at a range of locations in NSW. We will look into other issues including the accuracy of the dogs in detecting drugs and the number and consequences of any false detections.

### Observing police operations

Observing police 'on the street' has been an important aspect of our monitoring of the drug detection dog powers. Our initial observations were at an inner city location in cooperation with local police. We observed five operations using a drug detection dog. Four of these involved 'walk throughs' of licensed premises. Police also obtained warrants to allow detection work to be conducted on the street in those operations.

### *Conduct of the operations — general observations*

Up to 20 plain-clothes police officers were assigned to work in the drug dog team, plus the dog handler who was in uniform. We observed these teams walk through licensed premises between approximately 9pm and 2am.

On many occasions, we watched the dog suddenly change direction and follow a person on the street. In nightclubs and pubs, the dog would often strain towards a person and sit beside them. This type of behaviour was often interpreted by the handler to be evidence that the dog had detected an illegal drug.

Once the handler was satisfied that the dog had made a clear detection, they would explain to the person involved that the dog had detected the smell of an illegal substance coming from them. It was common for the police to ask for identification. Most members of the public cooperated, although there is no obligation to provide identification information to police if no offence has been committed.

### *Privacy*

Although on many occasions we observed police attempting to afford some privacy to the person being searched, for example by conducting street searches in an alcove or doorway, most searches were still in view of members of the public. A few people requested that their search be conducted at the police station.

On some occasions the people being searched appeared or admitted to feeling embarrassed. One woman said 'I've never been so embarrassed in all my life' and appeared to be shaking. Nothing illegal was found on her, but she admitted to having earlier smoked a 'joint'.

Searches required people to turn out their pockets, remove their shoes and outer clothing, have their wallet examined and their legs squeezed up and down. Bags were also searched. If the police found something they thought was an illegal substance, they took the person back to the police station for formal charging or cautioning.

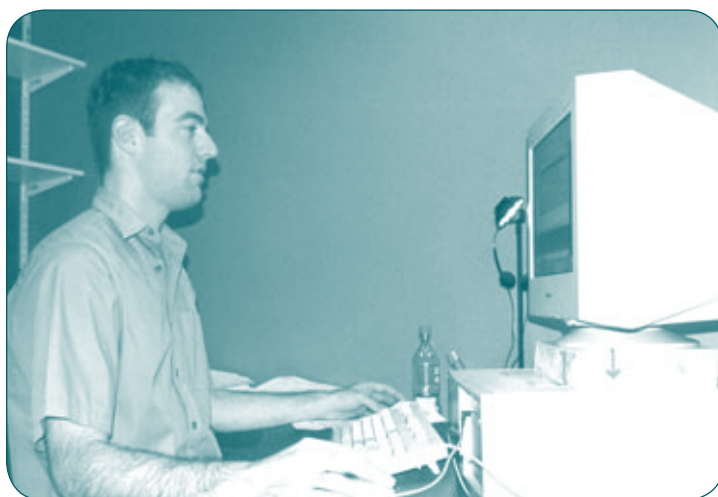
### *Responses from the public*

Occasionally members of the public yelled at the police with comments such as 'No police state', 'Fuckin' Nazis' and 'Shame'. Others taunted and made jokes, like one man who fell on his knees in front of the dog exclaiming 'Oh baby, sniff me!'. Many people attempted to pat the dog which the handlers discouraged. Others complimented police, with one man saying 'Good job — it's a good thing'.

### Some statistics

On the four nights we observed this kind of operation, police figures showed a total of 39 drug charges laid. Five of these were for supply offences, 33 were possession offences and there was one self-administration offence. In addition, 22 cannabis cautions were given.

A snapshot of the figures for two consecutive evenings of this drug detection work shows that no drugs were found for 77% (44 out of 57) of 'person searches' conducted as a result of an indication by the dog. This includes three people who were searched twice (six 'person searches') those nights. It also includes 24 cases where the person searched admitted to having been recently in the presence of an illegal substance, most commonly cannabis. The dogs are able to detect the residue of cannabis for some time after a person has been in contact with it.



Nicholas Richter, an assessment officer in our police team.

## Dogs searching for guns and explosives

The *Firearms Amendment (Public Safety) Act 2002* came into operation on 15 July 2002. This Act gives police officers the power to use a dog to carry out searches for firearms or explosives in a public place *without a warrant*. We are monitoring the use of these powers for two years.

The review of this Act is at a very preliminary stage, but some of the issues we will be looking at include:

- safety concerns for police and members of the public when guns and explosives are detected and confiscated in public places
- the adequacy of police procedures for conducting searches safely and appropriately
- practical issues relating to the use of dogs for detecting guns and explosives, especially because the police accompanying the dogs are likely to be carrying guns
- the quality of the intelligence information on which these operations are based
- the accuracy of the dogs in detecting guns and explosives, and the number and consequences of any false detections.

## New 'on-the-spot' fines for some criminal offences

The *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002* came into operation on 1 September 2002. It establishes a trial scheme allowing police to issue 'on-the-spot' penalty notices known as 'criminal infringement notices' or CINs for specified criminal offences. The trial will operate in 12 prescribed local area commands. The aim is to reduce the number of hours police spend on paperwork and therefore maximise police presence on the streets. The Act allows police to take fingerprints in the field in relation to CINs but does not allow them to issue a CIN to a person under 18 years.

CINs can be issued for the following types of offence.

- common assault
- larceny of property worth less than \$300
- obtaining money by false representation
- unlawful possession of property
- offensive conduct
- offensive language
- obstructing traffic
- unauthorised entry of a vehicle or boat.

We are monitoring the trial for 12 months and some key areas of our review will be:

- whether the introduction of the CINs saves police time and, if so, has any time saved resulted in a greater police presence on the streets
- the effect of the scheme on court appearances
- whether the introduction of CINs had any 'net widening' effect — that is, whether police choose to issue a CIN in circumstances in which they would previously have given a lesser penalty, such as an informal caution or warning
- the use by police of records relating to the issue of CINs — for example, whether police are considering whether a person has been previously issued a CIN when deciding on the appropriate action to take about an incident
- the proportion of CINs that are paid
- whether fingerprints are being appropriately destroyed once the penalty has been paid
- the impact of the trial on different communities, including ethnic and Aboriginal communities.



(l-r) Opal Kiang, assistant investigation officer in our police team, and Thomas Young, a work experience student.

## New powers in corrections

The *Summary Offences Amendment (Places of Detention) Act 2002* and *Crimes (Administration of Sentences) Amendment Act 2002* have not yet come into operation. After they do, we will monitor the Acts for two years.

The first Act will allow correctional officers to stop, search and detain people and/or vehicles in the immediate vicinity of a place of detention in specified circumstances. They will be authorised to use a dog to conduct these searches. New offences will be created including an offence of refusing or failing to comply with a request or direction of a correctional officer, and resisting or impeding a search.

The main amendments to the *Crimes (Administration of Sentences) Act* are as follows. One amendment aims to rectify deficiencies in the Act which contributed to the erroneous release of a prisoner in 2001. This amendment makes it clear that police and correctional officers who arrest an escaped inmate must take that inmate before an authorised justice. The authorised justice may then issue a warrant committing the inmate to custody.

Another amendment allows correctional officers to seize and dispose of property unlawfully brought into a correctional institution. A further amendment gives victims of serious offenders a right to make an oral submission to the Parole Board when the Board is considering making a parole order for the offender.

These provisions are diverse in their nature and impact so community consultation will be a key component of our review plan. We will also obtain input from key stakeholders such as inmates and their visitors, victims of crime, correctional officers and police.

## Covert operations by law enforcement agencies

In NSW there are currently three pieces of legislation that authorise law enforcement agencies to commit acts within NSW, for the purposes of investigations, that would otherwise be illegal. These agencies include the NSW Police, the Crime Commission, the Independent Commission Against Corruption, the Police Integrity Commission, the National Crime Authority, the Australian Federal Police and the Australian Customs Service.

These three Acts are:

- *Telecommunications (Interception) (NSW) Act 1987*
- *Listening Devices Act 1984*
- *Law Enforcement (Controlled Operations) Act 1997*.

The Acts give authorised law enforcement agencies the power to intercept telephone conversations, plant listening devices (commonly known as 'bugs') to listen to and video conversations and track positions of objects, and carry out undercover operations which may involve committing breaches of the law (for example, being in possession of illicit drugs).

The agencies may only use these powers if they follow the approval procedures and accountability provisions set out in the relevant Act.

### Different approval and accountability regimes

The three Acts were developed in isolation and, as a result, the accountability processes set out in them are quite different from each other. There are two significant differences.

The first is that to plant a bug or intercept a telephone conversation, an officer must apply to a judicial officer or, in the case of telephone intercepts, a member of the Commonwealth Administrative Appeals Tribunal (AAT) for a warrant. To conduct an undercover operation,

officers need only apply to the chief executive officer of their agency.

The second difference is that the Ombudsman monitors compliance with the accountability schemes set up for the use of telephone intercepts and undercover operations. There is currently no external monitoring of compliance with the *Listening Devices Act* (which governs the use of bugs) by the Ombudsman or any other body although such a scheme has been proposed (see below).

In addition, our role in relation to controlled operations is significantly more extensive than our role in relation to telephone intercepts.

### Controlled operations

There is a strict regime of accountability for controlled operations which aims to minimise abuse of the operational realities of criminal and corruption undercover work. As agencies do not have to consult anyone external to the agency before carrying out undercover operations, we have a significant role monitoring the approval process. Agencies are required to notify us within 21 days if an authority has been granted or varied, or a report has been received by the agency's chief executive officer on the conduct of a controlled operation.

We are also required to inspect the records of each agency at least once every 12 months. We have the power to inspect those records at any time and make a special report to Parliament if necessary.

### Telecommunication interceptions

As a judicial officer or member of the AAT already scrutinises the process of granting a warrant for a telephone interception, our role does not include ensuring compliance with approval procedures. Instead, we audit the records of agencies carrying out telephone interceptions. The records document the issue of warrants and how the

information gathered was used. Some of the records have to be given to the Attorney General, kept under secure conditions, or destroyed once specified conditions no longer apply.

Our role is to ensure that these provisions are complied with. We are required to inspect each agency's records at least twice a year. We also have discretionary power to inspect their records for compliance at any time.

We report the results of our inspections to the Attorney General. We can report on breaches of certain requirements, including any contravention of the *Telecommunications (Interception) Act 1979* (Cwlth) (the Commonwealth Act).

This year an agency challenged our right to access documents that we required to determine whether or not there had been a contravention of the Commonwealth Act. As a result, we recommended to the Attorney General that the *Telecommunications (Interception) (NSW) Act 1987* be amended to clarify our inspecting powers.

The NSW Act should also be reviewed to reflect recent amendments to the Commonwealth Act. One anomaly that still remains is that although the Inspector who oversees the operations of the Police Integrity Commission was given certain powers under the Commonwealth Act, the Inspector is not subject to oversight by our office under the *Telecommunications (Interception) (NSW) Act*. We are therefore unable to inspect any of the telecommunication interception records kept by the Inspector.

## Law Reform Commission review of surveillance operations

The NSW Law Reform Commission (LRC) is reviewing the laws that apply to surveillance operations, which includes the law regulating the use of bugs. In response to an issues paper released by the LRC in 1997, we suggested that the Ombudsman should be given a uniform monitoring role in relation to all three Acts.

This would help ensure that agencies complied with the terms and conditions of approvals and the information obtained from operations authorised under each Act was used appropriately.

The LRC published an interim report in February 2001 in which it recommended a new monitoring regime for listening device warrants similar to that used for telecommunication interceptions. The LRC considered alternative proposals for the Ombudsman or the Privacy Commissioner to act as the inspecting authority for the use of listening devices.

The LRC outlined the following arguments in favour of the Ombudsman being the inspecting authority:

- The Ombudsman already has the auditing experience in relation to telecommunication interception.
- Law enforcement agencies are familiar with the existing auditing procedures involving the Ombudsman, so the transition to the new regulatory system would be smoother.
- The Ombudsman would be able to make useful comparisons between the use of surveillance devices and telecommunications interceptions.

We support all of these arguments. Some further considerations favouring the Ombudsman as the appropriate inspecting authority are that we have:

- a depth of experience in conducting such inspections and using proven methodologies
- experience investigating complaints about police misconduct and prison administration — this means we have a good appreciation of the significance of information which has intelligence and security implications
- internal policies and procedures that are appropriate for maintaining the integrity of such information
- a specialist unit that currently conducts all secure monitoring activities as well as dealing with complaints and appeals relating to the witness protection program.



(l-r) Robyn Sadler, executive assistant, and Beverley Willis, investigation officer, both in our general team.

Our specialist unit is supervised personally by an Assistant Ombudsman who participates directly in the inspections. Staff of the unit have undergone an in-depth external vetting process to obtain appropriate security clearances, have been formally trained in counter-surveillance and other security measures, and operate from specially secured premises.

A body that does not have this depth of experience and infrastructure would be ill-equipped to carry out such responsibilities and poses risks that are likely to be unacceptable to the law enforcement authorities that conduct covert surveillance activities. Our 14 years experience in conducting inspections under the *Telecommunications (Interception) (NSW) Act* and four years experience in monitoring compliance with the *Law Enforcement (Controlled Operations) Act 1997* by both State and Commonwealth agencies, has more than equipped us to take on an expanded monitoring role.

The LRC has not yet completed its review of this matter.

## Private member's bill

On 9 May 2002 the Shadow Minister for Police, Mr Tink, introduced a private member's bill — the *Communications Interception Legislation Amendment (Ombudsman Oversight) Bill 2002*. The bill addresses some of the recommendations in the LRC interim report. It provides for the Ombudsman to monitor the use of listening devices under the *Listening Devices Act 1984* and could enable us to report to Parliament and to the Attorney General on our findings and recommendations. The bill would also enable the Ombudsman to give Parliament reports made by the Ombudsman to the Minister administering the *Telecommunications (Interception) (NSW) Act*.

Debate on this bill is currently adjourned.

## Our reporting requirements

We have to make two separate reports on our work in the area of controlled operations and telecommunication interception.

We are required to deliver the report on our telecommunication interception work to the Attorney General within three months of the end of the financial year. We are forbidden from including details of this work in our annual report.

We have to present the report on our controlled operations work to Parliament as soon as practicable after the end of the financial year. This year's report is available from our office.

## Witness protection

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### Witness Protection Act 1995

The Ombudsman has the power to hear appeals arising from the exercise of certain powers under the *Witness Protection Act 1995*. We are also responsible for handling complaints from people who are participating in the program.

The Act gives the NSW Commissioner of Police the power to refuse someone entry to the witness protection program or to terminate their participation in it. The person directly affected by such a decision can appeal to our office. The Ombudsman must determine an appeal within 72 hours of receiving it and any decision we make replaces that of the Commissioner. This is our sixth full year in this role under the Act and we determined four appeals this year.

Complaints usually relate to management practices and personality conflicts between participants and their case officers. Due to the ongoing and unique relationship between the participants on the program and the officers responsible for their protection, we usually take an informal approach to resolve these issues. In some cases our staff negotiate with the commander of the state protection group to refine procedures that generate recurring complaints. The management of the program has become more sophisticated over the years.

One of the original provisions of the *Witness Protection Act* was that it must be reviewed after five years of operation. The responsible Minister was required to assess whether the Act's policy objectives were still valid and whether its terms were still appropriate for achieving those objectives. The review was conducted this year and the Minister made a number of recommendations for amendments to the Act which we supported. The amendments should improve the functioning of the Act and our role.

The *Witness Protection Amendment Act 2002* was assented to on 4 July 2002 but at time of writing was still to be proclaimed. The Act makes a

number of changes to the role of the Ombudsman in the witness protection program.

- We have 72 hours to determine an appeal against the Commissioner's decision to refuse a person entry to the program or to terminate their participation in it. Under s12(5), this has been extended to seven days.
- Under s11A, the Commissioner may now temporarily suspend a participant from the program. An affected person may appeal against this decision to us and we have seven days to determine these appeals.
- Under s13(2), if we confirm the Commissioner's decision to terminate or suspend a person from the program but despite reasonable attempts we cannot locate the person to tell them of our decision, termination or suspension nevertheless takes effect when we inform the Commissioner that we have been unable to locate the person.

### Child Protection (Offenders Registration) Act 2000

The *Child Protection (Offenders Registration) Act 2000* came into effect in October 2001. The Act requires people convicted of certain offences against children to provide personal information to the NSW Commissioner of Police. This information is then included on a register of offenders believed to pose a risk to the safety of children.

If a person required to provide this information is a current or past participant in the witness protection program, or is about to leave the program, the Commissioner may make an order allowing them to provide the information in writing to a police officer authorised by the Commissioner. Other people are generally required to report to a police station in person.

If the Commissioner does not make such an order, the affected person may appeal to the Ombudsman. This year we did not handle any appeals of this nature.





# Reform

This section gives details of the work we have done to contribute to policy reform in NSW. We provide advice to agencies, make submissions and put forward proposals on a range of topics relating to public administration.

## Advice

This year we provided advice to a number of agencies on a variety of topics, including to:

- the Children's Guardian on its complaint-handling policy and its draft policy statement on behaviour management and the use of restraint with children and young persons in out-of-home care
- the Community Services Commission on a methodology for conducting complaint-handling systems audits
- the Office of Community Housing on complaint management procedures
- the Audit Office on issues relating to the conduct of a variety of performance audits
- the State Rail Authority on customer complaint-handling satisfaction benchmarks
- Canada Bay Council on the powers of council to exclude disorderly members of the public from council meetings
- the Joint Select Committee on Quality of Buildings on our jurisdiction and experience in relation to private certifiers
- Deniliquin Council on customer service guarantees
- Council of the City of Lithgow on their customer service policy
- Landcom on the sale of homesites by ballot system
- the Department of Housing on proposals for renewable tenancies and rental bonds
- the Attorney General's Department on their review of the *Sheriff Act 1900* and the Sheriff's role in the security of courts.

## Comments and recommendations

We also provided comments and input to:

- the policy review of the *Witness Protection Act*
- draft Codes of Practice under the *Privacy and Personal Information Protection Act 1998* including one about Inter-Agency Transfers of Information and Investigations
- the Senate Committee reviewing the Public Interest Disclosure Bill 2001 (Cwlth)
- the Internet Industry Association's Privacy Code of Practice
- the Joint Parliamentary Committee's Access to Information Inquiry
- the draft Children (Care and Protection — Child Employment) Regulation and its associated Regulatory Impact Statement
- a Cabinet Minute which proposed miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998* to improve its effectiveness
- a Cabinet Minute which proposed amendments to the *Child Protection (Prohibited Employment) Act 1998*, *Child Protection (Offenders Registration) Act 2000*, *Summary Offences Act 1988* and the *Commission for Children and Young Persons Act 1998* aimed at improving the effectiveness of employment screening
- draft procedures being developed by Commission for Children and Young People (CCYP) for the assessment of relevant apprehended violence orders.

## Submissions

We made a submission to the Inquiry into Child Sexual Assault Matters being conducted by the Legislative Council Standing Committee on Law and Justice. We drew the Committee's attention to the difficulties facing agencies when investigations indicated that staff had committed child abuse. In most instances, agencies are not able to take effective risk management procedures and instead may have no other alternative than to institute formal disciplinary proceedings, where the high standard of proof required often gives little hope of an outcome that will ensure the protection of children. We also drew attention to barriers preventing the exchange of information between agencies about child abuse investigations.

This year we also made a submission to the review of the 'Working With Children Check — Guidelines for Employers' being conducted under the *Commission for Children and Young Persons Act 1998*. In April 2002, following a meeting of the working with children check guidelines review advisory committee we wrote to CCYP to advise of our view of the draft procedures regarding relevant completed disciplinary proceedings that were distributed at the meeting. Our comments concentrated on difficulties in defining the terms 'false', 'vexatious' and 'misconceived' which are used to denote proceedings that do not have to be reported to the CCYP. We also considered how matters should be allocated in the two level database that the CCYP was proposing to establish.

We also participated in the general community consultation about the proposed Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation that was conducted by DoCS and provided comments. We drew particular attention to our concern that the proposed blanket exclusion of licensed private hospitals and licensed nursing homes from the definition of out-of-home care might lead to instances of children or young people with disabilities, who are sometimes placed in such facilities, being deprived of the benefits and protection flowing from the provisions of the proposed regulation.

## Discussion papers

Based on concerns arising from individual complaints we prepared a discussion paper entitled 'Some difficulties with CRIME highlighted by recent complaints against police officers'. The CRIME Code sets out guidelines in relation to arrest, search, and detention.

The concerns identified were that:

- the code appeared inconsistent with the provisions of Part 10A (Detention after Arrest) of the *Crimes Act 1900* and could result in persons being kept in police custody for longer periods than authorised by that legislation
- some local area commanders established local guidelines for strip searches inconsistent with the code
- the code's guidelines in relation to the searching of children were inconsistent with the Crimes (Detention after Arrest) Regulation.

After we raised these concerns with NSW Police, they amended the code to remove the inconsistencies we had identified and advised officers of the need for 'Local procedures' to comply with the code.

We also prepared a discussion paper about NSW Police procedures relating to the removal of police officers who have lost the confidence of the Commissioner (under section 181D of the *Police Act*). We raised the following issues:

- lack of clear guidelines about the factors to be taken into account when considering whether to nominate an officer for removal
- insufficient reasons provided for decisions not to proceed with nominations
- inappropriate management of officers during the section 181D process
- inadequate guidelines for police analysts assessing nominations to be forwarded to the Commissioner
- lack of timeliness in processing nominations.

Following our discussion paper, NSW Police agreed to develop a new section 181D Protocol which will aim to address the issues raised:

- to identify appropriate benchmarks (including timeliness and qualitative measures)
- to settle how performance will be measured against these benchmarks
- to collect relevant information to measure performance
- to ensure accountability for police officers who are implementing new processes and making relevant decisions
- to review the new processes.

We have continued to provide feedback during the development of the new protocol.

## A streamlined disciplinary scheme for public sector staff

In April 2000 we made a report to Parliament entitled 'Handling of Child Abuse Allegations Against Employees — an investigation into the system used by the NSW Department of Education and Training'. We concluded that one of the limitations of the disciplinary scheme that applied to teachers, in the light of a decision in the NSW Supreme Court in *Ward v DET* (80 IR 175), was that the scheme must be strictly complied with and there was no option available to adopt a risk management approach.

While our report was about the adequacy of the department's procedures in responding to allegations of child abuse, in particular the weaknesses in their disciplinary systems for dealing with these types of allegations, our conclusions and recommendations are just as relevant to most other public sector agencies in NSW. They are also applicable to a wide range of conduct issues.

In our experience, there is a plethora of different disciplinary procedures that apply to agencies with child protection responsibilities. In our report we recommended that consideration be given to the benefits of taking a whole-of-government approach to disciplinary procedures to provide consistency throughout the public service, streamline the process and help interested parties understand what to expect when disciplinary action is proposed.

We also recommended that the Minister for Education and Training approach Ministers of departments with child protection responsibilities about developing a comprehensive and consistent risk management approach to govern the response by these departments to allegations of child abuse against their employees.

We wrote to the Director-General of the Premier's Department in September 2000 to communicate our view that a consistent approach to the management of performance and conduct of public officials across the public sector was important. We suggested that it was unacceptable that there was a range of disciplinary schemes in place that, for no good or apparent reason, set out various levels of protection for staff and widely differing powers for agencies to investigate alleged misconduct by staff.

We suggested certain key elements that could be incorporated into any centralised disciplinary scheme including:

- provisions empowering agencies to adopt a risk management approach to allegations about the conduct of employees, and
- procedures to make sure that any person who is the subject of disciplinary action is provided with procedural fairness.

We are pleased to see that the new *Public Sector Employment and Management Act 2002* deals separately with conduct and performance issues and authorises departmental heads to take remedial action (for example formal and informal counselling, warnings, staff development, training and staff rotations) without the need to deal with an issue as a disciplinary matter. The Act ensures that remedial action can be taken as an alternative to disciplinary action. These proposed changes should facilitate the implementation of a risk management approach across the public service, as previously recommended by this office.

## Offering apologies

In last year's annual report (at p 115) we reported on a suggestion we had made to government to introduce legislation to make any apology or expression of sympathy or regret given by public sector staff to help resolve a complaint inadmissible in any civil proceedings.

We are pleased to note that the consultation draft of the Civil Liability Amendment (Personal Responsibility) Bill 2002 includes provisions addressing this issue. The proposal in the bill is that an apology (including an expression of sympathy or regret) by or on behalf of a person will not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability in tort or contract.

This appears to be a very commendable proposal that we believe should benefit the whole community.

# Access and awareness

We are committed to developing an effective access and awareness program to make sure that our services are accessible to all members of the public and to disadvantaged groups in particular. We believe it is essential that our office is accessible to anyone who needs our services and any barriers are identified and eliminated.

One of our corporate goals is to be accessible and responsive. Some of the strategies we use to achieve this goal include:

- identifying and targeting people with special needs
- consulting peak groups and key referral agencies and developing protocols for ongoing communications
- participating in community events and forums
- making presentations to and developing an outreach program for target groups
- developing and distributing information
- developing and implementing training and information programs for agencies in our jurisdiction
- minimising cultural and linguistic barriers to access.

It is important that we meet both our responsibilities to the community at large and the legitimate expectations of the external agencies who oversee the implementation of the government's disability, ethnic affairs and women's policies.

To minimise duplication, our staff work together to deliver information about our services to a range of community groups rather than just focusing on any particular target group. This means that we can maximise our visits to regional centres and ensure that the greatest number of people receive information about our services.

As our resources are limited, we have had to find creative and cost effective ways to implement our access and awareness strategies. We work with other complaint-handling agencies on joint initiatives such as presentations to community groups, information stalls at community festivals and joint publications. General information about the office, including information in a number of community languages, can be downloaded from our web site ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)). Most of our publications can also be downloaded from our web site or ordered through our online publication form.

During the year we began a review of our access and awareness plan. The review process involves statutory officers, team managers and staff members with specific responsibilities for access and awareness activities. This review will be completed during 2002–2003 and will include initiatives to take into account the expected increase in people contacting us following the merger of the Community Services Commission with our office in December 2002.

In this section we give details of the work we have done during 2001–2002 to improve the accessibility of our services to young people, people in detention, Aboriginal people, ethnic communities, people in rural areas, people with a disability and women. We also report on our implementation of a range of government policies and the work of our public relations and publications unit in promoting access to and awareness of our office.

## Inquiries

Our five inquiries staff are usually the first point of contact for members of the public. They are able to detect trends in the inquiries we receive and advise investigation staff of emerging issues that may need further attention.

Most people who contact us want help in resolving complaints about NSW government departments, local councils or the police. Some complaints can be resolved by a quick phone call to the department or agency concerned.

Even when matters are premature or outside our jurisdiction, we always try to provide information and guidance on how to have the issues addressed at a local level. If we are not able to give advice straight away, we research the issue and/or contact the agency concerned.

We make sure that we keep up-to-date with the internal review protocols of other agencies so that we make the most appropriate referral. This year we dealt with over 26,000 oral complaints and inquiries.



*Our inquiries team: (l-r) Luke Scane-Harris, Sheila O'Donovan, Wendy Parsons, Lisa Brown, Samantha Guillard.*

## Children and young people

We work with young people and youth workers to provide information, support and training about the role of our office and the complaint process. We also promote awareness of our child protection role and educate agencies that have a legislative obligation to report matters to us about what they have to do. Some highlights of our work in 2001–2002 include:

- conducting workshops, presentations, training programs and information sessions for agencies, young people and youth workers
- briefing management at the Department of Community Services, child protection officers and disability services staff about the role of the Ombudsman and the Department
- visiting youth services and youth workers in regional NSW
- developing and widely distributing information sheets on a range of issues including conflict of interest and risk management
- writing articles on child protection for publication in various newsletters.

Training and information sharing is an important part of our work, especially in the child protection area. This year we continued our policy development workshops for agencies in both the government and non-government sector. We conducted 56 workshops and information sessions for 1,285 participants. We also made 48 presentations to young people and youth workers.

We gave presentations about our child protection role at a number of conferences. The audience included public sector agencies, area health services, local councils, substitute care providers, youth networks, disability groups, the police service and young people.

A list of significant presentations our office made this year is at the end of this section.

To support our training program, we developed a number of fact sheets for agencies outlining their responsibilities when dealing with an allegation of child abuse against an employee. These fact sheets are available on our web site and are listed in the publications list at the end of this report.

We have adopted a proactive approach to address ongoing concerns regarding policing and young people. We are pleased that the number of complaints about police from young people has declined in the last year (see fig 46). However, we will continue to work with the police and peak youth organisations to ensure that continual improvements are made.

**Figure 46:**  
Complaints and inquiries received by and on behalf of young people – five year comparison \*

	97/98	98/99	99/00	00/01	01/02
Dept of Community Services	7	0	13	291	295
Dept of Corrective Services	19	38	119	37	78
Dept of Education and Training	30	126	205	174	152
Dept of Health	2	2	4	0	0
Dept of Housing	6	2	7	4	2
Dept of Juvenile Justice	168	251	232	218	209
Local councils	1	5	19	3	0
NSW Police	363	442	510	521	447
Roads and Traffic Authority	4	4	4	3	8
State Rail Authority	8	4	3	4	9
State Transit Authority	1	0	2	0	1
Other public sector agencies	6	14	29	12	17
General inquiries	19	13	4	10	18
Outside our jurisdiction	14	27	25	11	16
<b>Total</b>	<b>648</b>	<b>928</b>	<b>1,176</b>	<b>1,288</b>	<b>1,252</b>

\* excluding child protection related notifications and complaints and only including matters that we were able to identify as being made by or on behalf of a young person

It is often difficult for young people in detention to make complaints. To help them access our services, our youth liaison officer and Aboriginal complaints officer visited each of the nine juvenile justice centres in NSW twice. During these visits, they talked to staff and young people, took complaints and tried to resolve issues there and then. Please see 'Corrections' for more details of our work in this area.

### People in detention

This year we continued our program of visiting correctional centres and juvenile justice centres. During these visits we inspect the centres and talk to staff and inmates. We give information about our services to both staff and inmates, take complaints and try to resolve simple issues quickly and efficiently. The visits also allow us to gain first-hand knowledge of the structure and management of the centres and any specific programs being run there.

This year we made a total of 31 visits to 20 correctional centres and inspected two court cell complexes. We also visited each of the nine juvenile justice centres twice.

Please see 'Corrections' for more details of our work in this area.

## Aboriginal people and communities

We have four members of staff specifically employed to handle complaints by Aboriginal people about police and other agencies and to raise awareness of our office among Aboriginal communities.

Some highlights of our work in 2001–2002 include:

- visiting and consulting with Aboriginal communities in Nowra, Eden, Bega, Batemans Bay, Wollongong, Tamworth, Coonabarabran, Dubbo, Bourke, Brewarrina, Broken Hill, Orange, Cowra, Albury, Moree, Nambucca Heads, Byron Bay and Sydney metropolitan areas
- working with police and Aboriginal legal services to address policing issues affecting local Aboriginal communities
- liaising, networking and making presentations to government agencies and Aboriginal community groups to address issues affecting Aboriginal communities in a coordinated way
- visiting correctional centres and juvenile justice centres and looking at programs specifically designed for Aboriginal inmates
- meeting with the Aboriginal prisoner family support network and providing advice on the role of our office
- providing Aboriginal cultural awareness training for staff using an external trainer specialising in Aboriginal issues.

We work closely with NSW Police on a wide range of issues concerning Aboriginal communities. For example we participated in the Police Aboriginal Strategic Advisory Council, worked with the Aboriginal Coordination Team to develop the young offenders legal referral form, and participated in the sexual assault round table meeting. We also continue to participate in community consultative groups made up of our staff, local representatives from the Aboriginal community, the police and other government departments. We have found these groups to be helpful in breaking down communication barriers between the police and the community.

This year we also worked closely with community organisations and other government agencies to improve the access of Aboriginal people to government services.

For more details about our work with Aboriginal communities, please see 'Police' and 'Corrections'.



Laurel Russ, senior investigation officer in our Aboriginal complaints unit (2nd from right), participating in a meeting in Coonabarabran about the policing of crime, with community representatives from the youth council, the local Aboriginal land council, interested senior members of the community, and police officers from Mudgee local area command.

- providing training on the role of our office and the complaint process to the Hills Multicultural Network, the Tamil Workers Network and the Hawkesbury Nepean Community Legal Centre
- participating in the Multicultural Holroyd Carnival, St George Migrant Information Day, Chinese Community Information Expo, Indonesian Festival, Greek Festival, and the Pacific Islanders Youth and Family Festival.

Each year we focus on specific ethnic communities. We target emerging communities or existing large communities where no recent contact has been made. This year we targeted the Chinese, Vietnamese, Indonesian, Hindi, Tamil, Singhalese, Assyrian and Pacific Islander communities. We have also started working with the Macedonian community.

We are working with other complaint-handling agencies to develop joint access and awareness initiatives including trialling an information booth at a shopping complex at Liverpool.

Fig 47 shows our plans for 2002–2003.

## Ethnic communities

As a designated agency under the Ethnic Affairs Priority Statement (EAPS) program, we are required to develop an EAPS plan. This plan identifies our strategies to improve our services to the diverse community of NSW. We have to report to the Community Relations Commission on the implementation of this plan and we must detail our progress in our annual report.

Some highlights of our work in 2001–2002 include:

- developing an information sheet about our role and functions and translating it into the Indonesian, Hindi, Tamil, Singhalese and Macedonian languages (we already have similar brochures in 10 other languages)
- consulting with ethnic communities and community workers
- making presentations to ethnic community groups using interpreters, including the Assyrian Senior Group and a Vietnamese residents group in South Sydney

## Regional outreach

We visited major towns and regional centres across NSW, from Batemans Bay to Broken Hill to Nambucca Heads. We conducted community consultations, made presentations on the role of our office and our procedures to agencies and community groups, ran policy workshops for agencies that provide services to children, conducted face-to-face complaint taking sessions for members of the public, inspected correctional centres and juvenile justice centres, and held information stalls at country fairs and festivals.

We recognise the disadvantage caused by distance that people outside Sydney face. We have a number of strategies to minimise this disadvantage including a free call service where

Figure 47:  
Ethnic Affairs Priority Statement

Key result area	Initiative	Timeframe	Intended outcome
Planning	Review our access and awareness strategies, including strategies to implement our EAPS program	Oct 2002	Develop a three year plan with specific strategies to improve access to our services by people of diverse cultural backgrounds
Social justice	Liaise with peak ethnic community organisations to identify needs and develop appropriate strategies Provide training to community workers on complaint-handling Develop strategies to involve ethnic media in raising awareness of the role of our office	Ongoing	Increased community awareness of the role of our office Improved access to our services for people of diverse cultural backgrounds
Community harmony	Provide speakers to make presentations to people of diverse cultural backgrounds Participate in cultural activities and festivals	Ongoing	Increased community awareness and improved understanding of community needs

people outside Sydney can call us for the cost of a local telephone call. We include our free call number and our web and email addresses in all regional telephone directories. We also use local media to promote our visits and encourage people to make their complaint online or via email.

## People with a disability

The NSW Government Disability Policy Framework requires agencies to have a Disability Strategic Plan that identifies how they plan to improve services to people with a disability. During 2001–2002 we undertook a range of initiatives to improve access for people with disabilities. Some highlights include:

- making presentations to organisations such as the Foster Parents Support Network, the Out of Home Care Forum and the Disability Business Council of the Department of Ageing, Disability and Home Care
- conducting workshops on child protection policy development to agencies that provide substitute residential care services to children with disabilities
- auditing the systems that schools for special purposes have to prevent and handle allegations or convictions of child abuse against employees
- sponsoring and participating in a conference organised by the Ethnic Communities Council on 'Challenges — In home and

Figure 48:  
Implementation of our Disability Strategic Plan

Priority area for action	Goals/targets	Reporting year strategies	Outcomes/achievements
Physical access	Ensure that our office and any other locations we use are accessible to people with a disability	Undertake an access audit of our office using external experts	<p>We have extended and renovated our office space and installed a sliding door at the reception area to improve access. We also widened a door into the general office area to enable wheelchair access.</p> <p>We have disabled toilet facilities on our public access floor.</p> <p>Our building has wheelchair access (ramp and lift) and tactile ground surface indicators near all staircases, ramps and escalators.</p> <p>The tenant directory is a well-lit area with tenant details in a reasonably sized font.</p>
Promoting positive community attitudes	Actively promote people with disabilities as valuable members of the community	Work in partnership with peak organisations, particularly the Department of Ageing, Disability and Home Care to promote positive community attitudes	<p>We sponsored and participated in the conference 'Challenges—In home and community care for people from culturally and linguistically diverse backgrounds'. We distributed information about our services in 15 different languages to 200 conference participants.</p> <p>We conducted workshops on developing a child protection policy to agencies that provide substitute residential care services to children with a disability.</p>
Staff training	All staff are trained and competent in providing services for people with a disability	Conduct disability awareness training for all supervisors and frontline staff	<p>We organised two sessions of disability awareness training for our front line staff and supervisors.</p> <p>We have included 'communicating with people with a disability' in our investigation training course.</p>
Information about the services we provide	Our office and the services we provide are accessible to people with a disability	Research alternative means of communicating information about our services	<p>We provide information about our services in a range of alternative formats including large print, Braille and tapes.</p> <p>We have produced a COMPIC poster for people with an intellectual disability.</p>
Employment in the public sector	To employ more staff who have a disability	<p>Investigate skills based training programs for people with disabilities</p> <p>Review EEO program to ensure diverse recruitment practices</p> <p>Review job descriptions to identify any barriers for people with disabilities to apply for positions</p>	<p>We have investigated skills based training programs for people with disabilities, including participating in training programs organised by Office of the Director of Equal Opportunity in Public Employment.</p> <p>We have begun reviewing all job descriptions. As each job description is reviewed, any barriers to access by people with disabilities will be identified and eliminated.</p>
Complaint procedures	Our office and the services we provide are accessible to people with a disability	Develop strategies to let people with disabilities know about our complaints and compliments policy	<p>We have begun an office wide policy review which includes our complaints and compliments policy.</p> <p>An objective of the review is to make all relevant policies accessible via our web site.</p> <p>Our current information brochures include information about how to make a complaint about our services. These brochures are available in alternative formats such as Braille.</p>



community care for people from culturally and linguistically diverse backgrounds' and distributing information about our services in 15 languages to 200 conference participants

- contributing an article on the role and function of this office to a newsletter produced by ACROD, a peak industry body for providers of services to people with disabilities
- producing a COMPIC poster about our role and services which is being distributed to agencies and organisations that provide services to people with disabilities — COMPIC is a picture language for people with an intellectual disability.

We continued to consult with peak disability organisations such as the Department of Ageing, Disability and Home Care, ACROD, and the Spastic Centre and have received valuable information and assistance from these groups. We have worked with a number of disability organisations to raise awareness of our child protection role and focus on specific issues that may affect children with disabilities and their carers. For further discussion about these issues, see 'Child protection'.

We contracted the Spastic Centre to develop and conduct disability awareness training for our front line staff and supervisors as well as training for staff on communicating with people with a disability.

We also modified our fitout to provide better physical access to the public areas of the office. For example, we installed a sliding door at the reception area and a wheelchair accessible door into the general office area.

Fig 48 is our report on the implementation of our Disability Strategic Plan.

## Women

Our access and awareness activities relating to women focused on using existing networks and programs to promote the profile of our office and improve the access of women to our services. Some highlights of our work in 2001–2002 include:

- working with the police to improve their response to domestic violence incidents and their handling of domestic violence complaints
- participating in the NSW Police sexual assault round table meeting with other key stakeholders to reduce violence against women
- participating in a round table discussion on sexual violence in Aboriginal communities
- making presentations to women's organisations and groups including the Women's Legal Resource Centre
- participating in International Women's Day celebrations by holding stalls and including information about our office in show bags
- updating our 'Women's Fact Sheet' which was distributed throughout regional NSW.

We also implemented a range of initiatives to meet the objectives of the NSW Government's Action Plan for Women. Fig 49 gives details of our progress.

Figure 49:  
Action Plan for Women – progress report

Objective	What we have done/are doing
Reduce violence against women	We are monitoring police responses to domestic violence incidents and their handling of domestic violence complaints. We are also working with key agencies to address the issue of sexual violence in Aboriginal communities.
Promote safe and equitable workplaces that are responsive to all aspects of women's lives	We have adopted flexible working conditions including flexible working hours, part-time and job share arrangements, and leave for family responsibilities. We also promote a harassment free workplace.
Maximise the interests of women	We have not developed any specific strategies for this objective.
Improve the access of women to educational and training opportunities	We don't have an external role in improving women's access to educational and training opportunities, but women in our office are given many educational and training opportunities to further their careers.
Promote the position of women	We have a diverse and skilled workforce. Women make up 67% of our total staff and 64% of our staff above grade six. Of our team managers, 75% are women and one of our five statutory officers is a woman.  We employ people on merit. Of our new recruits 72% were women.  We participate in activities celebrating International Women's Day and develop fact sheets to inform women of our role and functions.

## Public relations and publications

Our public relations and publication unit coordinates our access and awareness program and develops support material such as brochures, guidelines and fact sheets. During the year we have been working closely with community groups such as disability and ethnic organisations to make sure that we are meeting our access and awareness objectives.

Some highlights of our work this year include:

- producing a web version of our annual report for the first time
- printing a COMPIC poster for people with an intellectual disability
- expanding our community language series to include information for the Indonesian, Tamil, Singhalese, Hindi and Macedonian communities.

We updated, reprinted and published a number of brochures and information sheets including:

- a fact sheet for women called 'Women's Issues: The Ombudsman & You'
- a set of four council fact sheets entitled 'Having trouble with unlawful development activity?', 'Unhappy about a proposed development?', 'Having trouble with your development application?' and 'Having trouble with rates and charges?'
- a set of nine fact sheets for our child protection jurisdiction on a range of issues including investigation techniques, record keeping and policy development
- a new general information brochure.

We have begun a comprehensive review of all our printed materials. We have revised and reprinted our general information brochure and will be reviewing our remaining brochures and publishing them as inserts. We will also be updating and reprinting our brochure called 'Some tips for making a complaint', our youth brochure and our brochure for Indigenous communities.

There is a list of all our recent reports and publications at the end of this report.

## Speeches and presentations

The following are some of the major speeches and presentations given by our staff this year.

### July 2001

Bruce Barbour, Ombudsman, spoke at the Australian Institute of Administrative Law Conference on 'What are the essential features of an Ombudsman?' and at the Police Reform Symposium in Brisbane on 'Police Reform and Civilian Oversight: In Conflict or Concert?'

Chris Wheeler, Deputy Ombudsman, spoke at the Australian Institute of Building Surveyors State Conference called 'Getting the Record Straight'.

### August 2001

Bruce Barbour attended the 19<sup>th</sup> Australasian and Pacific Ombudsman Conference in Brisbane and presented a paper called 'The effective, efficient and economical Ombudsman — new approaches to facilitate better public administration'.

Chris Wheeler spoke at the Local Government Managers Australia Annual Conference about the obligations of councils and protected disclosures.

Simon Cohen, Legal Officer, spoke to the police leadership development program on 'The Ombudsman and the police complaints system' (he also spoke to them in Dec 2001 and Feb 2002).

Wayne Kosh, Investigation Officer, spoke to the Rotary Club in Western Sydney about our role.

Steve Kinmond, Assistant Ombudsman (Police), gave a presentation about the complaints system to police at the Professional Standards Review Forum, Endeavour Region.

Michael Conaty, Investigation Officer, was interviewed on ABC radio about our functions.

### September 2001

Bruce Barbour gave a speech at a conference held by the OECD and the Queensland University of Technology on 'Handling Student Grievances — what lessons are there for institutions in the cases brought before Ombudsman in Australia?'

Steve Kinmond gave a presentation about the complaints system to police at the Professional Standards Review Forum, City East Region.

Katharine Ovenden, Team Manager, and Helen Ford, Senior Investigation Officer, spoke about our role and jurisdiction at an information session for the Foster Parents Support Network Inc.

Eileen Graham, Community Liaison Officer, gave a presentation at a child protection area forum in Canterbury during children's week.

### October 2001

Bruce Barbour launched State Records guidelines called 'Create and Capture: Guidelines on Better Recordkeeping'.

Michael Conaty gave a presentation to criminology students at UTS Law School about our work with corrections and juvenile justice institutions.

Katharine Ovenden gave a paper at the Australian and New Zealand Education Law Association conference in Melbourne on our child protection role and discussed emerging trends.

### November 2001

Bruce Barbour spoke at the Smaller Agencies CEO Forum on our role.

Chris Wheeler gave a speech at a NSW Supply Unit Manager's Forum on 'Ethics in the Public Sector'.

Greg Andrews, Assistant Ombudsman (General) spoke to the joint initiatives group on customer satisfaction surveys and ran a workshop for State Rail Authority Complaint Handling Stakeholders on what our office expects from public service agencies in their complaint-handling.

Joanne Scott and Terry Chenery, Investigation Officers, and Victor Darcy, Complaints Officer, spoke about our role at an Illawarra cross-cultural awareness day.

Helen Ford and Julia McCosker, Senior Investigation Officer, gave a presentation to the ACWA Out of Home Care Forum at Telopea about our child protection role.

Katharine Ovenden was a member of a discussion panel at a foster care forum for the Foster Parents Support Network Inc and gave a paper at the 8th Australasian Conference on Child Abuse and Neglect in Melbourne outlining our child protection role and discussing emerging trends.

### December 2001

Chris Wheeler gave a speech at an Open Government Forum at Parliament House called 'Frankness and candour in the public sector. What is the public entitled to expect?'

Steve Kinmond and Simon Cohen gave a presentation at Police Headquarters about measuring complaint performance and Mr Kinmond participated in a training session for senior police from the Hunter region.

### February 2002

Steve Kinmond spoke on 'Policing past and present — trying to keep up with change' to duty officers and local area commanders involved in a leadership development program.

Ian McCallan-Jamieson, Senior Investigation Officer, gave a presentation to his local church group on the work of our office.

### March 2002

Steve Kinmond gave a speech to the Human Rights and Equal Opportunity Commission (HREOC) National Conference on 'Racism in Australia' and the key areas of reform required by the police to combat racism.

Greg Andrews gave a presentation to staff from the Indonesian Ombudsman Commission on our role and functions.

Vince Blatch, Investigation Officer, gave a presentation at HREOC to a Chinese delegation of prison officials on the role of our office in promoting ethical behaviour.

Simon Cohen gave presentations to the Eastwood local area command education day on police complaints and the Complaints Management Team at the Broken Hill police LAC on 'Measuring Complaints Performance'.

### April 2002

Chris Wheeler spoke to a delegation from the Kwa Zulu Natal Province (South Africa) Public Accounts Committee about protected disclosures.

Geoff Briot, Senior Investigation Officer, gave a presentation about protected disclosures to senior management at the University of NSW.

Greg Andrews hosted a three-day study tour for the Thailand Ombudsman and his senior staff.

Ruth Barlow, Investigation Officer, gave a presentation at Penrith (organised by Hawkesbury Nepean Community Legal Centre) on our role in handling complaints about police.

### May 2002

Steve Kinmond and Emma Koorey, Manager Legislative Review Team, spoke at UTS to the Combined Community Legal Centres Group about police complaints and legislative reviews.

Greg Andrews ran an information workshop for a delegation of Indonesian parliamentarians preparing legislation for the formal establishment of an Indonesian Ombudsman Commission.

Bruce Barbour, Chris Wheeler and Greg Andrews gave presentations to the Queensland Parliamentary Committee on the Crime and Misconduct Commission.

Anne Barwick, Assistant Ombudsman (Children and Young People), gave a presentation to the NSW Volunteers Conference on 'Child protection legislation in NSW'.

Jo Flanagan, Senior investigation Officer, and Daryn Nickols, Acting Investigation Officer, addressed a police complaints investigation training day at Parkes about our role.

### June 2002

Bruce Barbour spoke to the Drummoyne Rotary Club on the work of the Ombudsman.

Anne Barwick gave a presentation to the Aboriginal Child and Family Association on agencies' reporting obligations.

Julia McKosker and Sue Phelan, Senior Investigation Officer, conducted a briefing for Juvenile Justice Centre Managers on their reporting responsibilities and the role of our office.

# Corporate support

This section gives details of our work in the corporate support area. The corporate support team includes personnel, financial services, public relations and publications, information and records management, information technology (IT) and library services.

Our corporate support team aims to:

- provide efficient and effective support to the core activities of the office
- make the most effective use of resources
- maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment
- increase parliamentary and community awareness of the role, function and services offered by the Ombudsman
- maximise the use of information technology and introduce appropriate technology to increase productivity and accessibility.

This year our corporate support team faced many challenges. The increase in staff at the office generated additional work which had a significant impact on our team.

We continued our program to use technology to improve our performance this year. Our accounts section upgraded their accounting software, improving the processing of accounts work. They also began a project to pay creditors electronically which should be operational next year.

This year we employed two new corporate support staff. One was an analyst/programmer to enable us to develop our computerised business systems and improve our core business efficiency and effectiveness. We also created a new position of information manager to help implement our enterprise document management system (EDMS) and provide advice and assistance for our state records compliance program. This position is proving to be a valuable resource for our core business units — providing a framework for improving how we manage our information collection.



The 2002–2003 reporting year will also be a busy one. The corporate support team will have a critical role to play in the successful merger of the Community Services Commission into our office. Our main areas of responsibility will include the physical relocation of CSC staff to our office, the merger of personnel, accounting and IT systems and the integration of databases, publications and access and awareness programs.

*Members of our corporate support team: (l-r) Allison Lawrence, Jayson Leahy, Lisa Du, Kate Doherty.*

## Personnel

Personnel services include recruitment, leave administration, payroll and occupational health and safety (OH&S).

Our key achievements for 2001–2002 include:

- a major review of our occupational health and safety program including the replacement of outdated workstations throughout the office
- improved efficiency and savings by using the government's jobs.nsw internet site to advertise vacancies, provide information electronically and receive job applications.

Next year we will finalise the review of our induction program and our OH&S program. We are also planning to review our training program and develop resources and training packages for supervisors.

### Staff

As at 30 June 2002, we had a full-time equivalent staff number of 122.5 (see fig 8 in 'Where we are now: a snapshot'). Staff numbers are expressed in terms of full-time equivalent, so the actual number of part-time staff is not reflected in the table. Staff on leave without pay are not included in this figure.

### Chief and Senior Executive Service

Our office has five senior positions — the Ombudsman, Deputy Ombudsman and three Assistant Ombudsmen. A woman currently holds

one of those positions. There was no change to the number of senior positions during 2001–2002. Details of the levels of senior positions are in fig 50.

### Wage movements

Public servants were awarded a 3% pay increase effective 4 January 2002.

### Executive remuneration

In its annual determination, the Statutory and Other Officers Remuneration Tribunal awarded increases to our statutory officers. The Deputy Ombudsman and each of our Assistant Ombudsmen were awarded a 3% increase effective 1 October 2001.

The Tribunal reviewed the Ombudsman's remuneration separately. It had not been reviewed for over 10 years although over that time there had been significant changes to the jurisdiction, functions, responsibilities and accountability structures of our office. Complaint levels have also increased in that time. The Tribunal increased the Ombudsman's salary by 22.06% effective 1 October 2001.

Fig 51 details the Ombudsman's remuneration, which includes salary, superannuation and annual leave loading.

### The Ombudsman's performance statement

As the Ombudsman is not responsible to an individual Minister, there is no formal one-on-one review of his performance. However, the Ombudsman regularly appears before the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission to answer questions about the performance of our office.

### Personnel policies

The Public Sector Management Office (PSMO), a division of the Premier's Department, negotiates the working conditions and entitlements of public sector staff. No new policies were issued this year.

The *Public Sector Management and Employment Act 2002* was passed by Parliament in June 2002. This Act, which replaces the *Public Sector Management Act 1988*, reforms many employment practice and we will be implementing relevant procedural changes during 2002–2003.

No new internal policies were negotiated through the Joint Consultative Committee (JCC), an internal committee comprising staff and management representatives. However, we have done substantial work on developing a manual for supervisors. The manual outlines responsibilities such as staff induction, managing staff and performance, resolving grievances,

Figure 50:  
Chief and Senior Executive Service

	2001	2002
SES Level 4	1	1
SES Level 2	3	3
CEO*	1	1
<b>Total</b>	<b>5</b>	<b>5</b>

\* CEO position listed under section 11A of the Statutory and Other Offices Remuneration Act 1975, not included in Schedule 3A of the Public Sector Management Act 1988

Figure 51:  
Executive Remuneration

Position	Ombudsman
Occupant	Bruce Barbour
Total remuneration package	\$238,712
\$ Value of remuneration paid as a performance payment	Nil
Criteria used for determining total performance payment	NA

managing attendance/absences, and maintaining a healthy and safe workplace. Supervisors have reviewed the draft and feedback is currently being incorporated into the final version to be issued shortly.

We have almost completed an induction manual for staff that provides extensive information about the Ombudsman's roles and functions, our policies, administrative procedures and employment conditions. The induction manual will complement our structured induction program for all new staff.

### Training and development

This year we developed our own internal investigations training program covering topics such as the Ombudsman's powers, investigation planning and risk management, the gathering of evidence and interviewing techniques. We have had interest from similar organisations interstate and overseas about purchasing this training package.

During 2001–2002, we spent \$91,000 or 0.8% of our total expenses on external training. Staff attended a variety of training programs including using case management systems, records management, disability awareness, Aboriginal cultural awareness and staff selection techniques. A comprehensive external training program was implemented for IT staff to strengthen our IT skills to accreditation standards, particularly in security specific technologies.

An important aspect of our staff training and development is the provision of study assistance. During 2001–2002, 12 members of staff used study leave provisions to undertake tertiary education courses.

### Occupational health and safety

This year we began a comprehensive review of our occupational health and safety program including revising our OH&S and first aid policies and reviewing our evacuation procedures. We also surveyed staff about their preferred consultative arrangements, as we are required to do under the *Occupational Health and Safety Act 2000*. The survey results are being collated.

We conducted two types of workplace inspections during 2001–2002. The first was an ergonomic assessment of workstations, computer placement and lighting conducted by an external OH&S specialist and the second was a general audit of hazards conducted by staff that have been trained in safety audits. We completed a major upgrade to our workstations. The new workstations are ergonomically sound, make better use of the available space and give staff more privacy.

Training is an important aspect of our OH&S program. During the year, our fire wardens attended training in emergency evacuation procedures. We are currently planning training for supervisors in hazard identification and safety audits. We also purchased first aid kits for our vehicles.

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

- hepatitis vaccinations — staff who visit correctional centres are vaccinated against Hepatitis A and B.
- eye examinations — our staff spend a lot of time using computers and this can lead to eyestrain. We organise an eye examination for all staff every two years so that any potential problems can be detected.
- flu shots — like many organisations, we have previously experienced high absenteeism during the flu season so for a second year running we organised flu shots for staff. About half of the staff participated in the program.
- employee assistance program — we provide staff with a confidential free counselling service through industrial program services. This program is available to staff, their partners and family and helps to solve both work and personal problems that, if not dealt with, may impact on job performance.

### Workers compensation

We participate in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. We have strategies to minimise our workers compensation claims including workplace inspections and the provision of a counselling service. Our claims have been generally limited to one or two per year.

The performance indicator 'Workers compensation claims' shows a comparative statistical analysis of workers compensation claims and compares our performance with the overall performance of all



Fire drill

participants in the NSW Treasury Managed Fund. This analysis does not include the period between March and June 2002, but we received no claims during that quarter.

### Equal employment opportunity

We are committed to the principles of EEO and have a program that includes policies on performance management, grievance handling, harassment-free workplace and reasonable adjustment.

#### Performance indicator

##### Workers compensation claims

	2000–2001		2001–2002	
	Fund*	Omb	Fund*	Omb
No. of claims	10,080	0	10,471	2
No. of staff	173,276	95	180,851	115
No. of claims per staff	0.058	0	0.058	0.017
Average cost per claim	\$4,472	0	\$4,791	\$1,342
Average cost per staff	\$260	0	\$277	\$23

\* NSW Treasury Fund's comparative statistical analysis as at 31 March 2001 and 31 March 2002 respectively

##### Interpretation

This performance indicator compares our performance with the overall performance of all participants in the NSW Treasury Managed Fund. As can be seen, we made two workers compensation claims in the reporting period, up from no claims the year before. We have a number of strategies to minimise accidents in the workplace, which are detailed in the occupational health and safety section of this report.

#### Performance indicator

##### Employment benchmarks

Representation	Public sector		Ombudsman's office	
	Govt target	00/01	00/01	01/02
Women	50%	56%	66%	67%
ATSI	2%	1.4%	3%	3%
ESL	19%	14%	15%	16%
Dis	12%	7%	7%	7%
Dis Adj	7%	1.9%	2.3%	1.5%

##### Interpretation

We exceed the government benchmark for employment of women and Aboriginal and Torres Strait Islander people. We are consistent with public sector employment patterns for people with a disability and are slightly higher for people whose first language is not English, but we fall behind the Government benchmark in both these categories.

The representation of women and people whose first language is not English has improved since the last reporting period. There has been a decrease in the representation of people with a disability requiring a work related adjustment. The representation of staff who are Aboriginal or Torres Strait Islanders or who have a disability did not change.

We need to focus on improving strategies for the employment of people with a disability.

ATSI = Aboriginal and Torres Strait Islander people  
 ESL = People whose language first spoken as a child was not English  
 Dis = People with a disability  
 Dis Adj = People with a disability requiring work-related adjustment

### A sound information base

We achieved a 100% response rate from staff to our EEO survey giving us a sound information base about the composition of our workforce.

### Ensuring staff views are heard

We provide mechanisms for staff to contribute their views about the planning and management of the office. Members of staff are involved in business planning and raise issues through the JCC.

### EEO outcomes included in agency planning

EEO accountabilities are included in business plans, performance agreements and work plans.

### Fair policies and procedures

We continued to promote flexible work practices including part-time work, working from home and use of family and community service leave.

### Needs-based program for EEO groups

We provided training and development opportunities for EEO groups.

### Managers and staff informed, trained and accountable for EEO

Our induction program for new staff includes a section on EEO and our performance agreements and work plans include EEO accountabilities. We are currently developing a supervisor's manual that details all supervisory responsibilities including information on sound EEO practices.

### A workplace culture displaying fair practices and behaviours

We have consultative arrangements in place, a harassment-free workplace and grievance policies.

### Improved employment access and participation by EEO groups

We offer traineeships to improve the employment access and participation of young people.

### A diverse and skilled workforce

Members of our staff come from a variety of backgrounds and experience. Figs 52 and 53 show the gender and EEO target groups of staff by salary level and employment basis, that is, permanent, temporary, full-time or part-time.

The government has established targets for the employment of people from various EEO categories. Measurement against these targets is a good indication of the success or otherwise of our EEO program. The performance indicator 'Employment benchmarks' compares our performance to the rest of the public sector and to government targets. In 2002–2003 we plan to review all aspects of our EEO program.

## Industrial relations

### **Joint Consultative Committee**

The JCC is made up of representatives of staff, management and the Public Service Association. They meet to discuss issues of mutual concern including policy development.

During the year, the JCC discussed a range of matters including the negotiated public sector pay award that provides a 16% pay increase to staff over three and a half years (discussed in 'Where we are now: a snapshot').

### **Part-time work**

The office promotes part-time work. On 30 June 2002, 23 members of staff or 17% were employed on a part-time basis.

### **Grievance procedure**

We have a grievance procedure designed in accordance with the provisions of the *Industrial Relations Act 1996*. No formal grievances were lodged during 2001–2002.

### **Trainee/apprentices**

We currently employ no trainees or apprentices.

**Figure 52:**  
Percentage of total staff by level

Level	Total staff No.	Subgroup as percentage of total staff at each level			Subgroup as estimated percentage of total staff at each level				
		Resp *	Men	Women	ATSI *	Ethnic *	ESL *	Dis *	Dis Adj *
< \$27,606	1	100%		100%		100%			
\$27,606 - \$40,535	14	100%	21%	79%		71%	57%	21%	7%
\$40,536 - \$51,293	24	100%	29%	71%	4.2%	21%	17%	13%	
\$51,294 - \$66,332	68	100%	29%	71%	2.9%	18%	10%	1%	1.5%
> \$66,332 (non SES)	24	100%	50%	50%	4.2%	13%	8%	8%	
SES	4	100%	75%	25%				25%	
<b>Total</b>	<b>135</b>	<b>100%</b>	<b>33%</b>	<b>67%</b>	<b>3.0%</b>	<b>23%</b>	<b>16%</b>	<b>7%</b>	<b>1.5%</b>
Estimated subgroup totals		135	45	90	4	31	21	10	2

**Figure 53:**  
Percentage of total staff by employment basis

Employment Basis	Total staff No.	Subgroup as percentage of total staff in each category			Subgroup as estimated percentage of total staff in each employment category				
		Resp *	Men	Women	ATSI *	Ethnic *	ESL *	Dis *	Dis Adj *
Permanent Full-time	86	100%	37%	63%	3.5%	26%	19%	6%	1.2%
Permanent Part-time	13	100%		100%		15%	15%		
Temporary Full-time	21	100%	33%	67%	4.8%	24%	10%	14%	4.8%
Temporary Part-time	10	100%	20%	80%		20%	10%		
Contract - SES	4	100%	75%	25%				25%	
Contract - non SES	1	100%	100%					100%	
<b>Total</b>	<b>135</b>	<b>100%</b>	<b>33%</b>	<b>67%</b>	<b>3.0%</b>	<b>23%</b>	<b>16%</b>	<b>7%</b>	<b>1.5%</b>
Estimated subgroup totals		135	45	90	4	31	21	10	2

\* Resp = Respondents

\* ATSI = Aboriginal and Torres Strait Islander people

\* Ethnic = People from racial, ethnic, ethno-religious minority groups

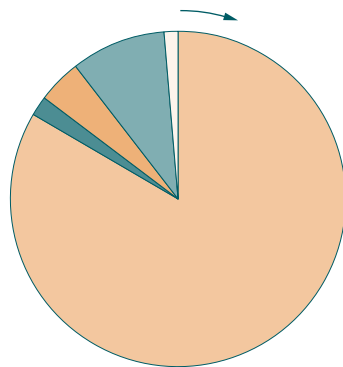
\* ESL = People whose language first spoken as a child was not English

\* Dis = People with a disability

\* Dis Adj = People with a disability requiring work-related adjustment



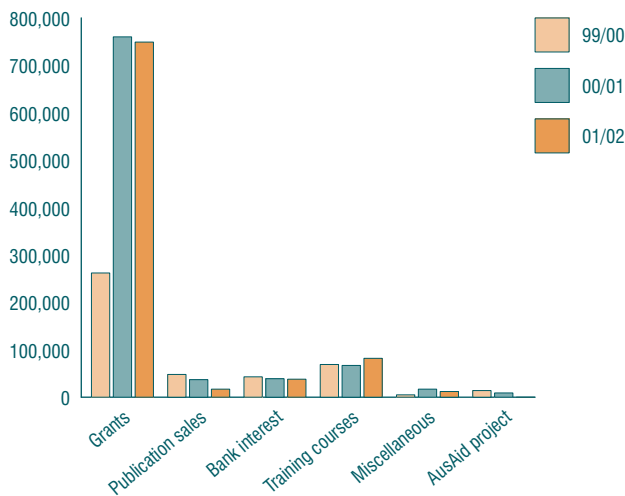
**Figure 54:**  
Revenue from other sources



- Grants
- Publication sales
- Bank interest
- Training courses
- Miscellaneous

	\$
Grants	749,000
Publication sales	17,000
Bank interest	38,000
Training courses	82,000
Miscellaneous	12,000
<b>Total</b>	<b>\$898,000</b>

**Figure 55:**  
Revenue from other sources—three year comparison



## Financial services

Financial services include budgeting, management reporting, accounts payable and purchasing.

Our key achievements for 2001–2002 include:

- upgrading our accounting systems
- reviewing and improving accounts payable processes
- an unqualified audit report.

Next year we will need to review our accounting processes and policies as part of the process of merging the staff of the Community Services Commission. We will also be reviewing our purchasing practices in response to the government’s procurement policies and implementing an electronic payment system.

## Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. The government also makes provision for our superannuation and long service leave liabilities. There is a breakdown of revenue generated, including capital funding and acceptance of employee entitlements in fig 6 in ‘Where we are now: a snapshot’.

Our appropriation was increased by \$285,000 during the year. We were granted extra funding for additional accommodation, our security review and for our new legislative review functions.

We generated additional revenue of \$149,000 through the sale of publications, bank interest and conducting training courses for other public sector agencies. See figs 54 and 55.

The PCCM project continued during the year, funded by a grant from the Premier’s Department. In 2001–2002, we received \$749,000 to continue implementing this project. Funds will be provided in 2002–2003 to complete the project.

**Expenses**

Most of our revenue is spent on employee-related expenses. These include salaries, superannuation entitlements, long service leave and payroll tax. Last year we spent more than \$8.81 million on employee-related expenses.

The day to day running of the office including rent, postage, telephone, stores, training, printing and travel costs over \$2.28 million. Depreciation of equipment, furniture and fittings and other office equipment was \$267,000. See fig 7 in ‘Where we are now: a snapshot’ and fig 56.

**Consultants**

During the year we used one consultant to provide expert advice and assistance. ISG Consulting was engaged to review our information security protocols as part of our AS7799 Information Security accreditation program. The total cost of this consultant was \$22,454.

There was no individual consultancy equal to, or in excess of, \$30,000.

**Stores expenditure**

Fig 57 shows our stores expenditure during the year. Stores include asset purchases such as office and computer equipment, furniture and fixtures and consumables such as stationery. Because our usual expenditure is small, the purchase of major items can cause fluctuations in the level of expenditure.



(l-r) Stan Waciega, systems/web support, and John McKenzie, help desk officer, in our server room.

A significant proportion of our stores expenditure in 2001–2002 was related to asset purchases for the PCCM system. In June 2002, we purchased a Storage Area Network (SAN) costing over \$200,000. We also upgraded our security infrastructure and expanded the number of user licences for PCCM business systems.

Other major purchases included replacing obsolete workstations — we received \$168,000 for this purpose. As we were unsure of the outcome of the merger with the Community Services Commission and whether we might need to relocate, we held off replacing the workstations until late in the reporting year.

**Funds granted to non-government community organisations**

We did not grant any funds to any non-government community organisations.

**Controlled entities**

We have no controlled entities.

**Credit card use**

We do not have any corporate credit cards.

**Assets**

**Major assets**

Our major assets are listed in fig 58.

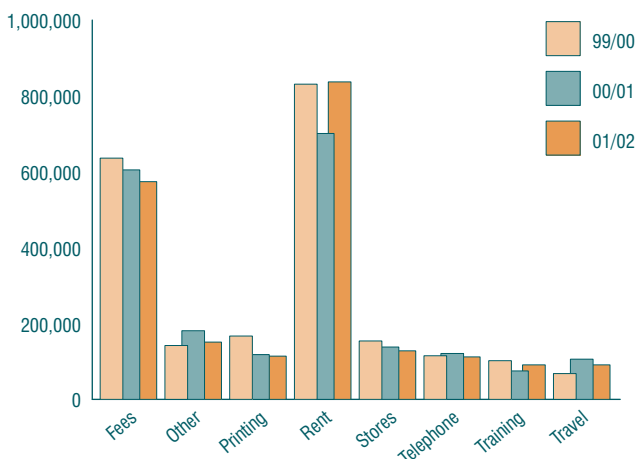
**Land disposal**

We did not dispose of any land or property.

**Major works in progress**

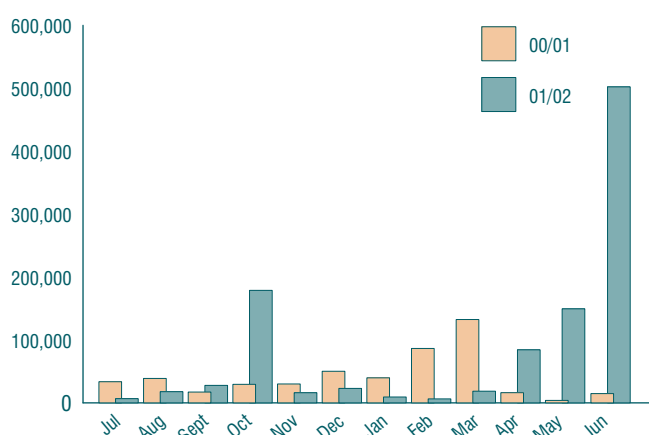
We had expected to complete the PCCM project this year, but experienced some delays. Significant work has been done on the security aspects of the project. IT staff undertook intensive training to operate the security systems with further training still planned.

Figure 56: Expenses – three year comparison



The overall project budget is significant. The Ombudsman's component is \$1.7 million capital funding, \$143,000 recurrent funding in 2000–2001 and \$380,000 ongoing funding from 2001–2002. These funds cover hardware and software acquisition, development, data migration from legacy systems, security infrastructure, maintenance and other ongoing recurrent costs.

**Figure 57:**  
Stores expenditure – two year comparison



**Figure 58:**  
Major assets

Description	00/01	Acquisition	Disposal	01/02
File servers (mini-computer)	11	10		21
Hub	11	2		13
Personal computers	22			22
Printers	12			12
Photocopiers	4		1	3
Televisions and video equipment	8	2		10

**Figure 59:**  
Aged analysis of accounts on hand at the end of each quarter

	September 2001	December 2001	March 2002	June 2002
Current (ie within due date)	\$37,308	\$54,320	\$51,982	0
Less than 30 days overdue	\$8,497	0	0	0
Between 30 days and 60 days overdue	0	\$1,094	0	0
Between 60 days and 90 days overdue	\$1,700	0	0	0
More than 90 days overdue	0	0	0	0
Total accounts on hand	\$47,505	\$55,414	\$51,982	0

### Minor works

A number of minor works were completed during the year. Modifications to the fitout were undertaken including installing new workstations and replacing very old workstations that were an occupational health and safety hazard.

Other minor works included the purchase of IT-related equipment, a video projector and the upgrade of accounting software to bring it up to its operating platform compatible with the platform being used for all other business applications.

### Liabilities

We have two sources of liabilities — creditors who are owed money for goods and services they provide and staff who are owed accrued leave entitlements.

There was an increase in our liabilities as at 30 June 2002. We received \$200,000 from the Minister for Juvenile Justice to cover future expenses for our three-year review of section 19 of the *Children (Criminal Proceedings) Act 1987*. Any unspent portion of this funding is treated as a liability.

Accounts payable decreased by \$13,000. The amount owed to staff, which includes unpaid salaries and recreation leave, increased by \$99,000.

### Accounts payable policy

We have an accounts payable policy that states that all accounts must be paid within the agreed terms or within 30 days of receipt of invoice if terms are not specified. We notify suppliers of the policy in writing when we place orders with them for goods and services.

For accounts on hand as at 30 June 2002, please see fig 59.

We regularly review our payment policy and aim to pay all accounts within the vendor credit terms 98% of the time. During 2001–2002 we paid over 97% of our accounts on time which is an

improvement from the previous year. The major problem we encounter with paying accounts on time is that with short timeframes, mostly within seven days, the account is received on or about the date that payment is due. We also questioned a number of invoices and disputed amounts with vendors. Payment was delayed until these disputes were resolved.

We have not had to pay any penalty interest on outstanding accounts.

**Value of leave**

The value of recreation (annual) leave and extended (long service) leave owed for all staff for the 2000–2001 and 2001–2002 financial years is shown in fig 60.

**Figure 60:**  
Value of recreation and long service leave

	00/01	01/02
Recreation leave	\$470,940	\$541,310
Long service (extended) leave	\$897,813	\$1,116,152

**Performance indicator**

**Accounts paid on time**

Quarter	Target	% paid on time	Amount paid on time	Total amount paid
September 2001	98%	94.50%	\$661,830	\$700,325
December 2001	98%	96.11%	\$850,067	\$884,446
March 2002	98%	98.54%	\$734,515	\$745,429
June 2002	98%	97.93%	\$2,001,207	\$2,043,601
Total	98%	97.12%	\$4,247,619	\$4,373,801

**Interpretation**

All public sector agencies have an obligation to pay accounts promptly. We aim to pay all accounts within the vendors credit terms at least 98% of the time. We did not meet our target, paying only 97.12% within the terms set by the vendor. We are finding that there is an increasing number of invoices reaching the office after the expected date of payment. In these circumstances, it is impossible to pay within the terms specified resulting in payment targets not being met. To a certain extent, the results are outside our control.

**Performance indicator**

**Insurance claims for motor vehicle accidents**

	2000–2001		2001–2002	
	Fund*	Omb	Fund*	Omb
No. of claims	2,273	0	2,650	2
No. of vehicles	20,601	3	20,521	3
No. of claims per vehicle	0.1103	0	0.129	0.667
Average cost per claim	\$2,774	\$0	\$3,018	\$1,040
Average cost per staff	\$306	\$0	\$390	\$693

**Interpretation**

This performance indicator compares our performance with the overall performance of all participants in the NSW Treasury Managed Fund. We had two claims during the year and although the average cost of these claims was below the fund average, the average cost per staff member was higher. The number of claims is unusual — we usually do not have any claims at all.

**Risk management**

The NSW Treasury Managed Fund encourages agencies to improve their performance in a range of areas including prevention of claims, education and the adoption of risk management principles. Our goal is to improve our performance in this area continually, with specific focus on overall risk management policy, OH&S and fleet management.

Further details on our risk management and internal control program relating to our core functions may be found in 'How we operate'.

**Workers compensation**

To limit the number of workers compensation claims, we actively promoted a safe work environment through workplace inspections and providing a counselling service.

**Fleet management**

We have a small motor vehicle fleet of three vehicles. The performance indicator 'Insurance claims for motor vehicle accidents' provides data on the number of claims made to our insurer, the NSW Treasury Managed Fund, as a result of motor vehicle accidents. The fund average represents all public sector claims.

**Financial based internal audit**

We use an accounting firm to undertake the financial based internal audit function. This internal audit consists of:

- an audit of internal controls within the accounting, payroll and leave functions
- a review of our statutory obligations such as the calculation and treatment of payroll tax and fringe benefits tax
- a review of the financial statements before submission to the Auditor-General.

We have also been addressing a range of risk management issues including internal control, corruption prevention, fraud control, office security, disaster recovery and preventative maintenance of equipment. We are close to finalising a new security policy and a business continuity plan.

## Public relations

Our public relations unit is responsible for publications, media liaison and coordinating our access and awareness program.

Our key achievements for 2001–2002 include:

- promoting and implementing our new corporate image in our printed publications and office documents
- conducting successful media campaigns for the release of our 2000–2001 annual report and three special reports to Parliament
- winning a silver medal for our 2000–2001 annual report in the Australasian Annual Report Awards
- producing three special reports to Parliament (discussed earlier in 'Where we are now: a snapshot')
- publishing a discussion paper on 'The Forensic DNA Sampling of Serious Indictable Offenders'
- publishing the first edition of our Enforcement Guidelines for Councils and the fourth edition of our 'Protected Disclosure Guidelines'
- dealing with over 120 inquiries from both print and electronic media.

Next year we will be focusing on promoting an integrated office after the merger of the Community Services Commission.

For more details about our access and awareness activities, please see 'Access and awareness'.

## Information and records management

Our information and records management program has helped us better manage our information and records. Our records staff are also responsible for file creation, maintenance, archiving and disposal.

Our key achievements for 2001–2002 include:

- developing a corporate records strategy
- undertaking an information inventory of all our physical and electronic information assets, including business information systems, records series, the library collection and the computer directories
- implementing a corporate keyword thesaurus
- creating an information management steering committee
- developing and implementing best practice business rules

- archiving over 1,000 boxes of records containing over 10,000 files
- continuing a review of our records disposal authorities.

Next year we will continue to develop and implement the EDMS, develop a series of policies and procedures, finalise our records disposal authorities and continue our archiving program.

### Records management program

This year we were audited by the Audit Office (on behalf of State Records) to see how we were progressing with our *State Records Act 2000* compliance program. The audit found that we have made significant progress but there are still areas that need work to ensure full compliance with the requirements of the Act. We will be concentrating on these areas during the next year.

### Enterprise Document Management System

As discussed in 'Where we are now: a snapshot', this year we have made a lot of progress on developing our enterprise document management system (EDMS).

We have made a significant investment in time and effort to prepare for the implementation of the EDMS. We developed detailed functional requirements and quotes were received from vendors on the government records and information management systems contract. The preferred vendor was selected in May 2002. Work is now progressing and next year we will develop a pilot system, train all staff and rollout the new system to the whole office. A comprehensive change management program is also being conducted.

A number of sub-projects have been conducted by the office in preparation for the system. This included workflow analysis, review of all policies and procedures, establishment of a corporate keyword thesaurus and the development of information management protocols.

### Corporate keyword thesaurus

We developed a corporate thesaurus by combining the administrative terms from the Keyword AAA thesaurus (developed by State Records for use in NSW public sector agencies) with the functional terms we use to describe our core business activities. This means we will have a controlled and consistent vocabulary for naming our documents.

The thesaurus will be officially launched when our EDMS is rolled out in early 2003.

## Archiving

We regularly send completed files to an offsite storage facility as we don't have the space to keep these files at our premises. During 2001–02 we sent over 10,000 files to offsite storage or to State Records as a permanent record of our work.

## Information technology

IT includes help desk/user support, network administration, information and computer systems security, and information and data analysis.

Our key achievements for 2001–2002 include:

- formalising help desk services
- finalising plans for the major upgrade of core system file servers and desktop computers, which will be implemented in 2002–2003
- purchasing a storage area network, which will be commissioned in 2002–2003
- developing and strengthening security systems and security policy
- preparing for the audit of information security systems and practices for compliance with Australian security standard AS7799.

Next year we will implement new core system file servers and a storage area network (SAN) to consolidate network storage and backup facilities. The SAN will allow us to address the growth in data storage in the next three to five years, particularly after the implementation of the EDMS in late 2002. We will also be providing IT infrastructure to incorporate the information storage and other IT business systems currently being used by the Community Services Commission. We will also develop a strategy to integrate the two offices' systems over time.

Our IT core network systems were upgraded during the year and we developed a consolidation strategy for storage and backup which will be implemented in 2002–2003. IT continued to work closely with our police team to develop the police complaints case management (PCCM) system.

This year we reviewed our information security policies and procedures because of the requirements of the PCCM project and our need to access police information. We looked at physical security arrangements as well as network security and the security of our information holdings. We aim to receive accreditation under the Australian standard for information security AS7799 and are well on track to being one of the first NSW agencies to achieve this. The upgrades are nearly completed.

## Police complaints case management system

In its interim report, the Royal Commission into the NSW Police (Royal Commission) recommended that a new, enhanced and integrated system should replace several systems used by the police to record and manage complaints about police misconduct. The recommendation was to link police and oversight agencies to establish a unified case management system for handling these complaints.

The Premier's Department set up a project on behalf of NSW Police, the Ombudsman and the Police Integrity Commission (PIC) to review existing systems, called the police complaints case management system (PCCM) project. Objectives included reviewing systems operating in the three agencies, determining the requirements for new systems and enhanced processes, and acquiring and developing those systems.

During the year, our IT team has continued their involvement in a number of PCCM-related projects including wide area network security, negotiating a service level agreement, testing and implementing wide area network infrastructure and user testing of the production applications.

### Wide area network security

The aim of this project was to establish a secure data link between our office, the police and the PIC. Because of the sensitivity of the data being accessed and transmitted on the network, security infrastructure was needed to protect each of the agencies from unwanted intrusion into their computer systems.

Our IT team was involved in the design of the wide area network, including its security components. A fire suppression system was installed in our computer facility and we acquired a range of security hardware.

A security risk assessment was done in 2001 and we started work on a business continuity plan and disaster recovery plan that will reflect the changed operating environment post-PCCM. This work includes an information security training program for staff and training for IT staff to improve security specific skills.



Most of our IT team: (l-r) Bao Nguyen, Geoff Pearce, Stan Waciega, David Begg.

**Electronic service delivery**

We have implemented an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically by Dec 2001.

Our program included two projects where cross-agency service delivery is planned. The PCCM project was implemented in 2001 followed by a review of services delivered via the web or other electronic media. Another project, the proposed 'customer counter', was postponed and will be reviewed after the merger with the Community Services Commission.

**General management****Research and development**

We were involved in a number of research projects in 2001–2002, as part of our legislative review function. See 'Legislative reviews'.

**Overseas travel**

Greg Andrews, the Assistant Ombudsman (General), travelled to Papua New Guinea on 4–8 February 2002 as part of the technical monitoring and review group for the AusAid PNG Ombudsman Commission institutional strengthening project. This project helps the PNG Ombudsman Commission to improve its management and professional skills and systems. For more details, see 'How we operate'.

**Code of conduct**

Our code of conduct provides practical guidance to staff in the performance of their duties and in handling situations that may present ethical conflicts. It sets out basic principles that members of staff are expected to follow and prescribes specific conduct in areas central to the exercise of the Ombudsman's functions and powers. No changes were made to our code of conduct during 2001–2002.

**Privacy and Personal Information Protection Act**

Our office has established a privacy management plan as required by the *Privacy and Personal Information Protection Act 1998*. This year we did one review under Part 5 of that Act.

**Environmental issues**

All organisations, including our office, have an impact on the environment. This impact includes generating emissions and waste and using resources such as water and energy. To monitor and ultimately reduce our impact, we have put in place a number of environmental programs including an energy management program and a waste reduction and purchasing strategic plan.

The owners of our building have also been proactive in improving the environmental performance of the building and have achieved significant results in water conservation, energy savings and reduction of CO<sub>2</sub> emissions.

**Energy management**

In 1998, the Premier announced the government's energy management policy. This policy committed each agency to sustainable energy use, lower greenhouse gas emissions, improved environmental outcomes and better financial performance.

The policy outlined specific agency responsibilities including:

- establishing performance goals and reporting on outcomes in the annual report
- reporting energy consumption to the Department of Energy at the end of each year
- adopting best practice in procurement of new assets.

**Developing our goals**

We reviewed our activities and identified that the energy we use is mainly electricity and fuel in our cars. Our energy management targets are to:

- reduce the total energy consumption, where cost effective and feasible, by 15% of the 1995 level by 2001 and 25% of the 1995 level by 2005
- include 6% green power in electricity use when available under contract
- purchase (now lease) personal computers which comply with SEDA's energy star requirement
- include energy efficiency as an additional selection criteria for the purchase of any equipment
- include an appropriate energy management/environmental module in employee induction
- implement an employee education program.

**Benchmarking**

The government's policy requires each agency to establish benchmarks. The baseline year is 1995–1996 and future reporting will be compared to this baseline.

**Petrol consumption**

During 2001–2002 there was an increase in the litres of petrol we used, the litres per person, and the gigajoules per person however the cost per person was lower.

**Electricity consumption**

Our electricity consumption has increased from 6.9 gigajoules per person in 1995–1996 (the baseline year) to 7.64 gigajoules in 2001–2002. Our target was to reduce our consumption by 15%.

A number of factors affected our ability to reduce our energy consumption. Our staff level has increased by over 75% since 1995–1996. We have

also installed a 24-hour air conditioning system in our computer room to regulate the temperature and protect our IT investment.

**Future direction**

The focus of our energy management program for the coming year will be an awareness program for staff. All individual office lighting was labelled to remind staff to turn off their lights, but additional awareness strategies will be required to reduce costs.

Energy Australia audited our premises and recommended that we look at replacing all of the lighting. We will be considering this as part of our building works.

**Performance indicator**

**Petrol consumption**

	95/96	99/00	00/01	01/02
No. of litres used	3269	4154	3042	4276
Cost	4264	3303	3694	3343
Litres converted to GJ*	111.8	142.06	104	146.18
Staff no. at 30 June	69.7	93.63	117.2	122.5
Litres per person	46.9	44.37	25.96	34.90
Cost per person	61.18	35.28	31.52	27.29
GJ per person	1.6	1.52	0.89	1.19

\* GJ = gigajoules

**Interpretation**

Our office is committed to reducing total energy consumption where cost effective and feasible. Under the Government’s Energy Management Policy, we are required to establish benchmarks and report on the progress of meeting the government’s environmental outcomes. Electricity and petrol are the major types of energy used.

This table shows petrol usage for the last three financial years and for the baseline year of 1995–1996. We have significantly reduced our petrol consumption in terms of litres used per person, cost per person and gigajoules per person. However the number of litres used has significantly increased from the last reporting year.

**Other environmental programs**

**Waste reduction**

We have a waste reduction and purchasing strategic plan which was submitted to the Environmental Protection Authority (EPA) for assessment in June 1998. The focus of our plan has been on waste reduction and avoidance and increasing the purchase of recycled content products.

**Reducing generation of waste**

To reduce the amount of paper and toner we use, we have promoted email as the preferred internal communication tool. We also provided duplex trays for all the printers and instructed staff on double-sided copying. Out of 31 toner cartridges purchased, 16 were recycled. The recycled cartridges were of a very poor quality and caused problems to our equipment — we are investigating this further with the manufacturer. All printer toner cartridges were returned for reuse.

**Resource recovery**

We recycled approximately 1.49 tonnes of paper through the office shredder bins. We also participated in the buildings paper and glass recycling program. This program will be extended in 2002 to include aluminium and P.E.T. plastic.

**The use of recycled material**

We use 100% recycled content copy paper and the office letterhead and envelopes are printed on recycled content paper. Approximately 80% of our printed material is printed on either recycled, acid free or chlorine free paper. We are currently reviewing our purchasing practices to make sure that we buy recycled content product whenever possible.

**Water usage reduction**

The building owners have implemented a water saving strategy throughout the building.

**Performance indicator**

**Energy consumption**

	95/96	99/00*	00/01	01/02
Number of kW used	133,630	–	229,653	259,938
Cost	16,254	–	22,782	27,070
kW* converted to GJ*	481.07	–	827	935.90
Staff no. at 30 June	69.7	–	117.2	122.5
kW per person	1917.22	–	1959.49	2121.94
Cost per person	233.20	–	194.39	220.97
kW per person	6.90	–	7.06	7.64

\* GJ = gigajoules

\* kW = kilowatts

\* We cannot provide accurate details of our electricity consumption for this year as we were on a common meter with other tenants in our building.

**Interpretation**

Our office is committed to reducing total energy consumption where cost effective and feasible. Under the government’s Energy Management Policy, we are required to establish benchmarks and report on the progress of meeting the government’s environmental outcomes. Electricity and petrol are the major types of energy used.

This table shows electricity use for the last three financial years and for the baseline year of 1995–1996. We have increased our electricity consumption however this can be explained by the increase of staff and the installation of a 24-hour air conditioning system in our computer room. We also secured an additional floor in May 2002, which would explain the increase in electricity usage.





# Financial statements



GPO BOX 12  
SYDNEY NSW 2001

## INDEPENDENT AUDIT REPORT

### OMBUDSMAN'S OFFICE

#### To Members of the New South Wales Parliament

#### Scope

I have audited the accounts of the Ombudsman's Office for the year ended 30 June 2002. The Ombudsman is responsible for the financial report consisting of the accompanying statement of financial position, statement of financial performance, statement of cash flows, program statement - expenses and revenues and summary of compliance with financial directives, together with the notes thereto, and information contained therein. My responsibility is to express an opinion on the financial report to Members of the New South Wales Parliament and the Ombudsman based on my audit as required by the *Public Finance and Audit Act 1983* (the Act). My responsibility does not extend to an assessment of the assumptions used in formulating budget figures disclosed in the financial report.

My audit has been conducted in accordance with the provisions of the Act and Australian Auditing Standards to provide reasonable assurance whether the financial report is free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.

These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with the requirements of the Act, Accounting Standards and other mandatory professional reporting requirements, in Australia, so as to present a view which is consistent with my understanding of the Office's financial position, the results of its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

#### Audit Opinion

In my opinion, the financial report of the Ombudsman's Office complies with section 45E of the Act and presents fairly, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements, the financial position of the Office as at 30 June 2002 and the results of its operations and its cash flows for the year then ended.

A handwritten signature in black ink, appearing to read 'R J Sendt'.

R J Sendt  
Auditor-General

SYDNEY  
11 September 2002

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**NSW Ombudsman**

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## STATEMENT BY THE OMBUDSMAN

Pursuant to Section 45F of the Public Finance and Audit Act 1983 I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit (General) Regulation 2000 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position and transactions of the Office; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

Bruce Barbour  
Ombudsman

11 September 2002

# Ombudsman's Office

## Statement of Financial Performance

### For the Year Ended 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
<b>Expenses</b>				
Operating Expenses				
Employee related	2(a)	8,817	8,616	7,302
Other operating expenses	2(b)	2,098	1,553	2,045
Maintenance	2(c)	183	185	64
Depreciation and amortisation	2(d)	267	559	233
<b>Total Expenses</b>		<b>11,365</b>	<b>10,913</b>	<b>9,644</b>
Less:				
<b>Retained Revenue</b>				
Sale of goods and services	3(a)	29	63	37
Investment Income	3(b)	38	35	39
Grants and contributions	3(c)	749	759	763
Other revenue	3(d)	82	0	90
<b>Total Retained Revenue</b>		<b>898</b>	<b>857</b>	<b>929</b>
<b>Gain/(Loss) on disposal of non-current assets</b>	4	1	0	0
<b>Net Cost of Services</b>	18	<b>10,466</b>	<b>10,056</b>	<b>8,715</b>
<b>Government Contributions</b>				
Recurrent appropriation	5(a)	9,611	9,326	8,408
Capital appropriation	5(b)	358	358	127
Acceptance by the Crown of employee entitlements and other liabilities	6	916	789	751
<b>Total Government Contributions</b>		<b>10,885</b>	<b>10,473</b>	<b>9,286</b>
<b>SURPLUS FOR THE YEAR</b>		<b>419</b>	<b>417</b>	<b>571</b>
<b>TOTAL REVENUES, EXPENSES AND VALUATION ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY</b>				
		0	0	0
<b>TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH OWNERS AS OWNERS</b>				
	16	<b>419</b>	<b>417</b>	<b>571</b>

The accompanying notes form part of these statements.

# Ombudsman's Office

## Statement of Financial Position

### As at 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash	8	729	697	812
Receivables	9	116	70	100
Other assets	10	192	295	267
<b>Total Current Assets</b>		<b>1,037</b>	<b>1,062</b>	<b>1,179</b>
<b>Non-Current Assets</b>				
Plant and Equipment	11	1,984	1,730	1,172
<b>Total Non-Current Assets</b>		<b>1,984</b>	<b>1,730</b>	<b>1,172</b>
<b>Total Assets</b>		<b>3,021</b>	<b>2,792</b>	<b>2,351</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	95	141	108
Employee entitlements and other provisions	13	894	805	795
Other liabilities	14	112	49	34
<b>Total Current Liabilities</b>		<b>1,101</b>	<b>995</b>	<b>937</b>
<b>Non-Current Liabilities</b>				
Other liabilities	15	337	216	250
<b>Total Non-Current Liabilities</b>		<b>337</b>	<b>216</b>	<b>250</b>
<b>Total Liabilities</b>		<b>1,438</b>	<b>1,211</b>	<b>1,187</b>
<b>Net Assets</b>		<b>1,583</b>	<b>1,581</b>	<b>1,164</b>
<b>EQUITY</b>				
Accumulated funds	16	1,583	1,581	1,164
<b>Total Equity</b>		<b>1,583</b>	<b>1,581</b>	<b>1,164</b>

The accompanying notes form part of these statements.

# Ombudsman's Office

## Statement of Cash Flows

### For the Year Ended 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(8,188)	(8,178)	(6,753)
Other		(2,157)	(1,790)	(2,627)
<b>Total Payments</b>		<b>(10,345)</b>	<b>(9,968)</b>	<b>(9,380)</b>
<b>Receipts</b>				
Sale of goods and services		116	63	55
Interest received		36	27	48
Other		820	789	1,104
<b>Total Receipts</b>		<b>972</b>	<b>879</b>	<b>1,207</b>
<b>Cash Flows from Government</b>				
Recurrent appropriation		9,611	9,326	8,408
Capital appropriation		358	358	127
Cash reimbursements from the Crown		399	407	321
Cash transfers to the Consolidated Fund		0	0	(135)
<b>Net Cash Flows From Government</b>		<b>10,368</b>	<b>10,091</b>	<b>8,721</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	18	<b>995</b>	<b>1,002</b>	<b>548</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Proceeds from sale of Leasehold Improvements, Plant and Equipment and Infrastructure Systems		1	0	1
Purchases of Leasehold Improvements, Plant and Equipment and Infrastructure Systems		(1,079)	(1,117)	(354)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(1,078)</b>	<b>(1,117)</b>	<b>(353)</b>
<b>NET INCREASE/(DECREASE) IN CASH</b>				
Opening cash and cash equivalents		812	812	617
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	8	<b>729</b>	<b>697</b>	<b>812</b>

The accompanying notes form part of these statements.

# Ombudsman's Office

## Program Statement - Expenses and Revenues

### For the Year Ended 30 June 2002

	Program 1*		Program 2*		Program 3*		Not Attributable		Total	
	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000
<b>AGENCY'S EXPENSES AND REVENUES</b>										
<b>Expenses</b>										
Operating Expenses										
Employee related	3,978	3,322	2,630	2,353	2,209	1,627	0	0	8,817	7,302
Other operating expenses	959	861	646	671	493	513	0	0	2,098	2,045
Maintenance	94	30	49	19	40	15	0	0	183	64
Depreciation and amortisation	109	95	88	77	70	61	0	0	267	233
<b>Total Expenses</b>	<b>5,140</b>	<b>4,308</b>	<b>3,413</b>	<b>3,120</b>	<b>2,812</b>	<b>2,216</b>	<b>0</b>	<b>0</b>	<b>11,365</b>	<b>9,644</b>
<b>Retained Revenue</b>										
Sale of goods and services	(7)	(16)	(13)	(13)	(6)	(8)	0	0	(26)	(37)
Investment income	(15)	(17)	(12)	(13)	(10)	(9)	0	0	(37)	(39)
Grants and contributions	(745)	(761)	(2)	(1)	(2)	(1)	0	0	(749)	(763)
Other revenue	(3)	(3)	(82)	(86)	(1)	(1)	0	0	(86)	(90)
<b>Total Retained Revenue</b>	<b>(770)</b>	<b>(797)</b>	<b>(109)</b>	<b>(113)</b>	<b>(19)</b>	<b>(19)</b>	<b>0</b>	<b>0</b>	<b>(898)</b>	<b>(929)</b>
Gain/(loss) on disposal of non-current assets	0	0	0	0	0	0	(1)	0	(1)	0
<b>NET COST OF SERVICES</b>	<b>4,370</b>	<b>3,511</b>	<b>3,304</b>	<b>3,007</b>	<b>2,793</b>	<b>2,197</b>	<b>(1)</b>	<b>0</b>	<b>10,466</b>	<b>8,715</b>
Government contributions							(10,885)	(9,286)	(10,885)	(9,286)
<b>NET EXPENDITURE/REVENUE FOR THE YEAR</b>	<b>4,370</b>	<b>3,511</b>	<b>3,304</b>	<b>3,007</b>	<b>2,793</b>	<b>2,197</b>	<b>(10,886)</b>	<b>(9,286)</b>	<b>(419)</b>	<b>(571)</b>

\* The name and purpose of each program is summarised in Note 7.

\*\* Appropriations are made on an agency basis and not to individual programs. Consequently, government contributions must be included in the 'Not Attributable' column.

The accompanying notes form part of these statements.

# Ombudsman's Office

## Summary of Compliance with Financial Directives

### For the Year Ended 30 June 2002

	2002				2001			
	Rec* \$'000	Exp* \$'000	Cap* \$'000	Exp** \$'000	Rec* \$'000	Exp* \$'000	Cap* \$'000	Exp** \$'000
<b>ORIGINAL BUDGET APPROPRIATION/EXPENDITURE</b>								
• Appropriation Act	9,326	9,326	358	358	7,733	7,728	0	0
• Additional Appropriations	0	0	0	0	0	0	0	0
• s 21A PF&AA – special appropriation	0	0	0	0	0	0	0	0
• s 24 PF&AA – transfers of function between departments	0	0	0	0	0	0	0	0
• s 26 PF&AA – Commonwealth specific purpose payments	0	0	0	0	0	0	0	0
	<b>9,326</b>	<b>9,326</b>	<b>358</b>	<b>358</b>	<b>7,733</b>	<b>7,728</b>	<b>0</b>	<b>0</b>
<b>OTHER APPROPRIATIONS / EXPENDITURE</b>								
• Treasurers Advance	378	285	0	0	680	680	127	127
• s 22 – expenditure for certain works and services	0	0	0	0	0	0	0	0
• Transfers from another agency (s 25 of the Appropriation Act)	0	0	0	0	0	0	0	0
<b>Total Appropriations/Expenditure/Net Claim on Consolidated Fund</b>	<b>9,704</b>	<b>9,611</b>	<b>358</b>	<b>358</b>	<b>8,413</b>	<b>8,408</b>	<b>127</b>	<b>127</b>
<b>Amount drawn down against appropriation</b>		9,611		358		8,408		127
<b>Liability to Consolidated Fund</b>		<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

The Liability to Consolidated Fund represents the difference between the 'Amount Drawdown against Appropriation' and the 'Total Expenditure/Net Claim on Consolidated Fund'.

Rec\* = Recurrent Appropriation

Exp\* = Expenditure/Net Claim on Consolidated Fund

Cap\* = Capital Appropriation

Exp\*\* = Expenditure/Net Claim on Consolidated Fund



# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### (a) Reporting entity

The Ombudsman's Office, as a reporting entity, comprises all the activities of the Office.

The reporting entity is consolidated as part of the NSW Total State Sector and as part of the NSW Public Accounts.

##### (b) Basis of Accounting

The Office's financial statements are a general purpose financial report, which has been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards
- other authoritative pronouncements of the Australian Accounting Standards Board (AASB)
- UIG Consensus Views
- the requirements of the Public Finance and Audit Act and Regulations
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, the legislative provisions have prevailed.

In the absence of a specific Accounting Standard, other authoritative pronouncements of the AASB or UIG Consensus View, the hierarchy of other pronouncements as outlined in AAS 6 "Accounting Policies" is considered.

The financial statements are prepared in accordance with the historical cost convention, rounded to the nearest one thousand dollars and expressed in Australian currency.

The accounting policies adopted are consistent with those of the previous year. Comparative information is reclassified where appropriate to enhance comparability.

##### (c) Revenue Recognition

Revenue is recognised when the Office has control of the good or right to receive, it is probable that the economic benefits will flow to the Office and the amount of revenue can be measured reliably. Additional comments regarding the accounting policies for the recognition of revenue are discussed below.

##### (i) Parliamentary Appropriations and Contributions from Other Bodies

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as revenues when the Office obtains control over the asset comprising the appropriations and contributions. Control over said appropriations and contributions being obtained upon receipt of cash.

An exception to the above is when appropriations remain unspent at year-end. As a result, unspent appropriations are accounted for as liabilities rather than revenue. The Office had no such liability in the 2001–2002 reporting year.

The liability disclosed in Notes 14 & 15 as part of 'other current liabilities' and 'other non-current liabilities' relate to funds provided by the Department of Juvenile Justice for review of s 19 of the Children (Criminal Proceeding) Act and will be extinguished by the end of the 2004–2005 financial year.

##### (ii) Sale of Goods and Services

Revenue from the sale of goods and services comprises revenue from the provision of products or services ie user charges, sale of publications/reports etc. These are recognised as revenue when the Office obtains control of the assets that result from them.

##### (iii) Investment Income

Interest revenue is recognised as it accrues.

##### (d) Employee Entitlements

##### (i) Salaries and Wages, Annual Leave, Sick Leave and On-Costs

Liabilities for salaries and wages, annual leave and vesting sick leave are recognised and measured as the amount unpaid at the reporting date at current pay rates in respect of employees services up to that date.

Unused non-vesting sick leave does not give rise to a liability, as it is not considered probable that sick leave taken in the future will be greater than the entitlements accrued in the future.

The outstanding amounts of payroll tax, workers compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee entitlements to which they relate have been recognised.

##### (ii) Long Service Leave and Superannuation

The Office's liabilities for long service leave and superannuation are assumed by the Crown Entity. The Office accounts for the liability as having been extinguished resulting in the amount assumed being shown as part of the non-monetary revenue item described as "Acceptance by the Crown Entity of Employee Entitlements and Other Liabilities".

Long service leave is measured on a nominal basis. The nominal method is based on the remuneration rates at year-end for all employees with five or more years of service. It is considered that this measurement technique produces results not materially different from the estimate determined by using the present value basis of measurement.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (ie Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (ie State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

##### (e) Insurance

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund manager based on past experience.

# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### (f) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except:

- the amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the acquisition of an asset or as part of an item of expense.
- receivables and payables are stated with the amounts of GST included.

#### (g) Acquisition of Assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

#### (h) Plant and Equipment

Plant and equipment costing \$5000 and above individually are capitalised.

#### (i) Depreciation/Amortisation of Non-Current Physical Assets

Depreciation/amortisation is provided for on a straight line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Office.

Depreciation/Amortisation rates used are:

Computer Equipment	33.33%
Office Equipment	20.00%
Furniture & Fittings	10.00%
Leasehold Improvements	Life of Lease Contract

#### (j) Maintenance and repairs

The costs of maintenance are charged as expenses as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

#### (k) Leased Assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is recognised at its fair value at the inception of the lease. The corresponding liability is established at the same amount. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are charged to the Statement of Financial Performance in the periods in which they are incurred.

Lease incentives received on entering non-cancellable operating leases are recognised as a lease liability. This liability is reduced on a straight-line basis over the lease term.

#### (l) Financial Instruments

Financial instruments give rise to positions that are financial assets or liabilities (or equity instruments) of either the Office or its counterparties. These include cash at bank, receivables and accounts payable. Classes of instruments are recorded at cost. Classes of instruments are recorded at cost and are carried at net fair value.

##### (i) Cash

Cash comprises cash on hand and bank balances within the Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate adjusted for a management fee to Treasury. The average interest rate during the period and the period end interest rate were 3.52% (4.83% 2001–00) and 3.73% (4.00% 2001–00) respectively. The Office does not have an overdraft facility.

##### (ii) Receivables

All trade debtors are recognised as amounts receivable at balance date. Debtor's balances are reviewed on an ongoing basis. A doubtful debts provision is made when collection of the full amount is doubtful and the amount is significant. Bad debts are written off as incurred. The credit risk is the carrying amount and approximates net fair value. Sales of publications are made on 14 day terms. Fees for workshops are paid in advance or in accordance with the Ombudsman's policy on the provision of credit.

##### (iii) Trade Creditors and Accruals

All trade creditors and accruals are recognised as liabilities for goods and services provided to the Office, whether invoiced or accrued. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the following month in which an invoice or statement is received. Treasurer's Direction 219.01 allows for interest to be paid as a result of late payment. No interest was paid during the 2001–2002 year (nil for 2000–2001).

#### (m) Other Assets

Other assets including prepayments are recognised on a cost basis.

#### (n) Payables

These amounts represent liabilities for goods and services provided to the Office and other amounts, including interest. Interest is accrued over the period it becomes due.

#### (o) Budgeted amounts

The budgeted amounts are drawn from the budgets as formulated at the beginning of the financial year and with any adjustments for the effects of additional appropriations, s 21A, s24 and/or s26 of the Public Finance and Audit Act 1983.

The budgeted amounts in the Statement of Financial Performance and the Statement of Cash Flows are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above).

However, in the Statement of Financial Position, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward amounts per the audited financial statements (rather than carried forward estimates).

# NSW Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 2 EXPENSES

	2002 \$'000	2001 \$'000
<b>(a) Employee related expenses comprise the following specific items:</b>		
Salaries and wages (inc. recreation leave)	7,355	6,122
Superannuation	595	488
Long service leave	284	233
Workers compensation insurance	37	32
Payroll tax and fringe benefit tax	509	397
Payroll tax on superannuation	37	30
	<b>8,817</b>	<b>7,302</b>
<b>(b) Other operating expenses</b>		
Auditors remuneration		
– audit or review of the financial reports	18	15
Operating lease rental expenses		
– minimum lease payments	837	701
IT Leasing		
– minimum lease payments	130	110
Insurance	12	9
Consultants	20	34
Fees	406	446
Telephones	112	121
Stores	128	138
Training	91	75
Printing	114	118
Travel	91	106
Books, Periodicals & Subscriptions	46	51
Advertising	27	44
Energy	28	21
Motor Vehicle	21	22
Postal and Courier	17	34
	<b>2,098</b>	<b>2,045</b>
<b>(c) Maintenance</b>		
Repairs and maintenance	183	64
	<b>183</b>	<b>64</b>
<b>(d) Depreciation and amortisation expense</b>		
Depreciation		
Plant and Equipment	221	190
Amortisation		
Leasehold Improvements	46	43
	<b>267</b>	<b>233</b>

#### 3 REVENUES

	2002 \$'000	2001 \$'000
<b>(a) Sale of goods and services</b>		
Sale of Publications	15	37
Other	14	0
	<b>29</b>	<b>37</b>
<b>(b) Investment Income</b>		
Bank interest	38	39
	<b>38</b>	<b>39</b>
<b>(c) Grants and contributions</b>		
Police Complaints Case Management (PCCM)	743	760
Trainee Salary Subsidy (ATS/Career Start)	6	3
	<b>749</b>	<b>763</b>
<i>Conditions on contributions</i>		
The Ombudsman's participation in the PCCM project is funded by a grant from the Premier's Department. Although this grant is recognised as retained revenue, the Ombudsman has limited discretion over its use as it is solely for the purposes of the PCCM project. The Ombudsman is required to provide expenditure details to the PCCM Steering Committee to ensure that funds are appropriately spent.		
<b>(d) Other revenue</b>		
Workshops	82	67
AUSAID PNG Ombudsman Institutional Strengthening Project	0	9
National Investigation Conference	0	11
Others	0	3
	<b>82</b>	<b>90</b>
<b>4 GAIN/(LOSS) ON DISPOSAL OF NON-CURRENT ASSETS</b>		
Gain/(loss) on disposal of Land and Buildings, Plant and Equipment and Infrastructure Systems		
Proceeds from disposal	1	1
Written down value of assets disposed	0	(1)
<b>Gain/(loss) on sale of non current assets</b>	<b>1</b>	<b>0</b>

# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 5 APPROPRIATIONS

##### (a) Recurrent appropriations

Total recurrent drawdowns from Treasury  
(per Summary of Compliance)

2002 \$'000	2001 \$'000
9,611	8,408
<b>9,611</b>	<b>8,408</b>

Comprising:

Recurrent appropriations  
(per Statement of Financial Performance)

9,611	8,408
<b>9,611</b>	<b>8,408</b>

**Total**

##### (b) Capital appropriations

Total capital drawdowns from Treasury  
(per Summary of Compliance)

358	127
<b>358</b>	<b>127</b>

Comprising:

Capital appropriations  
(per Statement of Financial Performance)

358	127
<b>358</b>	<b>127</b>

**Total**

#### 6 ACCEPTANCE BY THE CROWN ENTITY OF EMPLOYEE ENTITLEMENTS AND OTHER LIABILITIES

The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:

	2002 \$'000	2001 \$'000
Superannuation	595	488
Long service leave	284	233
Payroll tax	37	30
<b>Total</b>	<b>916</b>	<b>751</b>

#### 7 PROGRAMS/ACTIVITIES OF THE AGENCY

##### (a) Program 1:

###### Resolution of Complaints about Police

Objectives:

Oversight and scrutinise the handling of complaints about the conduct of police. Promote fairness, integrity and practical reforms in the NSW Police Service.

Description:

Keep under scrutiny Police Service systems, investigate complaints, report and make recommendations for change.

##### (b) Program 2:

###### Resolution of Local Government, Public Authority and Prison Complaints and Review of Freedom of Information Complaints

Objectives:

Resolve justified complaints and protected disclosures about the administrative conduct of public authorities and local councils. Promote fairness, integrity and practical reforms in New South Wales public administration.

Description:

Conduct investigations, audits and monitoring activities. Report and make recommendations for change.

##### (c) Program 3:

###### Resolution of Child Protection Related Complaints

Objectives:

Scrutiny of complaint handling systems and monitoring of the handling of notifications of alleged child abuse.

Description:

Keep under scrutiny systems in place to prevent and investigate allegations of child abuse, investigate complaints, make recommendations for change.

#### 8 CURRENT ASSETS – CASH

Cash at bank and on hand

2002 \$'000	2001 \$'000
729	812
<b>729</b>	<b>812</b>

For the purposes of the Statement of Cash Flows, cash includes cash on hand and at bank.

Cash assets recognised in the Statement of Financial Position are reconciled to cash at the end of the financial year as shown in the Statement of Cash Flows as follows:

Cash (per Statement of Financial Position)	729	812
Closing cash and cash equivalents (per Statement of Cash Flows)	<b>729</b>	<b>812</b>

#### 9 CURRENT ASSETS – RECEIVABLES

Sale of goods and services

Bank Interest

Travel Advances

GST Receivable

Reimbursement from Treasury

Telephone rebate

2002 \$'000	2001 \$'000
6	10
19	17
0	2
91	29
0	37
0	5
<b>116</b>	<b>100</b>

Management considers all amounts to be collectable and as such, no provision for doubtful debts has been established.

# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 10 CURRENT ASSETS – OTHER ASSETS

	2002 \$'000	2001 \$'000
<b>Prepayments</b>		
Salaries and wages	0	1
Maintenance	50	59
Prepaid rent	113	64
Subscription/Membership	10	13
Training	2	54
Motor Vehicle	1	1
Insurance	0	51
Employee assistance program	0	3
IT Leasing	16	20
Other	0	1
	<b>192</b>	<b>267</b>

#### 11 NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	2002 \$'000	2001 \$'000
<b>Plant and Equipment</b>		
At cost	3,448	2,368
Accumulated Depreciation at Cost	1,464	1,196
Total Plant and Equipment at Net Book Value	<b>1,984</b>	<b>1,172</b>

#### RECONCILIATIONS

Reconciliations of the carrying amounts of each class of plant and equipment at the beginning and end of the current and previous financial years are set out below.

	Plant & Equipment		Total	
	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000
Carrying amount at start of year	1,172	1,052	1,172	1,052
Additions	1,079	354	1,079	354
Disposals	(17)	(122)	(17)	(122)
Depreciation/Amortisation for the year	(267)	(233)	(267)	(233)
Depreciation/Amortisation Writeback on Disposal	17	121	17	121
<b>Carrying amount at end of year</b>	<b>1,984</b>	<b>1,172</b>	<b>1,984</b>	<b>1,172</b>

The Office continues to derive service potential and economic benefits from the following fully depreciated assets.

Nature	Quantum	
	2002	2001
Computer Equipment	247	28
Office Equipment	3	4

# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 12 CURRENT LIABILITIES – PAYABLES

	2002 \$'000	2001 \$'000
Trade Creditors	71	75
Payroll Tax	11	10
Fringe Benefit Tax	2	1
GST Payable	0	1
Superannuation	11	17
Workshop income distribution	0	4
	<b>95</b>	<b>108</b>

#### 13 CURRENT LIABILITIES – EMPLOYEE ENTITLEMENTS

	2002 \$'000	2001 \$'000
Recreation leave	541	471
Annual Leave Loading	78	72
Accrued salaries and wages	167	162
Payroll tax on recreation and long service leave	103	85
Workers compensation on recreation leave	5	5
Aggregate employee entitlements	<b>894</b>	<b>795</b>

#### 14 CURRENT LIABILITIES – OTHER

	2002 \$'000	2001 \$'000
Department of Juvenile Justice Advance payment review of Section 19 of the Children (Criminal Proceedings Act)	78	0
Lease Incentive	34	34
	<b>112</b>	<b>34</b>

#### 15 NON-CURRENT LIABILITIES – OTHER

	2002 \$'000	2001 \$'000
Department of Juvenile Justice Advance payment review of Section 19 of the Children (Criminal Proceedings Act)	122	0
Lease Incentive	215	250
	<b>337</b>	<b>250</b>

#### 16 CHANGES IN EQUITY

	2002 \$'000	2001 \$'000
Balance at the beginning of the financial year	1,164	593
Surplus for the year	419	571
<b>Balance at the end of the financial year</b>	<b>1,583</b>	<b>1,164</b>

#### 17 COMMITMENTS FOR EXPENDITURE

	2002 \$'000	2001 \$'000
<b>(a) Capital Commitments</b>		
Aggregate capital expenditure for the acquisition of hardware and software for the Police Complaints Case Management (PCCM) Project and Document Management (DOCM) Project contracted for at balance date and not provided for:		
Not later than one year	0	217
Later than one year and not later than five years	0	0
Later than five years	0	0
Total (including GST)	<b>0</b>	<b>217</b>
<b>(b) Other Expenditure Commitments</b>		
Aggregate other expenditure contracted for the acquisition of monitoring services for unauthorised access/intrusion of PCCM and minor purchases contracted for at balance date and not provided for:		
Not later than one year	0	102
Later than one year and not later than five years	0	0
Later than five years	0	0
Total (including GST)	<b>0</b>	<b>102</b>
<b>(c) Operating Lease Commitments</b>		
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	1,527	886
Later than one year and not later than five years	5,732	3,049
Later than five years	1,778	2,430
Total (including GST)	<b>9,037</b>	<b>6,365</b>

# Ombudsman's Office

## Notes to the Financial Statements

### For the Year Ended 30 June 2002

#### 18 RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET COST OF SERVICES

	2002 \$'000	2001 \$'000
Net cash used on operating activities	995	548
Cash Flows from Government / Appropriations	(9,969)	(8,535)
Acceptance by the Crown Entity of employee entitlements and other liabilities	(916)	(751)
Depreciation / Amortisation	(267)	(233)
Decrease / (Increase) in provisions	(99)	(143)
Increase / (Decrease) in receivables	16	34
Increase / (Decrease) in prepayments and other assets	(75)	107
Increase / (Decrease) in creditors	13	89
Decrease / (Increase) in other liabilities	(165)	169
Net loss / (gain) on sale of plant and equipment	1	0
Net cost of services	<b>(10,466)</b>	<b>(8,715)</b>

#### 19 RESTRICTED ASSETS

	2002 \$'000	2001 \$'000
Police Complaints Case Management system funds	0	355
Department of Juvenile Justice	201	0
	<b>201</b>	<b>355</b>

The Ombudsman received funding of \$200,585 in the form of an advance payment from the Department of Juvenile Justice being the costs of the Ombudsman's review of the operation and effect of Sect 19 of the Children (Criminal Proceedings) Act for the financial years to June, 2005.

At year end, all these funds were unspent, the project is to commence in July, 2002.

#### 20 BUDGET REVIEW

##### Net Cost of Services

There was a variation of \$410,000 between the budgeted net cost of services and actual. This was largely due to additional funding being provided for costs associated with the Ombudsman's review of a range of police powers and to secure additional office accommodation. There were also unbudgeted recurrent expenses of \$95,000 due to delays in the development of the Police Complaints Case Management System.

##### Assets and Liabilities

Current assets were slightly lower than budget. A \$200,585 prepayment was received from the Department of Juvenile Justice for a project to commence in the next financial year, this prepayment was reflected in the accounts as a current and non-current liability and not as revenue. There was an increase in GST receivable due to the acquisition of IT equipment in June and the office fitout, to be recovered from the ATO in July 2002.

Non-current assets were higher than budget due to acquisitions of IT equipment and the office fitout.

##### Cash Flows

Cash flow from operating activities was in line with expectations.

Cash flows from investing activities was slightly lower than anticipated due to delays in the PCCM project.

#### 21 AFTER BALANCE DATE EVENTS

##### Community Services Commission

The Community Services Commission is to be merged with the Ombudsman's Office in the 2002–2003 Financial Year.

The Community Services Commission Legislation Amendment Act 2002, which was passed by parliament in June, 2002, abolished the Community Services Commission, and confers, amongst other things, its function on the Ombudsman.

The Act requires the Ombudsman to establish a Community Services Division within his Office.

END OF AUDITED FINANCIAL STATEMENTS



# Appendices

**Appendix A: Summary total of complaint determinations**

**Appendix B: Police complaints profile**

**Appendix C: Public sector agencies — summary of complaint determinations**

**Appendix D: Local councils complaints — summary of complaint determinations**

**Appendix E: Corrections complaints**

**Appendix F: Freedom of Information — summary of complaint determinations**

**Appendix G: FOI annual reporting requirements**

**Appendix H: Legal changes**

**Appendix I: Significant committees**



# Appendix A:

## Summary total of complaint determinations

Figure 61:  
Summary total of complaint determinations

### KEY

#### Assessment only

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

#### Preliminary or informal investigations

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

#### Formal investigations

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Other public sector agencies	105	30	104	120	171	102	8	173	194	33	134	47	3	4	0	1	9	1238
Local councils	10	34	78	124	66	61	3	166	112	16	82	54	1	1	0	0	1	809
Corrections	11	6	9	45	40	22	3	53	84	12	41	17	1	1	1	0	3	349
Freedom of information	17	1	4	6	3	2	0	10	25	4	64	9	1	2	2	0	7	157
Outside our jurisdiction	611	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	611
<b>Total</b>	<b>754</b>	<b>71</b>	<b>195</b>	<b>295</b>	<b>280</b>	<b>187</b>	<b>14</b>	<b>402</b>	<b>415</b>	<b>65</b>	<b>321</b>	<b>127</b>	<b>6</b>	<b>8</b>	<b>3</b>	<b>1</b>	<b>20</b>	<b>3164</b>

# Appendix B:

## Police complaints profile

Figure 62:  
Police complaints profile

Each individual complaint may contain a number of allegations. Of the 4,501 complaints we determined this year, 8,894 allegations were made. This appendix lists the categories of allegations and how each allegation was determined.

Category	Declined	Adverse finding	No adverse finding	Conciliated / other	Total
<b>Abuse/rudeness</b>					
Race related	12	5	28	12	57
Other social prejudice	4	1	4	3	12
Traffic rudeness	24	1	16	60	101
Other	72	37	180	189	478
<b>Total</b>	<b>112</b>	<b>44</b>	<b>228</b>	<b>264</b>	<b>648</b>
<b>Administrative wrong conduct</b>					
Cell/premises conditions	1	0	2	0	3
Child abuse related	3	0	1	2	6
Deficient investigation	6	49	18	2	75
Deficient management	19	74	27	6	126
Delay in correspondence	9	0	4	4	17
Summons/warrant/order	5	1	8	8	22
Warrant withdrawn/payment	2	0	1	0	3
Whistleblower	5	0	0	0	5
Other	61	20	31	23	135
<b>Total</b>	<b>111</b>	<b>144</b>	<b>92</b>	<b>45</b>	<b>392</b>
<b>Assault</b>					
No physical/mental injury	13	8	112	7	140
Physical/mental injury	97	30	321	3	451
<b>Total</b>	<b>110</b>	<b>38</b>	<b>433</b>	<b>10</b>	<b>591</b>
<b>Breach of rights</b>					
Fail to provide/delay	10	16	77	17	120
Fail to return property	23	8	29	23	83
Unreasonable treatment	78	34	210	123	445
<b>Total</b>	<b>111</b>	<b>58</b>	<b>316</b>	<b>163</b>	<b>648</b>
<b>Criminal conduct</b>					
Bribery/extortion	33	2	53	0	88
Consorting	20	7	65	0	92
Conspiracy/cover up	68	17	162	0	247
Dangerous/culpable driving	3	2	2	0	7
Drug offences	45	4	97	0	146
Fraud	8	5	25	0	38
Murder/manslaughter	4	0	8	0	12
Perjury	25	1	20	1	47
Sexual assault	7	17	34	0	58
Telephone tapping	1	0	0	1	2
Theft	30	9	90	1	130
Other	26	11	37	2	76
<b>Total</b>	<b>270</b>	<b>75</b>	<b>593</b>	<b>5</b>	<b>943</b>

Category	Declined	Adverse finding	No adverse finding	Conciliated / other	Total
<b>Inadvertent wrong treatment</b>					
Administrative matter arising	11	0	2	3	16
Property damage	4	2	16	2	24
Total	15	2	18	5	40
<b>Information</b>					
Fail to notify/give information	27	52	78	66	223
Inappropriate access to information	13	45	66	8	132
Inappropriate disclosure of information	41	43	131	29	244
Provide false information	25	71	72	22	190
Total	106	211	347	125	789
<b>Investigator/Prosecution misconduct</b>					
Disputes traffic infringement notice	165	0	0	5	170
Fabrication	45	7	62	1	115
Failure to prosecute	37	17	85	49	188
Faulty investigation/prosecution	112	142	284	184	722
Forced confession	3	1	7	2	13
Suppression of evidence	7	2	14	0	23
Unjust prosecution	22	2	21	8	53
Total	391	171	473	249	1284
<b>Stop/Search/Seize</b>					
Faulty search warrant	4	2	14	1	21
Strip search	6	4	25	5	40
Unjust search/entry	25	4	62	28	119
Unnecessary force/damage	44	6	206	18	274
Unreasonable arrest/detention	49	8	123	19	199
Total	128	24	430	71	653
<b>Other misconduct</b>					
Breach police regulations	44	410	288	42	784
Drink on duty	1	1	12	1	15
Fail to identify/wear number	6	5	26	20	57
Failure to take action	248	51	225	372	896
Faulty policing	18	4	23	15	60
Misuse of office	24	25	102	19	170
Sexual harassment	5	14	15	0	34
Threats/harassment	122	49	305	143	619
Traffic/parking	24	19	41	19	103
Other	56	18	63	31	168
Total	548	596	1100	662	2906
<b>Summary of allegations</b>					
Total	1902	1363	4030	1599	8894

# Appendix C:

## Public sector agencies — summary of complaint determinations

Figure 63:  
Public sector agencies – summary of complaint determinations \*

### KEY

#### Assessment only

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

#### Preliminary or informal investigations

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

#### Formal investigations

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

Public Sector Agency	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Aboriginal Affairs, Dept of	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Aboriginal Housing Office	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Ageing, Disability and Home Care, Dept of	2	0	0	0	1	0	0	3	2	0	2	0	0	0	0	0	0	10
Agriculture, Dept of	0	1	3	0	1	0	0	0	1	0	1	1	0	0	0	0	0	8
Ambulance Service of NSW	2	0	1	0	1	0	0	1	0	0	0	0	0	0	0	0	0	5
Anti-Discrimination Board	0	0	0	1	0	0	0	3	1	0	0	0	0	0	0	0	0	5
Attorney General's Department	6	0	0	3	1	0	0	0	2	0	2	0	0	0	0	0	0	14
Board of Optometrical Registration	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Board of Studies	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Centennial Park and Moore Park Trust	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Central Coast Area Health Service	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Central Sydney Area Health Service	2	0	0	0	0	1	0	1	1	1	0	0	0	0	0	0	0	6
Charles Sturt University	0	0	0	0	1	0	0	0	4	1	0	0	0	0	0	0	0	6
Coal Compensation Board	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Community Relations Commission	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Community Services Commission	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	2
Community Services, Dept of	14	2	3	6	14	5	2	35	53	8	31	5	0	0	0	1	2	181
Consumer, Trader and Tenancy Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Country Energy	0	0	3	0	0	0	0	0	0	0	1	0	0	0	0	0	0	4
Department for Women	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Director of Public Prosecutions	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	2
Education and Training, Dept of	15	3	2	9	12	10	1	5	14	1	13	2	0	1	0	0	0	88
Energy Australia	0	1	7	3	0	1	0	0	0	0	0	0	0	0	0	0	0	12
Environment Protection Authority	0	0	2	2	1	0	0	3	1	0	0	1	0	0	0	0	0	10
Fair Trading, Dept of	1	2	2	6	7	2	0	4	3	2	2	1	0	0	0	0	1	33
Fire Brigades NSW	4	0	0	1	2	0	0	2	0	1	1	0	0	0	0	0	0	11
First State Superannuation Trustee Corporation	0	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	3
Freightcorp	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gaming and Racing, Dept of	1	0	0	2	0	1	0	0	1	0	0	1	0	0	0	0	0	6
Greyhound Racing Authority, NSW	0	0	0	1	0	0	0	1	0	0	0	0	1	0	0	0	0	3
Guardianship Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Harness Racing, NSW	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Health Care Complaints Commission	1	0	0	2	0	0	0	1	2	0	1	0	0	0	0	0	0	7

Public Sector Agency	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Health, Dept of	3	1	1	2	4	0	0	1	6	0	2	0	0	0	0	0	0	20
Heritage Council of NSW	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Heritage Office, NSW	0	0	0	1	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Housing, Dept of	3	5	9	11	28	9	1	23	10	4	10	7	1	0	0	0	2	123
Hunter Area Health Service	0	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	3
Hunter Water Corporation Limited	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	2
Illawarra Area Health Service	0	1	0	0	0	2	0	2	0	0	0	0	0	0	0	0	0	5
Independent Commission Against Corruption	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	0	1	1	0	0	0	0	1	0	0	0	0	0	0	3
Information Technology and Mgmt, Dept of	2	1	1	1	3	0	0	1	1	0	0	0	0	0	0	0	0	10
Infringement Processing Bureau	0	0	3	0	0	1	0	0	1	0	0	2	0	0	0	0	0	7
Integral Energy	0	1	3	0	0	0	0	0	0	1	1	0	0	0	0	0	0	6
Koompahtoo Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Land and Water Conservation, Dept of	4	1	1	0	4	0	0	4	6	1	3	0	0	0	0	0	0	24
Legal Aid Commission of NSW	1	0	4	3	1	0	0	1	2	0	0	0	0	0	0	0	0	12
Local Government Boundaries Commission	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Local Government, Dept of	0	0	0	0	0	3	0	1	1	0	1	0	0	0	0	0	0	6
Long Service Payments Corporation	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Macquarie Area Health Service	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Macquarie University	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Mental Health Review Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Mid North Coast Area Health Service	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Mid Western Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Mineral Resources, Dept of	0	0	1	0	0	2	0	1	1	0	0	0	0	0	0	0	0	5
Ministry for the Arts	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Motor Accidents Authority	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
National Parks & Wildlife Service	0	1	1	0	3	2	0	1	1	0	2	2	0	0	0	0	0	13
New South Wales Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
North Coast Water	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Northern Rivers Area Health Service	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Northern Sydney Area Health Service	0	0	0	1	0	2	0	1	0	0	0	1	0	0	0	0	0	5
Northpower	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Fisheries	0	0	1	2	3	2	0	0	3	0	1	0	0	0	0	0	0	12
NSW Lotteries	0	0	0	2	1	0	0	0	1	0	0	1	0	0	0	0	0	5
Nurses Registration Board	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Office of Community Housing	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Office of State Revenue	1	0	2	3	2	0	0	6	4	0	2	1	0	0	0	0	0	21
Olympic Coordination Authority	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Olympic Roads and Transport Authority	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Pillar Administration	0	0	0	0	2	0	0	4	2	0	2	1	0	0	0	0	0	11
Planning NSW	3	0	3	0	0	3	0	3	1	0	3	1	1	0	0	0	0	18
Police Integrity Commission	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Poultry Meat Industry Committee	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Premier's Department	0	0	0	1	0	1	0	1	1	0	0	0	0	0	0	0	0	4
Privacy NSW	1	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	3
Public Trust Office	2	0	0	1	0	1	0	1	0	0	1	2	0	0	0	0	0	8
Public Works and Services, Dept of	1	0	0	1	0	0	0	1	3	1	0	0	0	0	0	0	0	7
Rail Access Corporation	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Rail Infrastructure Corporation	2	0	0	0	1	0	0	0	2	0	1	0	0	0	0	0	0	6
Rail Services Australia	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Registry of Births, Deaths and Marriages	1	0	1	0	2	3	0	0	0	0	2	0	0	0	0	0	0	9
Rental Bond Board	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	2
Roads and Traffic Authority	2	2	9	11	28	18	1	5	12	2	6	3	0	1	0	0	0	100
Rural Assistance Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Rural Fire Service, Dept of	0	0	0	0	2	0	0	1	0	0	0	1	0	0	0	0	0	4
Rural Lands Protection Board	0	0	0	0	1	0	0	2	3	0	1	0	0	0	0	0	1	8

**KEY****Assessment only**

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

**Preliminary or informal investigations**

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

**Formal investigations**

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

Public Sector Agency	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Safe Food Production NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
SOCOG	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
South Eastern Sydney Area Health Service	2	0	0	1	1	0	0	0	1	0	3	0	0	0	0	0	0	8
South Western Area Health Service	1	1	0	1	1	1	0	0	1	0	1	0	0	0	0	0	0	7
Southern Area Health Service	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Sport and Recreation, Dept of	1	0	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0	4
State and Regional Development, Dept of	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
State Contracts Control Board	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
State Debt Recovery Office	0	1	18	13	1	6	1	5	10	1	9	4	0	1	0	0	0	70
State Electoral Office	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
State Emergency Service	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
State Forests	0	0	0	0	2	1	1	0	0	0	0	0	0	0	0	0	0	4
State Rail Authority of NSW	1	0	7	4	13	6	1	16	2	0	7	2	1	0	0	0	0	60
State Superannuation Investment and Mgmt Corp	0	0	0	3	1	0	0	2	1	0	1	1	0	0	0	0	0	9
State Transit Authority of NSW	1	0	0	0	3	3	0	3	0	0	1	0	0	0	0	0	0	11
Superannuation Services Company Pty Limited	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Sydney Harbour Foreshore Authority	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Sydney Opera House	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Sydney Water Corporation	1	0	1	1	1	0	0	0	0	1	0	0	0	0	0	0	0	5
TAFE	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Tourism NSW	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Tow Truck Industry Council	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
Transport, Dept of	0	1	0	3	2	1	0	1	2	0	4	0	0	0	0	0	0	14
Universities Admissions Centre	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
University of New England	0	0	0	10	0	0	0	7	2	0	0	1	0	0	0	0	1	21
University of New South Wales	0	0	1	0	0	0	0	1	2	1	1	0	0	0	0	0	1	7
University of Newcastle	0	1	1	1	0	1	0	0	0	0	1	0	0	0	0	0	0	5
University of Sydney	3	0	0	0	1	0	0	0	4	0	1	0	0	0	0	0	0	9
University of Technology	0	0	0	1	2	1	0	0	2	0	0	0	0	0	0	0	0	6
University of Western Sydney	1	0	0	0	0	1	0	0	1	1	0	0	0	0	0	0	0	4
University of Wollongong	1	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Upper Parramatta River Catchment Trust	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Veterinary Surgeons Investigating Committee	1	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	3
Waterways Authority	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0	0	0	3
Wentworth Area Health Service	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Western Sydney Area Health Service	1	0	3	0	0	2	0	1	0	0	0	0	0	0	0	0	0	7
Workcover Authority	2	0	1	1	4	3	0	3	3	1	2	0	0	0	0	0	0	20
<b>Total</b>	<b>105</b>	<b>30</b>	<b>104</b>	<b>120</b>	<b>171</b>	<b>102</b>	<b>8</b>	<b>173</b>	<b>194</b>	<b>33</b>	<b>134</b>	<b>47</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>9</b>	<b>1238</b>

\* This figure shows the determinations made in relation to complaints about all public sector agencies other than NSW Police, local councils, the Department of Corrective Services, the Department of Juvenile Justice, the Corrections Health Service, and excluding FOI complaints.

# Appendix D:

## Local councils complaints — summary of complaint determinations

Figure 64:  
Local Councils – summary of complaint determinations

### KEY

#### Assessment only

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

#### Preliminary or informal investigations

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

#### Formal investigations

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding

#### 18 Total

Local Council	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Albury City Council	0	0	0	2	0	1	0	0	0	0	0	1	0	0	0	0	0	4
Armidale Dumaresq Council	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Ashfield Municipal Council	0	0	1	3	0	1	0	1	2	0	0	1	0	0	0	0	0	9
Auburn Council	0	0	2	0	1	1	0	1	2	0	0	0	0	0	0	0	0	7
Ballina Shire Council	0	1	0	1	2	2	1	3	1	0	0	0	0	0	0	0	0	11
Bankstown City Council	0	0	0	1	0	0	0	2	1	0	1	0	0	0	0	0	0	5
Bathurst City Council	0	0	0	1	1	0	0	1	1	0	0	0	0	0	0	0	0	4
Baulkham Hills Shire Council	1	1	0	2	2	0	0	1	2	0	0	3	0	0	0	0	0	12
Bega Valley Shire Council	1	0	0	3	0	1	0	1	2	0	0	2	0	0	0	0	0	10
Bellingen Shire Council	0	0	0	2	1	0	0	1	1	3	1	0	0	0	0	0	0	9
Blacktown City Council	0	1	0	2	1	2	0	1	1	0	0	1	0	0	0	0	0	9
Blayney Shire Council	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Blue Mountains City Council	0	0	3	2	0	0	0	4	2	0	0	1	0	0	0	0	0	12
Boorowa Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Botany Bay City Council	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Bourke Shire Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Brewarrina Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Burwood Municipal Council	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Byron Shire Council	1	0	2	1	0	1	0	1	1	0	0	0	0	0	0	0	0	7
Cabonne Shire Council	0	0	0	1	0	0	0	1	0	0	0	2	0	0	0	0	0	4
Camden Council	0	0	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	3
Campbelltown City Council	0	0	1	0	1	2	0	1	0	0	0	2	0	0	0	0	0	7
Canada Bay Council	0	0	3	0	1	1	1	3	1	0	1	0	0	0	0	0	0	11
Canterbury City Council	1	0	0	1	0	0	0	2	3	0	1	1	0	0	0	0	0	9
Central Tablelands County Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Cessnock City Council	0	1	0	1	1	0	0	1	1	0	2	0	0	0	0	0	0	7
Clarence Valley Weeds Authority	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Coffs Harbour City Council	0	2	0	1	0	0	0	0	1	0	1	2	0	0	0	0	0	7
Cooma-Monaro Shire Council	0	0	0	3	2	0	0	1	2	0	0	0	0	0	0	0	0	8
Cootamundra Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	2
Council Not Named	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Council of the City of Lithgow	2	0	0	0	1	0	0	3	1	0	2	1	0	0	0	0	0	10
Cowra Shire Council	0	1	1	1	1	0	0	0	0	0	1	0	0	0	0	0	0	5

**KEY****Assessment only**

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

**Preliminary or informal investigations**

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
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- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

**Formal investigations**

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

Local Council	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Deniliquin Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Dungog Shire Council	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Eurobodalla Shire Council	0	0	0	1	1	1	0	3	1	1	1	0	0	0	0	0	0	9
Fairfield City Council	0	1	2	0	1	0	0	2	1	2	1	0	0	0	0	0	0	10
Far North Coast County Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Georges' River Combined Councils Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Municipal Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gloucester Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Goldenfields Water County Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Gosford City Council	0	0	3	6	1	4	0	4	4	0	4	4	0	0	0	0	0	30
Grafton City Council	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Great Lakes Council	0	0	1	2	1	1	0	2	1	0	0	0	0	0	0	0	0	8
Greater Taree City Council	0	0	1	1	1	0	0	2	0	0	1	0	0	0	0	0	0	6
Griffith City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Gunnedah Shire Council	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Gunning Shire Council	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Hastings Council	0	2	0	2	1	0	0	6	1	0	3	0	0	0	0	0	0	15
Hawkesbury City Council	0	0	1	2	1	0	0	0	2	0	0	0	0	0	0	0	0	6
Holbrook Shire Council	0	0	1	0	0	0	0	2	0	0	0	0	0	0	0	0	0	3
Holroyd City Council	0	1	1	3	1	0	0	0	3	0	0	2	0	0	0	0	0	11
Hornsby Shire Council	0	1	1	2	2	0	0	3	1	0	3	2	0	0	0	0	0	15
Hume Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Hunters Hill Municipal Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Hurstville City Council	0	0	1	1	3	1	0	1	1	0	0	0	0	0	0	0	0	8
Inverell Shire Council	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
Kempsey Shire Council	0	0	0	1	0	0	0	1	2	1	0	1	0	0	0	0	0	6
Kiama Municipal Council	0	1	0	0	1	0	0	2	0	0	0	0	0	0	0	0	0	4
Kogarah Municipal Council	0	0	1	0	0	0	0	1	1	0	0	0	0	0	0	0	0	3
Ku-ring-gai Municipal Council	0	0	1	0	1	0	0	3	0	0	0	0	0	0	0	0	0	5
Kyogle Shire Council	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	2
Lachlan Shire Council	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Lake Macquarie City Council	0	0	3	3	1	0	0	4	4	0	2	2	0	0	0	0	0	19
Lane Cove Municipal Council	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Leichhardt Municipal Council	0	0	3	0	0	1	0	2	0	0	2	0	0	0	0	0	0	8
Lismore City Council	0	1	0	2	0	0	0	3	0	0	0	1	0	0	0	0	0	7
Liverpool City Council	0	0	2	4	0	1	0	2	5	0	0	0	0	0	0	0	0	14
Maclean Shire Council	0	0	0	1	0	1	0	1	1	0	0	0	0	0	0	0	0	4
Maitland City Council	0	0	1	0	1	1	0	0	0	1	0	1	0	0	0	0	0	5
Manly Municipal Council	0	0	1	0	1	1	0	5	1	0	0	1	0	0	0	0	0	10
Marrickville Council	0	0	2	0	1	0	0	1	1	0	1	0	0	0	0	0	0	6
Mid Coast County Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Mosman Municipal Council	0	0	0	0	0	1	0	1	0	0	2	0	0	0	0	0	0	4
Mudgee Shire Council	0	0	0	2	0	0	0	0	0	0	1	0	0	0	0	0	0	3



Local Council	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Mulwaree Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Murray Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Muswellbrook Shire Council	0	0	0	1	0	0	0	1	2	0	0	0	0	0	0	0	0	4
Nambucca Shire Council	0	1	0	0	0	1	0	3	2	0	1	0	0	0	0	0	0	8
Narrandera Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Narromine Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Newcastle City Council	1	0	1	3	1	2	0	6	4	0	3	0	0	0	0	0	0	21
North Coast Water	0	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	0	3
North Sydney Council	0	0	3	1	1	0	0	1	2	0	1	0	0	0	0	0	0	9
Orange City Council	0	0	0	1	1	0	0	0	1	0	1	0	0	0	0	0	0	4
Parkes Shire Council	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2
Parramatta City Council	0	0	2	1	1	1	0	2	0	0	2	1	0	0	0	0	0	10
Parry Shire Council	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Penrith City Council	0	1	0	1	0	0	0	3	0	0	1	0	0	0	0	0	0	6
Pittwater Council	0	0	3	0	0	3	0	1	3	0	3	1	0	0	0	0	0	14
Port Stephens Shire Council	0	0	0	1	1	0	0	1	2	0	2	0	0	0	0	0	0	7
Principal Certifying Authority	0	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Pristine Waters Council	0	1	0	1	3	3	0	6	2	0	0	1	0	0	0	0	0	17
Queanbeyan City Council	0	1	1	4	0	1	0	1	0	1	1	1	0	0	0	0	0	11
Randwick City Council	0	2	3	5	2	2	0	3	1	0	1	0	0	0	0	0	0	19
Richmond River County Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Richmond Valley Council	0	1	0	2	0	2	0	0	0	0	2	0	0	0	0	0	0	7
Rockdale Municipal Council	0	1	1	1	1	2	0	6	0	0	1	1	0	0	0	0	0	14
Rous County Council	0	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0	0	3
Ryde City Council	0	0	0	0	1	1	0	0	0	0	1	2	0	0	0	0	0	5
Rylstone Shire Council	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Scone Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Shellharbour City Council	0	0	0	1	0	0	0	1	0	0	1	0	0	0	0	0	0	3
Shoalhaven City Council	0	2	0	0	0	0	0	5	1	1	0	2	0	0	0	0	0	11
Singleton Shire Council	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Snowy River Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
South Sydney Council	0	0	2	1	0	0	0	4	1	1	1	1	0	0	0	0	0	11
Strathfield Municipal Council	1	0	1	1	1	0	0	3	0	1	0	0	0	0	0	0	0	8
Sutherland Shire Council	0	0	3	6	2	1	0	2	2	0	0	2	0	0	0	0	1	19
Sydney City Council	0	0	0	1	1	1	0	1	3	0	3	1	0	0	0	0	0	11
Tamworth City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Tenterfield Shire Council	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	2
Tumut Shire Council	0	0	0	1	0	0	0	1	0	0	0	1	0	0	0	0	0	3
Tweed Shire Council	0	0	0	1	1	0	0	4	4	0	0	0	0	0	0	0	0	10
Uralla Shire Council	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Urana Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Walcha Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Warringah Council	0	4	5	2	3	2	0	6	2	0	2	0	0	0	0	0	0	26
Waverley Council	0	0	1	0	1	0	0	0	2	1	0	0	0	0	0	0	0	5
Weddin Shire Council	0	0	1	1	0	0	0	1	1	0	0	0	0	0	0	0	0	4
Wellington Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Wentworth Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Willoughby City Council	0	1	1	0	0	1	0	0	1	0	1	1	0	0	0	0	0	6
Wingecarribee Shire Council	0	0	2	1	0	1	0	2	3	1	1	1	0	0	0	0	0	12
Wollondilly Shire Council	0	0	2	1	0	0	0	0	1	0	1	0	0	0	0	0	0	5
Wollongong City Council	1	1	1	0	2	5	1	5	4	0	5	1	0	0	0	0	0	26
Woolahra Municipal Council	0	1	1	0	0	0	0	1	1	0	3	1	0	0	0	0	0	8
Wyong Shire Council	0	0	2	3	1	2	0	4	0	0	2	1	0	0	0	0	0	15
<b>Total</b>	<b>10</b>	<b>34</b>	<b>78</b>	<b>124</b>	<b>66</b>	<b>61</b>	<b>3</b>	<b>166</b>	<b>112</b>	<b>16</b>	<b>82</b>	<b>54</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>809</b>

# Appendix E:

## Corrections complaints

Figure 65:  
Corrections – summary of complaint determinations

### KEY

#### Assessment only

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

#### Preliminary or informal investigations

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

#### Formal investigations

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

Agency	Assessment only							Preliminary or informal investigations							Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Australasian Correctional Management	0	2	1	3	5	1	1	5	11	2	5	4	0	0	0	0	0	40	
Corrections Health Service	0	0	3	4	6	1	0	4	4	0	2	0	0	0	0	0	1	25	
Correctional centres and DCS	10	4	5	35	28	20	2	39	65	7	29	12	1	1	1	0	2	261	
Juvenile justice centres and DJJ	1	0	0	3	1	0	0	5	4	3	5	1	0	0	0	0	0	23	
<b>Total</b>	<b>11</b>	<b>6</b>	<b>9</b>	<b>45</b>	<b>40</b>	<b>22</b>	<b>3</b>	<b>53</b>	<b>84</b>	<b>12</b>	<b>41</b>	<b>17</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>349</b>	

DCS = Department of Corrective Services

DJJ = Department of Juvenile Justice

Figure 66:  
Complaints received (written and oral) about juvenile justice centres and DJJ, by institution

Institution	Written	Oral	Total
Department of Juvenile Justice	7	12	19
Acmena Juvenile Justice Centre	1	23	24
Cobham Juvenile Justice Centre	1	21	22
Frank Baxter Juvenile Justice Centre	3	41	44
Kariong Juvenile Justice Centre	3	25	28
Keelong Juvenile Justice Centre	0	19	19
Minda Juvenile Justice Centre	0	1	1
Mt Penang Juvenile Justice Centre	1	0	1
Orana Juvenile Justice Centre	0	10	10
Reiby Juvenile Justice Centre	0	16	16
Riverina Juvenile Justice Centre	0	14	14
Yasmar Juvenile Justice Centre	3	27	30
<b>Total</b>	<b>19</b>	<b>209</b>	<b>228</b>

**Figure 67:**  
Complaints received (written and oral) about correctional centres, DCS and ACM, by institution

<b>Institution</b>	<b>Written</b>	<b>Oral</b>	<b>Total</b>
Bathurst Correctional Centre	11	110	121
Berrima Correctional Centre	3	1	4
Broken Hill Correctional Centre	0	10	10
Cessnock Correctional Centre	10	73	83
Cooma Correctional Centre	0	3	3
Corrective Services Academy	0	1	1
Court Escort/Security Unit	16	14	30
Department of Corrective Services	97	1182	1279
Emu Plains Correctional Centre	2	16	18
Glen Innes Correctional Centre	0	5	5
Goulburn Correctional Centre	22	167	189
Grafton Correctional Centre	8	99	107
Industrial Training Centre	0	3	3
Ivanhoe 'Warrakirri' Correctional Centre	0	5	5
John Morony Correctional Centre	4	87	91
Junee Correctional Centre	40	278	318
Kirkconnell Correctional Centre	7	49	56
Lithgow Correctional Centre	8	68	76
Long Bay Hospital	1	26	27
Malabar Special Programs Centre	16	198	214
Mannus Correctional Centre	0	9	9
Metropolitan Medical Transient Centre	3	83	86
Metropolitan Remand Reception Centre	21	214	235
Mulawa Correctional Centre	5	202	207
Norma Parker Correctional Centre	0	2	2
Oberon Correctional Centre	0	10	10
Parklea Correctional Centre	7	100	107
Parramatta Correctional Centre	0	18	18
Parramatta Transitional Centre	0	5	5
Periodic Detention Centres	0	11	11
Probation and Parole Service	4	12	16
Silverwater Correctional Centre	9	67	76
Special Purpose Prison Long Bay	0	9	9
St Heliers Correctional Centre	0	11	11
Tamworth Correctional Centre	3	26	29
Yetta Dhinnakkal (Brewarrina) Correctional Centre	2	1	3
<b>Total*</b>	<b>299</b>	<b>3175</b>	<b>3474</b>

\* A number of the 291 written complaints and 3156 oral inquiries were about more than one centre

# Appendix F:

## Freedom of Information — summary of complaint determinations

Figure 68:  
Freedom of Information – summary of complaint determinations

### KEY

#### Assessment only

- 1 Outside jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds
- 7 Premature, second tier review referral

#### Preliminary or informal investigations

- 8 Substantive advice, information provided without formal finding of wrong conduct
- 9 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 10 Further investigation declined on grounds of resources/priority
- 11 Resolved to Ombudsman's satisfaction
- 12 Resolved by agency prior to our intervention
- 13 Conciliated/mediated

#### Formal investigations

- 14 Resolved during investigation
- 15 Investigation discontinued
- 16 No adverse finding
- 17 Adverse finding
- 18 Total

Public Sector Agency	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Ageing, Disability & Home Care, Department of	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Attorney General's Department	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	2
Australasian Correctional Management	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Ballina Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Bankstown City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
Cessnock City Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Charles Sturt University	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Coal Compensation Board	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Community Services, Department of	1	0	0	0	0	0	0	0	3	0	2	1	0	0	0	0	1	8
Cooma-Monaro Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Corrective Services, Department of	1	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	3
Department for Women	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Education and Training	1	0	0	1	0	0	0	0	1	0	4	1	1	0	0	0	4	13
Department of Local Government	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Department of Mineral Resources	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Department of Public Works and Services	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Department of State and Regional Development	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Department of Transport	1	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	6
Drummoyne Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Eurobodalla Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Fair Trading, Department of	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	2
Gaming and Racing, Department of	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Gosford City Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Grafton City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Great Lakes Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Greyhound Racing Control Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Harness Racing NSW	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Health, Department of	0	0	0	4	0	0	0	1	2	0	2	0	0	0	0	0	0	9
Housing Department	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	3
Ku-ring-gai Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Lake Macquarie City Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Macquarie University	0	0	0	0	0	2	0	0	0	0	1	0	0	1	0	0	0	4

Public Sector Agency	Assessment only							Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Manilla Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Mid North Coast Area Health Service	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Moree Plains Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
National Parks & Wildlife Service	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Newcastle City Council	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
NSW Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
NSW Fisheries	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
NSW Lotteries	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
NSW Medical Board	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Police	1	1	1	0	1	0	0	3	6	1	6	2	0	0	0	0	0	22
Penrith City Council	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Planning NSW	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Port Stephens Shire Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Premier's Department	0	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	0	3
Rail Infrastructure Corporation	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Richmond Valley Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	1	0	1	0	0	0	0	0	2	0	2	0	0	0	0	0	0	6
Rural Fire Service, Department of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Rural Lands Protection Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
South Eastern Sydney Area Health Service	0	0	0	1	0	0	0	0	1	1	1	0	0	0	0	0	0	4
South Sydney Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Southern Cross University	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
State Emergency Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority of NSW	1	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	4
State Transit Authority of NSW	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	3
Sutherland Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney Catchment Authority	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
University of New England	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
University of New South Wales	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Warringah Council	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Waste Services NSW	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Waterways Authority	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Workcover Authority	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
<b>Total</b>	<b>17</b>	<b>1</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>10</b>	<b>25</b>	<b>4</b>	<b>64</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>7</b>	<b>157</b>

# Appendix G:

## FOI annual reporting requirements

The following information is provided in accordance with our annual reporting requirements under the *Freedom of Information Act 1989*, the Freedom of Information (General) Regulation 2000 and Appendix B in the NSW Ombudsman 'FOI Procedure Manual'. Under section 9 and Schedule 2 of the FOI Act, the Ombudsman is exempt from the operation of the Act in relation to its complaint-handling, investigative and reporting functions. We therefore rarely make a determination under the Act, as most applications we receive, which was the case with all applications this year, relate to our exempt functions.

### Clause 9(1)(a) and (2) of the Regulation and Appendix B of the NSW Ombudsman FOI Procedure Manual

#### Section A: Numbers of new FOI requests

We received three new FOI applications in the 2001–2002 year. None from 2000–2001 were brought forward into 2001–2002. All applications were processed and completed and none were withdrawn.

FOI requests	Personal	Other	Total
A1 New (including transferred in)	3	0	3
A2 Brought forward	0	0	0
A3 Total to be processed	3	0	3
A4 Completed	3	0	3
A5 Transferred out	0	0	0
A6 Withdrawn	0	0	0
A7 Total processed	3	0	3
A8 Unfinished (carried forward)	0	0	0

#### Section B: What happened to completed requests?

All three completed applications were for documents which related to the Ombudsman's complaint-handling, investigative and reporting functions. In all these matters an explanation of section 9 and our inclusion in Schedule 2 of the FOI Act was provided.

FOI requests	Personal	Other
B1 Granted in full	0	0
B2 Granted in part	0	0
B3 Refused	0	0
B4 Deferred	0	0
B5 Completed*	3	0

Notes: \*The figures on the line B5 should be the same as the corresponding ones on A4. All of these applications related to functions of the office which are excluded from the operation of the Act.

#### Section C: Ministerial certificates

No ministerial certificates were issued in relation to FOI applications to the Ombudsman this year.

Ministerial certificates	Number issued
C1 Ministerial certificates issued	0

#### Section D: Formal consultations

No requests required consultations, formal or otherwise.

Request requiring formal consultations	Issued	Total
D1 Number of requests requiring formal consultation(s)	0	0

#### Section E: Amendment of personal records

We received no requests for the amendment of personal records.

Requests for notification	Total
E1 Result of amendment — agreed	0
E2 Result of amendment — refused	0
E3 Total	0

#### Section F: Notification of personal records

We received no requests for notations in the period.

Requests for notification	Total
F1 Number of requests for notation	0

## Section G: FOI requests granted in part or refused

No decisions to grant access in part or to restrict access were made.

Basis for disallowing or restricting access	Personal	Other
G1 s 19 (application incomplete, wrongly directed)	0	0
G2 s 22 (deposit not paid)	0	0
G3 s 25(1)(a1)(diversion of resources)	0	0
G4 s 25(1)(a) (exempt)	0	0
G5 s 25(1)(b), (c), (d) (otherwise available)	0	0
G6 s 28(1)(b) (documents not held)	0	0
G7 s 24(2) — deemed refused, over 21 days	0	0
G8 s 31(4) (released to medical practitioner)	0	0
G9 Total	0	0

## Section H: Costs and fees of requests processed during the period

We received three application fees of \$30, \$35 and \$15. All three cheques were returned to the applicants.

	Assessed costs	FOI fees received
H1 All completed requests	\$0	\$80

## Section I: Discounts allowed

No fees were retained and therefore the question of discounts did not arise.

Type of discount allowed	Personal	Other
I1 Public interest	0	0
I2 Financial hardship — Pensioner/Child	0	0
I3 Financial hardship — Non profit organisation	0	0
I4 Totals	0	0
I5 Significant correction of personal records	0	0

## Section J: Days to process

All applications were dealt with within 21 days.

Days to process	Personal	Other
J1 0–21 days	3	0
J2 22–35 days	0	0
J3 Over 35 days	0	0
J4 Totals	3	0

## Section K: Processing time

All applications were dealt with in 0–10 hours.

Processing Hours	Personal	Other
K1 0–10 hours	3	0
K2 11–20 hours	0	0
K3 21–40 hours	0	0
K4 Over 40 hours	0	0
K5 Totals	3	0

## Section L: Reviews and appeals

No applications proceeded to internal review. Under section 52(5)(d) of the FOI Act we cannot review determinations. No applications were finalised by or indeed proceeded to the Administrative Decisions Tribunal (ADT).

Internal reviews finalised	Total
L1 Number of internal reviews finalised	0
Ombudsman reviews finalised	Total
L2 Number of Ombudsman reviews finalised	0
District Court appeals finalised	Total
L3 Number of ADT appeals finalised	0

## Section L: Details of internal review results

Type of discount allowed	Personal	Other
Grounds on which internal review requested		
L4 Access refused	U* V*	U* V*
L5 Deferred	0 0	0 0
L6 Exempt matter	0 0	0 0
L7 Unreasonable charges	0 0	0 0
L8 Charge unreasonably incurred	0 0	0 0
L9 Amendment refused	0 0	0 0
L10 Totals	0 0	0 0
U* = Upheld V* = Varied		

## Clause 9(1)(b) and (3) of the Regulation

Dealing with the above matters took very little time and did not impact to a significant degree on our activities during the year. The preparation of our 'Statement of affairs' and 'Summary of affairs' also does not take much time and again could not be said to have impacted to any significant degree on our activities. In terms of clause 9(3)(c), (d) and (e), no major issues arose during the year in connection with our compliance with FOI requirements, and given that there could be no inquiries by us of our own determinations and there were no appeals of our decisions made to ADT, there is no information to give as specified at (d) and (e) of Clause 9.

# Appendix H:

## Legal changes

The following Acts and Regulations had an impact on our functions this year.

### ***Police Powers (Drug Premises) Act 2001***

This Act commenced in July 2001. It gives the police new powers that can be exercised on dwellings and places considered to be 'drug premises'. We are required to review the implementation of the Act for two years. More details may be found in 'Legislative reviews'.

### ***Children and Young Persons (Care and Protection) Act 1998***

The Act is being commenced in stages. On 2 July 2001, certain sections were commenced, that provide for:

- the role of the Children's Court Clinic
- the accreditation of designated agencies
- a Charter of Rights for children and young persons in out-of-home care
- the appointment of an Acting Children's Guardian
- the general functions of the Children's Guardian
- activities of the Children's Guardian relating to provision and exchange of information, delegation of functions, and reports to Parliament or the Minister
- reciprocity between the States and Territories.

### ***Children and Young Persons (Savings and Transitional) Amendment (Reciprocity) Regulation 2001***

This Regulation, which was gazetted on 2 July 2001, made provisions for transitional arrangements made necessary by the commencement of section 255 of the *Children and Young Persons (Care and Protection) Act*.

### ***Statute Law (Miscellaneous Provisions) Act 2001***

This Act made amendments to the *Ombudsman Act 1974* and the *Freedom of Information Act 1989*, which became effective on 17 July 2001. The details of the amendments were reported in last year's annual report.

### ***Children (Care and Protection — Child Employment) Regulation 2001***

This Regulation was gazetted on 31 August 2001. It governs the conditions under which children may be employed in film, television or theatrical performances.

### ***Education Teaching Service Regulation 2001***

The Regulation commenced on 1 September 2001. Generally, it allows the Department of Education and Training to take more of a risk management approach to misconduct by a staff member. More details may be found in 'Reform'.

### ***Child Protection (Offenders Registration) Act 2000***

This Act effectively commenced on 15 October 2001. It has affected our activities in the legislative review and witness protection areas. More details may be found in 'Legislative Review' and 'Witness Protection'.

### ***Child Protection (Offenders Registration) Regulation 2001***

The Regulation was gazetted on 12 October 2001. It prescribes administrative and other matters necessary for the effective operation of the Act.

### ***Police Service Amendment (Complaints) Act 2001***

This Act commenced on 23 November 2001. The Act changed the definition of notifiable complaint, allowing some complaints not to be notified to the Ombudsman, and made it an offence to make a false complaint about police or to provide false information during an investigation of a police complaint.

This Act also made amendments to the *Police Service Act 1990* (now the *Police Act 1990*) in relation to the statute of limitations and the onus of proof to apply in matters involving a whistleblower who is a police officer making a complaint under the *Police Service Act*. More details may be found in 'Protected disclosures'.

### ***Statute Law (Miscellaneous Provisions) Act (No 2) 2001***

This Act made amendments to the *Protected Disclosures Act 1994*, the *Local Government Act 1993* and the *Defamation Act 1974*, which became effective on 21 December 2001. More details may be found in 'Protected disclosures'.

### ***Police Powers (Vehicles) Amendment Act 2001***

This Act commenced on 1 January 2002. It amends the *Police Powers (Vehicles) Act* in a number of ways, including giving the police new powers to require identification from passengers in suspect vehicles. We are required to review the amendments for one year. More details may be found in 'Legislative reviews'.

### ***Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001***

This Act commenced on 25 January 2002. It amended the *Children (Criminal Proceedings) Act 1987* to provide for the automatic transfer to an adult correctional centre of certain classes of people detained in juvenile justice centre. More details may be found in 'Legislative reviews'.

### ***Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001***

The major portion of the Act commenced on 1 February 2002. The Act amends the *Children and Young Persons (Care and Protection) Act* to provide that permanency plans are prepared for children in out-of-home care.



# Appendix I:

## Significant committees

### ***Police Powers (Drug Detection Dogs) Act 2001***

This Act commenced on 22 February 2002. It gives police the power to use 'sniffer dogs' to detect drugs on individuals. We are required to review the use of these powers for two years. More details may be found in 'Legislative reviews'.

### ***Universities Legislation Amendment (Financial and Other Powers) Act 2001***

This Act commenced in March 2002. This Act amends the various university Acts to make further provision for their financial and other powers. It extends the Ombudsman's jurisdiction to cover controlled entities, such as commercial bodies controlled by universities, enabling this office to handle complaints about them. More details may be found in 'Investigations and complaint resolution'.

### ***Justice Legislation Amendment (Non-association and Place Restriction) Act 2001***

Some provisions of this Act commenced in May 2002. The Act provides for bail and sentence conditions to be placed on defendants restricting the people with whom they can lawfully associate and the places which they can lawfully visit. More details may be found in 'Legislative reviews'.

### ***Police Powers (Drug Detection Dogs) Regulation 2002***

The Regulation commenced on 11 May 2002. It sets out the public transport routes on which police can take drug detection dogs without a warrant, according to the *Police Powers (Drug Detection Dogs) Act*. Particular train and bus routes are specified in the regulation. The regulation also sets out the requirements for warrants to authorise the use of drug detection dogs and includes copies of the warrant, warrant application and reporting forms to be used.

### ***Crimes Amendment (Child Protection — Physical Mistreatment) Act 2001***

The Act will commence on 5 December 2002. The Act clarifies the nature of 'lawful correction' by providing for the limited circumstances under which physical force may be applied to a child lawfully.

## Internal

### ***Joint Consultative Committee***

Anne Barwick, Assistant Ombudsman (Children and Young People); Katharine Ovenden, Manager Child Protection Team; Anne Radford, Manager General Team; Vincent Riordan, Manager Police Team; Anita Whittaker, Manager Corporate Support; Damien Sams, Staff Representative; Wayne Kosh, Staff Representative; Julia McCosker, Staff Representative; Lindy Annakin, Staff Representative (alternate); Vince Blatch, Staff Representative (alternate); Jessie Choy, Public Service Association Industrial Officer

### ***Team Managers Committee***

Anita Whittaker, Manager Corporate Support; Anne Radford, Manager General Team; Vincent Riordan, Manager Police Team; Katharine Ovenden, Manager Child Protection Team

### ***Information Management Steering Committee***

Bruce Barbour, Ombudsman; Allison Lawrence, Information Manager; Greg Andrews, Assistant Ombudsman (General); Kay Weir, Project Manager Document Management; Vincent Riordan, Manager Police Team; Michael Gleeson, PCCM Business Manager; Katharine Ovenden, Manager Child Protection Team; Anita Whittaker, Manager Corporate Support; Geoff Pearce, Manager IT; Clare Wilde, Manager Intelligence

### ***Security Management Committee***

Chris Wheeler, Deputy Ombudsman; Anita Whittaker, Manager Corporate Support; Geoff Pearce, Manager, IT; David Begg, Network Administrator

## External

### **(office representatives only)**

#### ***Ombudsman — Bruce Barbour***

Institute of Criminology Advisory Committee; Community Services Review Council; Ombudsman Network (network of accountability agencies); Australasian Ombudsman; CEOs Group on Child Protection; Standing Committee with NSW Police Service

#### ***Deputy Ombudsman — Chris Wheeler***

Protected Disclosures Implementation Steering Committee; Community Services Review Council (alternate member); Ombudsman Network (network of accountability agencies); Ombudsman/ICAC Liaison

**Assistant Ombudsman (General) — Greg Andrews**

Department of Corrective Services Liaison Meeting; Ombudsman/ICAC Liaison; Department of Community Services/Ombudsman liaison meeting; Public sector panel of the Churchill Fellowships

**Assistant Ombudsman (Children and Young People)****— Anne Barwick**

Interagency Investigative Forum; Child Protection Senior Officers Group (SOG); Exchange of Information Working Party (SOG); Industrial Relations Commission User Group; Department of Education and Training/Ombudsman Liaison Meeting; CCER/Ombudsman Liaison Meeting; CCYP Guidelines Review Committee.

**Assistant Ombudsman (Police) — Stephen Kinmond**

Police Complaints Case Management Program Review Group; Internal Witness Advisory Council; Standing Committee with NSW Police Service; Ombudsman/PIC Oversight Liaison Committee

**Manager Child Protection Team — Katharine Ovenden**

Child Protection Senior Officers Group; Department of Community Services/Ombudsman Liaison Meeting; CCER/Ombudsman Liaison Meeting; CCYP Guidelines Review Committee

**Manager General Team — Anne Radford**

Department of Local Government Liaison Committee; Department of Corrective Services Liaison Meeting; Joint Initiative Group

**Manager, IT — Geoff Pearce**

PCCM WAN Security Management Forum

**Principal Investigator — Kylie Symons**

Interagency Investigative Forum

**Legal Officer (Police) — Simon Cohen**

Ombudsman/PIC Oversight Liaison Committee; Standing Committee with NSW Police Service

**Legal Officer (Child Protection) — Greg Williams**

Commission for Children and Young People/Ombudsman Liaison Meeting

**Manager Legislative Review Team — Emma Koorey**

Criminal Infringement Notice Steering Committee

**Manager, Intelligence — Clare Wilde**

PCCM Program Working Committee; PODS Business Team; PODS Steering Committee; Standing Committee with NSW Police Service

**Principal Investigation Manage — David Mewing**

Ombudsman/PIC Oversight Liaison Committee

**Senior Investigation Officer — Lindy Annakin**

Department of Corrective Services Liaison Meeting; Joint Initiative Group; Steering committee for the Department of Corrective Service Support Line

**Senior Investigation Officer — John Davies**

Department of Local Government Liaison Committee

**Senior Investigation Officer — Helen Ford**

Department of Community Services/Ombudsman Liaison Meeting

**Senior Investigation Officer — Elizabeth LeBrocq**

Department of Education and Training/Ombudsman Liaison Meeting

**Senior Investigation Officer — Julia McCosker**

Interagency Investigative Forum

**Senior Investigation Officer — Sue Phelan**

Department of Juvenile Justice Liaison Meeting; Department of Community Services Liaison Meeting

**Business Manager CAMS — Michael Gleeson**

Complaint Administration Management System Steering Committee

**Network Administrator — David Begg**

PCCM WAN Security Management Forum

**Projects Officer — Selena Choo**

Protected Disclosures Implementation Steering Committee; NSW Public Sector Corruption Prevention Committee

**Project Officer (Forensic Procedures Review) — Juliet Dimond**

Interdepartmental Committee on the *Crimes (Forensic Procedures Act) 2000*

**Investigation Officer — Vince Blatch**

Department of Corrective Services Liaison Meeting; Steering committee for the Department of Corrective Service Support Line

**Investigation Officer — Kim Castle**

Internal Witness Advisory Council

**Investigation Officer — Kate Jonas**

CCER/Ombudsman Liaison Meeting

**Investigation Officer — Wayne Kosh**

ADT FOI Users Group; ADT General Division Rule Subcommittee

**Investigation Officer — Michael Quirke**

Ombudsman/PIC Oversight Liaison Committee

**Assistant Investigation Officer — Birgit Cullen**

Department of Juvenile Justice Liaison Meeting

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## Glossary

ACM	Australasian Correctional Management Pty Ltd
AHS	Area health service
ADT	Administrative Decisions Tribunal
AIS	Association of Independent Schools
c@tsi	police complaints tracking system
CCER	Catholic Commission for Employment Relations
CCYP	Commission for Children and Young People
CEO	Chief Executive Officer
CHS	Corrections Health Service
CSC	Community Services Commission
DCS	Department of Corrective Services
DET	Department of Education and Training
DJJ	Department of Juvenile Justice
DoCS	Department of Community Services
DPP	Director of Public Prosecutions
EAPS	Ethnic affairs priority statement
EDMS	Enterprise document management system
EEO	Equal Employment Opportunity
FOI	Freedom of Information
ICAC	Independent Commission Against Corruption
IPB	Infringement Processing Bureau
IT	Information technology
JIG	Joint Initiatives Group
JCC	Joint Consultative Committee
LALC	Local Aboriginal Land Council
LAC	Local area command
NSWALC	New South Wales Aboriginal Land Council
OH&S	Occupational health and safety
OIT	Office of Information Technology and Management
PCCM	Police complaints case management
PD Act	Protected Disclosures Act
PIC	Police Integrity Commission
PJC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
RTA	Roads and Traffic Authority
SDRO	State Debt Recovery Office
SOC	State Owned Corporation

# Publications list

The Ombudsman Act prevents us from releasing any information relating to an investigation unless it has been tabled in Parliament. For this reason, most of our reports are not available to the public. The following is a list of recent reports and other publications. For a more detailed list, phone 02 9286 0961 or visit our web site at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## Recent reports

- Reports to Parliament are \$10 unless otherwise stated (plus 10% GST). Postage is included within Australia only.
- 2002 Improving the management of complaints: Police complaints and repeat offenders
  - 2002 Improving the management of complaints: Assessing police performance in complaint management
  - 2002 Speedometers and speeding fines: A review of police practice
  - 2002 DoCS: Critical issues - Concerns arising from investigations into the Department of Community Services
  - 2002 Improving the management of complaints: Identifying and managing officers with complaint histories of significance
  - 2001 Discussion Paper: The forensic DNA sampling of serious indictable offenders (free)
  - 2000 Vehicle powers, questions and answers (\$15)
  - 2000 The handling of child abuse allegations against employees: An investigation into the system used by the NSW Department of Education and Training
  - 2000 Investigation into Kariong Juvenile Justice Centre (\$20)
  - 1999 Policing public safety (\$20)
  - 1999 Policing of domestic violence in NSW
  - 1999 Loss of Commissioner's Confidence
  - 1999 The Norford Report
  - 1999 Officers under stress

## Guidelines

- Guidelines are free unless otherwise stated. Prices do not include 10% GST. Postage is included within Australia only.
- 2002 Enforcement Guidelines for Councils (\$30)
  - 2002 Protected Disclosure Guidelines (4th ed) (\$45)
  - 2001 Child protection: responding to allegations of child abuse against employees
  - 2001 Child protection legislation: What employers and employees need to know
  - 2001 Developing a child protection policy: A practical guide for agencies
  - 2000 The Complaint Handler's Tool Kit (\$90)
  - 2000 Investigation complaints: A manual for investigators (\$45)
  - 2000 Better service and communication for council (\$15)
  - 2000 Options for Redress: Guidelines for redress for detriment arising out of maladministration (\$15)
  - 2000 Effective Complaint Handling
  - 1997 FOI policies and guidelines (2nd ed) (\$30)
  - 1996 Public sector mediation guidelines

## Previous annual reports

The previous year's annual report cost \$10 (plus 10% GST). Older reports are free (subject to availability).

## Fact sheets (free)

- 2002 The Ombudsman & You (Chinese)
- 2002 The Ombudsman & You (Arabic)
- 2002 The Ombudsman & You (Macedonian)
- 2002 Council fact sheet no. 1: Having trouble with unlawful development activity?
- 2002 Council fact sheet no. 2: Unhappy with a proposed development?
- 2002 Council fact sheet no. 3: Having trouble with your development application?
- 2002 Council fact sheet no. 4: Having trouble with your rates and charges?
- 2001 The Ombudsman & You (Hindi)
- 2001 The Ombudsman & You (Singhalese)
- 2001 The Ombudsman & You (Tamil)
- 2001 The Ombudsman & You (Indonesian)
- 2002 Women's Issues: The Ombudsman & You
- 2001 Functions and Jurisdictions of the Ombudsman

## Brochures (free)

- 2002 General information
- 2002 Thinking about blowing the whistle?
- 2001 The New Forensic Procedures Law and the NSW Ombudsman
- 2001 Enjoying yourself (for young people)
- 2000 Child Protection
- 2000 General information (Vietnamese)
- 2000 General information (Arabic)
- 2000 General information (Spanish)
- 2000 General information (Greek)
- 2000 General information (Turkish)
- 2000 General information (Korean)
- 2000 General information (Serbian)
- 2000 General information (Italian)
- 2000 General information (Croatian)
- 2000 Guarantee of service
- 2000 Problems in detention?
- 2000 Some tips for making a complaint
- 2000 Trouble with council?
- 2000 Problems with police?
- 2000 Unhappy with an FOI decision?
- 1999 That's not fair! (Aboriginal brochure)

## Posters (free)

- 2002 Compic (for people with a disability). A3 colour poster
- 1998 NSW Ombudsman. A2 poster

# Our staff (as at 30 June 2002)

## Executive and Corporate Support

**Ombudsman** Bruce Barbour

**Deputy Ombudsman** Chris Wheeler

**Manager Corporate Support** Anita Whittaker

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Bao Nguyen	Kay Weir
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Bina Aswani	Lisa Du
Christine Johnson	MaryAnne Borg
Cuong Tran	Michelle Stewart
David Begg	Rebeca Garcia
Geoff Pearce	Roger Bullen
Jacqueline Spedding	Selena Choo
Jayson Leahy	Stan Waciega
John McKenzie	

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John Davies	Tony Day
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Lin Phillips	Wendy Parsons
Lindy Annakin	

## Police team

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Arthur McCulloch	Michael Randell
Brendan Delahunty	Michael Robertson
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Damien Sams	Nicole Blundell
Daryn Nickols	Nicole Tarrant
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David Mewing	Peter Burford
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Faye Greville	Rachel Hutka
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Gabrielle McNamara	Rosemary Kusuma
Heather Brough	Ruth Barlow
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Joanne Scott	Shelagh Doyle
Julianna Demetrius	Simon Cohen
Juliet Dimond	Sue Meade
Kate Owens	Susanna Loto'Aniu
Katie Hall	Terry Chenery
Kim Castle	Vince Riordan
Kim Swan	Violeta Brdaroska
Laurel Russ	Yvon Piga
Lily Enders	Zaldy Bautista
Lorana Bartels	

## Child protection team

**Assistant Ombudsman** Anne Barwick

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Elizabeth Le Brocq	Maria Petrou
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Julia McCosker	Sophie Woods
Julie Ross	Sue Phelan
Kate Jonas	Tamaris Cameron



## Complaining to the Ombudsman

Anyone can make a complaint to the Ombudsman. If you do not want to complain yourself, you can ask anyone — a relative, friend, lawyer, social worker, your local member of parliament — to complain for you.

### How do I make a complaint?

Start by complaining to the agency you are dissatisfied with. If you need advice at any time, you can phone us. If you are unhappy with the way an agency has handled your complaint, you can complain to us. Complaints should be in writing. Your complaint can be in any language. If you have difficulty writing a letter — due to language or a disability — we can help. We can also arrange for translations, interpreters and other services.

### What should I include with my complaint?

Briefly explain your concerns in your own words. Include enough information for us to assess your complaint to determine the most appropriate response. For example, describe what happened, who was involved, when and where the events took place. Remember to tell us what action you have already taken and what outcome you would be satisfied with. Include copies of all relevant correspondence between you and the agency concerned.

### What happens to my complaint?

A senior investigator will assess your complaint. Where appropriate we will phone the agency concerned and make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the agency's response, we may investigate.

We do not have the resources to investigate every complaint, so priority is given to serious matters, especially if it is an issue that is likely to affect other people. If there are reasons why we cannot take up your complaint we will tell you.

### What happens in an investigation?

The first step in an investigation is to require the agency to comment on your complaint and explain its actions. Generally, we will tell you what the agency has said and what we think of its explanation. Some matters are resolved at this stage and the investigation is discontinued.

If the investigation continues, it can take several months until a formal report is issued. We will tell you what is likely to happen.

If we find your complaint is justified, the findings are reported to the agency concerned and the relevant minister. You will be told of the conclusions and findings. In a report, the Ombudsman may make recommendations. We cannot force an agency to comply with our recommendations, however, most usually do. If they do not, the Ombudsman can make a special report to Parliament.

### What if I am unhappy with the Ombudsman's actions?

If you are unhappy with our decision you can ask for it to be reviewed. However, a decision will only be reviewed once. All reviews are conducted by a senior staff member and by someone other than the staff member originally assigned your complaint. To request a review, telephone or write to the complaints manager in the general, police or child protection team.

If you are unhappy with any of our *procedures* write to:

Clerk to the Committee  
Committee on the Office of the Ombudsman and the Police Integrity Commission  
Parliament House, Macquarie Street, SYDNEY NSW 2000

The committee monitors and reviews our functions. It cannot review our decisions about individual complaints.



l-r: Anne Penny, Publications Officer with  
Selena Choo, Projects Officer.

## Acknowledgements

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