3 Police and Compliance

Our police and compliance branch is responsible for oversighting the way police handle complaints.

We do this through auditing complaints, reviewing police complaint investigations and conducting our own direct investigations. We also monitor the exercise of certain police powers through our legislative review role.

We monitor compliance with requirements relating to covert operations. We hear appeals and handle complaints relating to witness protection.

Highlights

- Reviewed 1,896 individual complaints that were investigated or resolved by police, and found the majority of them had been handled satisfactorily. SEE PAGE 74
- Investigated police practices for destroying fingerprints, using tasers and activating in-car video and provided recommendations for improvement. SEE PAGES 78–79
- Reviewed more than 3,000 complaint records from across the state during one investigation, and will use the findings to work with the Professional Standards Command to improve police systems for recording complaints on c@tsi. SEE PAGE 80
- Inspected the records of 342 controlled operations, and prepared an annual report on our monitoring work under the *Law Enforcement (Controlled Operations) Act 1997*. SEE PAGE 85
- Prepared six monthly reports for the Attorney-General on our inspections of 449 surveillance device records of NSW law enforcement agencies. SEE PAGE 86
- Completed two inspections of the NSWPF's records for covert search warrants, reviewing 48 files. SEE PAGE 86

Policing

We are committed to working with police to achieve a police complaint system that reaches fair and just outcomes and fosters good customer service. We also aim to help police improve the way they operate by addressing issues raised in complaints.

To do this, we closely review complaints about serious police misconduct and provide feedback to the NSW Police Force (NSWPF) about best practice in complaint-handling. We also check how well police are handling less serious complaints and regularly audit the effectiveness of their complaint-handling systems.

Our legislative review role includes keeping under scrutiny how police use certain new powers. We also investigate particular areas of police practice if we think it is in the public interest to do so.

Our role in the police complaints system

The police complaints system is governed by the *Police Act 1990*, which sets out how complaints are to be addressed. Approximately 5,000 complaints about police officers are made each year. These come from both the public and from within the police force itself. Approximately 60% of these complaints are directly assessed by our office.

Under the statutory framework, police conduct the majority of complaint investigations. We are required to oversee the way these complaints are handled, including any decisions not to investigate. Police must notify the Ombudsman about more serious complaints – such as complaints involving allegations of criminal, corrupt or unreasonable conduct.

We complete detailed reviews of all police investigations of more serious complaints. Our role is to ensure these investigations are effective and timely and the action taken is appropriate. For example, we may:

- ask police to review the action taken if we consider it is inadequate
- seek further information
- monitor the police investigation
- prepare a report about the investigation if we consider it deficient
- investigate the matter of our 'own motion'
- report to Parliament about issues of significant public interest.

We have a class or kind agreement with the Police Integrity Commission (PIC) that sets out the types of less serious complaints that can be handled by police without our oversight – such as complaints about poor customer service, rudeness or minor workplace conduct issues. These complaints are resolved by local commanders without our direct oversight. However police are still required to register the details of these complaints on their complaints management system, and we conduct regular audits to make sure they are being handled appropriately.

Current complaint trends and outcomes

This year we received 3,032 formal or written complaints about police for individual assessment and oversight. This included complaints we received directly as well as those that were notified to us by police or referred from the PIC. We finalised 3,093 complaints. Figure 36 shows the number of complaints we have received and finalised over the past five years.

We determined that 27% of complaints could be declined for investigation for reasons such as the availability of an alternative and satisfactory means of redress – such as raising the allegations in court if they directly related to a charge. Another 340 complaints were assessed as local management issues and referred to commands for direct action. We quality reviewed 1,896 individual complaints that were fully investigated or resolved by police, and found that the majority of them had been handled satisfactorily. However, in 283 matters (15%) we considered the handling to be deficient. This included 161 or 8.5% of matters where we believed the initial investigation or proposed management action taken in response to the findings of the investigation was deficient, and 122 or 6.5% of matters where the timeliness of the investigation alone was found to be unsatisfactory. Following our advice, police were able to remedy the deficient investigation and management actions in 74% of the cases where we identified deficiencies.

Figure 37 shows the proportion of oversighted complaints about police officers made this year by fellow police officers and by members of the public, compared to the previous four years. The high proportion of complaints raised by officers about their colleagues is an indicator of the low tolerance for misconduct within the current NSWPF. Figure 38 shows a breakdown of the kinds of complaints that were notified to us this year (some complaints may contain more than one allegation). Appendix A provides more detail about the types of complaints and the way they were handled.

Figure 36: Formal complaints about police received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Received	3,753	3,466	2,969	2,948	3,032
Finalised	3,833	3,555	3,254	3,094	3,093

Figure 37: Who complained about the police?

This figure shows the proportion of formal complaints about police officers made this year by fellow police officers and from members of the general public, compared to the previous four years.

	05/06	06/07	07/08	08/09	09/10
Police	1,151	1,268	1,056	1,158	1,090
Public	2,602	2,198	1,913	1,790	1,942
Total	3,753	3,466	2,969	2,948	3,032

Over the past three years, we have seen an increase in the use of informal resolution by police to address complaints and a reduction in formal investigations, as shown in figure 39. This shift reflects the effects of the new streamlined complaints resolution approach introduced across the NSWPF in 2008. The aim of this streamlined process is to resolve less serious complaints more efficiently, rather than relying on resource intensive complaint management teams.

The NSWPF is still not meeting its own internal timeliness standards for completion of investigations and informal resolutions although completion times are continuing to improve (see figure 40).

An important issue we monitor is the adequacy of the management action the NSWPF takes following a complaint. Even if an allegation is not sustained against an individual officer, police may decide some action is required to improve operational issues or the complaint-handling process. In 2009–2010, 66% of the investigations we reviewed resulted in some form of management action (see figure 41).

Figure 39: Action taken in response to formal complaints about police that have been finalised

Action taken	07/08	08/09	09/10
Investigated by police and oversighted by us	1,983	1,395	1,145
Resolved by police through informal resolution and oversighted by us	99	443	751
Assessed by us as local management issues and referred to local commands for direct action	490	468	340
Assessed by us as requiring no action (eg alternate redress available or too remote in time)	682	788	857
Total complaints finalised	3,254	3,094	3,093

Figure 40: Timeliness of the completion of investigations and informal resolutions by the NSW Police Force

Percentage of	05/06	06/07	07/08	08/09	09/10
Investigations less than 90 days	28	28	34	40	44
Informal investigations less than 45 days	21	14	15	41	47

Figure 41: Action taken by the NSW Police Force following complaint investigations

	05/06	06/07	07/08	08/09	09/10
No management action taken	895	936	837	500	386
Management action taken	1,236	1,221	1,146	895	759
Total investigations completed	2,131	2,157	1,983	1,395	1,145

Figure 38: What people complained about

Subject matter of allegations	No. of allegations
Arrest	134
Complaint-handling	211
Corruption/misuse of office	278
Custody/detention	153
Driving-related offences/misconduct	107
Drug-related offences/misconduct	178
Excessive use of force	723
Information	678
Inadequate/improper investigation	677
Misconduct	1,414
Other criminal conduct	398
Property/exhibits/theft	200
Prosecution-related inadequacies/misconduct	265
Public justice offences	167
Search/entry	149
Service delivery	1,148
Total	6,880

Note: Please see Appendix A for more details about the action that the NSW Police Force took in relation to each allegation.

Of the 751 informal resolutions of notifiable complaints we oversighted, police took some form of management action in almost half (47%). Non-reviewable sanctions such as management counselling, official reprimands or warning notices, additional training, performance agreements and mentoring are the main types of management actions used to correct misconduct. In the majority of cases we have agreed with police that the proposed management was appropriate and reasonable.

The system continues to work well in relation to complaints about serious misconduct. In matters where disciplinary action was finalised this year, 95 officers had been charged with a total of 300 offences. Some of the most common charges were for unauthorised access to information/data (56 charges were laid against four officers), assault (46 charges laid against 34 officers), and driving offences, including drink driving (24 charges laid against 24 officers), and negligent/dangerous driving (16 charges laid against nine officers).

A total of 31 officers were charged with 51 'other summary offences', including public mischief, making false statements, unauthorised possession of a prohibited weapon, and failure to quit premises. The 69 criminal charges for 'other indictable offences', were laid against 12 officers, and included offences such as possession of child pornography, firing a firearm in a manner likely to injure persons or property, and drug offences. Case study 27 is an example of a dismissal as a result of charges laid against the officer.

CS 27: Stealing army clothing

An on-duty police officer stole several hundred dollars worth of army clothing while supervising a boot camp held at Holsworthy army base, aimed at preventing youth offending. The officer placed the clothing in a police vehicle, and then drove to a nearby service station where he put the items in his girlfriend's car. Police at the camp wrongly accused the young people of stealing the property and searched their bags. Later, a complaint into the officer's conduct was initiated by another officer who had witnessed the removal of the property. As a result of the investigation into the complaint, the officer was charged with larceny. He was convicted, fined $5,000, and dismissed from the police force as a result of his conduct.

Twenty five police officers were removed from the NSWPF during the financial year and at least another four resigned as a result of disciplinary procedures.

See figure 42 for a five year comparison of charges against police arising from complaints that were finalised during each period.

Overseeing serious misconduct investigations

The complaints system is more than a disciplinary process for individuals who have acted wrongly. It is also about ensuring police act reasonably and police policies and procedures are reasonable. The complaints system allows police action to be reviewed and officers to be educated when mistakes have been made. Complaints may also help police identify circumstances where their practices need to change.

Our role is to help police achieve best practice in complaint-handling and investigation by:

- providing feedback about potential problems in investigative approaches
- highlighting operational issues that may not have been identified in the process of handling the complaint.

Police have to take into consideration a multitude of laws and regulations when policing in the community. Sometimes, they get things wrong – as shown in case studies 28 and 29. This can adversely impact the rights of the public and may also compromise criminal investigations.

CS 28: Difficulties handling a noise complaint

In response to a late-night noise complaint, police attended a property where a fancy-dress party was being held. After receiving no response from knocking on the front door, the officers went to the rear of the property through a side gate. They encountered the owner of the property and another person dressed in police uniforms claiming to be police officers. The owner told the officers to leave the property and not to come back without a warrant.

The officers promptly left and contacted a more senior officer who went to the property a short time later. The officers went to the front door, again without a warrant. The senior officer recognised the two people dressed in police uniform as ex-police officers and asked that they return the uniforms. After a short while, the officers entered the house and seized the uniforms. The ex-police officers were later charged with possession of police uniforms and impersonating a police officer. A magistrate dismissed the charges on the basis that the attending officers trespassed when obtaining evidence of the offences. Costs of $15,000 were ordered against the police.

The owner of the property complained about the unlawful actions of the officers. The police investigator made no sustained finding, stating the officers erred on a point of law and did not intentionally abuse their powers. We raised concerns about this finding given that the magistrate found that the officers acted unlawfully. We recognised that they had acted in good faith when trying to deal with the noise complaint, but nevertheless exceeded their powers. We also acknowledged the officers attempted to deal with the noise complaint in a sensible and practical manner.

We suggested that the issues raised in this complaint provided an opportunity for educating all police officers on their powers of entry when dealing with noise complaints. The NSWPF agreed with our suggestion and issued a Law Note published in the Police Weekly. This outlined the various powers of entry when dealing with noise complaints – including the requirement to obtain a warrant if an occupant requests that police leave the property before they have a chance to address the noise complaint.

Figure 42: Police officers criminally charged in relation to notifiable complaints finalised

Number of	05/06	06/07	07/08	08/09	09/10
Complaints leading to charges	65	63	50	63	92
Officers charged	64	60	49	60	95
Total charges laid	101	184	136	259	300
Officers charged following complaints by other officers	51	48	32	45	68
Percentage of officers charged	79	80	65	75	72

We regularly receive complaints about the lawfulness of arrests. The issue raised in case study 30 demonstrates that some police officers may not fully appreciate the fact that an arrest is a measure of last resort, and suspects can only be arrested for limited purposes outlined in section 99(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

CS 29: Searching garages and mail boxes

Police attended a residence to see if a person wanted for questioning was present. Without the consent of the owner, police opened the garage door to check if the person's vehicle was there. They also opened and searched the mail box and the mail inside. Police claimed they did this to establish whether the person was present at the location. The initial complaint investigation found that the officers' actions were an acceptable part of police investigative process and no adverse findings were made.

After reviewing the matter and the relevant legislation, we formed the view that police did not have the power to conduct these searches in the circumstances. We wrote to the NSWPF and asked them to reconsider the findings made and take appropriate management action.

Police reconsidered the matter and accepted that the searches were unlawful. As a result, sustained findings were recorded, the officers involved were counselled about appropriate search practices, and training was provided to all general duties officers in the local area about the legalities of searching mail boxes and garages without the owner's consent.

CS 30: When is an arrest unlawful?

Investigators from the Professional Standards Command were investigating allegations that two police officers were running a debt collection business without a licence and without secondary employment approval – and they arrested the officers while they were on duty. The purpose of the arrest was to give the officers the opportunity to participate in a criminal interview and ensure they could be controlled during the execution of search warrants at their respective homes. During the subsequent legal proceedings, a magistrate found the investigators unlawfully arrested the officers.

After the charges for conducting a debt collection business without a licence were dismissed, the officers complained to us about the unlawful arrests. The NSWPF initially declined to investigate the allegation on the basis that the investigators relied on internal legal advice when deciding to arrest the officers, and on the understanding that the magistrate did not make any adverse finding or comment about the conduct of the investigators.

We obtained a copy of the transcript, noting the magistrate criticised the actions of the investigators in arresting the officers. We prepared a comprehensive legal advice outlining our view that the investigators appeared to have unlawfully arrested the officers – given that their purpose of arrest was to conduct investigative procedures and to control the officers, rather than start legal proceedings at the time of the arrests. We gave a copy to the NSWPF requiring them to investigate the issue of unlawful arrest. We also suggested that the complaint provided an opportunity to clarify legal and procedural issues about the arrest of police officers and members of the public during criminal investigations.

The NSWPF agreed the investigators unlawfully arrested the officers. The officers received an apology and internal complaint-handling guidelines have been amended to clarify the scope of the power of arrest when conducting criminal investigations involving police officers.

Case study 31 involved serious allegations against a senior police officer. Unfortunately, police failure to properly investigate the matter affected the outcomes that could be reached. We identified problems with the investigation, including a failure to properly follow complaint-handling protocols. We hope this will help police to avoid similar problems in the future.

CS 31: A lack of integrity and a missed opportunity

A superintendent who was a local area commander was detected by highway patrol (HWP) officers driving at 176kph in a 100kph zone. When stopped by the HWP officers, the superintendent claimed he was in pursuit of another driver for a traffic offence. The HWP officers joined this pursuit with two vehicles, but eventually realised the vehicle the superintendent referred to did not exist.

The region commander took action after a short investigation. We were critical of this investigation as it failed to conduct criminal inquiries and ask adequate questions about the superintendent's reasons for speeding. Although the superintendent admitted he had lied to HWP about the involvement of another vehicle, his admissions could not be used in any criminal proceedings as he had not been criminally cautioned and the admissions were not electronically recorded. In our view, the superintendent's conduct could have constituted an offence of public mischief and an attempt to pervert the course of justice.

As the complaint involved an integrity issue, it needed to be referred to the Internal Review Panel (IRP) – a panel of senior officers who recommend management action for complaints involving serious misconduct and integrity issues. However this did not occur. We raised this with the commander of Professional Standards Command who agreed the conduct should have been notified to the IRP. They could have provided a more robust and independent consideration of the matter.

The superintendent received a region commander's warning notice, a fine of $1,674 and a six month licence suspension. He was also decertified from driving police vehicles for the same period and required to requalify. No action was taken against the region commander in relation to his handling of the investigation as he had retired from the NSWPF.

We look at the complaint histories of both complainants and subject officers when we are assessing complaints. Case study 32 shows how not disclosing the identity of complainants may affect both the complaint investigation and our oversight.

Investigations by the Ombudsman

In addition to our powers to oversee police complaints under the Police Act, we may decide to investigate police practices using the Ombudsman Act if it is in the public interest to do so.

Destroying records of fingerprints

On 12 December 2006, the *Law Enforcement (Powers and Responsibilities) Act 2002* 'LEPRA' was amended to allow fingerprints taken by police to be destroyed if they were taken for an offence where the person was found not guilty or was acquitted, or the charges were withdrawn or dismissed.

After the amendment to LEPRA, people began applying to have their fingerprints destroyed. We received a number of inquiries and complaints about the NSWPF refusing to destroy fingerprints after valid applications had been made. The NSWPF advised us that they were relying on legal advice suggesting that destroying fingerprint 'records' would contravene the State Records Act.

The inconsistency between LEPRA and the State Records Act was resolved on 6 March 2009, allowing the NSWPF to lawfully destroy fingerprint records. They destroyed the fingerprint records of the five people who had complained to our office, but had no plans to re-visit rejected applications where the applicant had not complained to us.

We decided to investigate the NSWPF's practices for destroying fingerprints and found out that there were a further 414 rejected applications. The NSWPF proposed to write to the rejected applicants inviting them to complete a fresh application. There did not appear to be any legal requirement for a fresh application – and it would just result in more time-consuming paperwork. We also thought there might be some unforeseen or unintended consequences if the NSWPF used fingerprint records after there had been a valid application for them to be destroyed.

We recommended that the NSWPF act upon all previous valid applications and only ask for further information from applicants if they could not identify the fingerprint record to be destroyed. We also recommended that they provide clear information on their website about the process for applying to have fingerprints destroyed.

The NSWPF agreed with our recommendations and are currently implementing them. This includes writing to previous applicants to advise them that their fingerprints have been destroyed.

Using Tasers

In March 2009, an experienced police officer used a taser on a person who had been seen walking erratically in the middle of the road near Oxford Street. The officer stated that the person appeared drug or alcohol affected and initially did not respond to his requests to get off the road.

CCTV footage indicates that the person eventually complied with the police direction to move onto the footpath. By this time, at least four other police had arrived although the officer's evidence was that he was not aware of this. When the person attempted to step onto the footpath, the police officer tasered him in the back and he fell onto the roadway.

He then stood up and was surrounded by four police. The taser was then used a second time and the person again fell onto the roadway before being physically controlled by the other attending police. He was subsequently found to be in possession of a small amount of illicit drugs and arrested.

A subsequent complaint investigation by police found that the use of the taser was appropriate and within the NSWPF guidelines. We had concerns about the adequacy and outcome of the investigation but, as the incident was to be reviewed in court proceedings, we decided to wait for the outcome of those proceedings.

The magistrate dismissed all charges against the person on the basis that the arrest was unlawful and the use of the taser was unreasonable and amounted to assault.

Having considered all the available information, we issued a statement of provisional findings and recommendations to the police. In our view, the officer's use of the taser constituted excessive force. We recommended that an adverse complaint finding be made against the officer and that he and the other involved officers receive further training in appropriate use of tasers. We also recommended that this case become an example in police training of how a taser should not be used.

CS 32: Problems with anonymous allegations

An officer made an allegation of illicit drug use by another officer. The officer who made the allegation wanted to remain anonymous, and said they had received the information from another officer who also wanted to remain anonymous.

The Police Act requires the NSWPF to protect the identities of internal police complainants, but there are no provisions for granting anonymity. If officers are not identified, it may have an impact on the effectiveness of the complaint investigation. Lines of inquiry are immediately closed down. Identification is important for reviewing the complaint history of the involved officers to see if they may be making a reprisal complaint. Additionally, failure to identify the complainant means we are unable to properly monitor the complaint investigation and attend any interviews.

As the officer who made the allegation declined to provide the NSWPF with the name of the officer who reported their observations, no further enquires were able to be conducted with that officer. We also understand that there were other officers present at the function where the alleged drug use had occurred. These officers were also not able to be identified or interviewed.

We requested the identities of all the officers in this matter. The local area commander advised that he could not comply with our request as undertakings had been given to the officers that their identities would not be disclosed.

The investigator had also failed to review the subject officer's history. This showed he had previously admitted to illicit drug possession and use, but was allowed to remain with the NSWPF as he had provided information about other police who were alleged to be using illicit drugs.

We raised the matter with Professional Standards Command who directed the local area commander to provide us with the identities of the involved officers. The NSWPF subsequently amended their guidelines to reflect the requirement for complainants' identities to be disclosed to our office.

While the officers involved subsequently received additional training, the police did not support making an adverse finding against the main officer although it acknowledged that the NSWPF could have handled the incident differently. The NSWPF expert in relation to taser deployment also did not concur with our conclusion that the taser use was inappropriate and police stated that there were less ambiguous examples of inappropriate use available for training purposes.

At the time, the standard operating procedures (SOPs) for Tasers did not, and still do not, contain an instruction prohibiting the discharging of tasers upon a subject in passive non-compliant situations. The officer, most probably in good faith, used his discretion within the tactical operations model utilised by the NSWPF to take control of the situation and justified his taser use within the terms of the relevant SOPs on the basis he was acting to prevent potential injury to the person as a consequence of being struck by a motor vehicle or to others as a result of the person's perceived irrational behaviour.

We continue to believe that the SOPs that guide police use of tasers contain criteria for use that are capable of too wide an interpretation and leave too much to the discretion of individual officers. In our 2008 report to Parliament on *The Use of Taser Weapons by New South Wales Police Force* we recommended among other things that the SOPs be tightened to make clear that they should only be used in situations where a person is violently confronting or resisting police. The NSWPF have refused to do this. Interestingly, Victorian Police, like some other jurisdictions, recently issued SOPs that make it abundantly clear that tasers must not be used as a compliance tool against individuals offering passive resistance.

Prior to finalising our consideration of this individual matter, the Police Integrity Commission utilised its power under section 70 of the *Police Integrity Commission Act 1996* to take over from the Commissioner the investigation of this and a related complaint. As a consequence the matter was taken outside Part 8A of the *Police Act 1990* and the Ombudsman's oversight role with respect to this incident at this time has ceased.

Performance indicators

2009–2010 criteria (%)	Target	Result
Formal reports about police conduct that made recommendations relating to law, policy or procedures	70	86
Recommendations in formal reports supported or implemented by the NSW Police Force	80	96

Activating in-car video

In December 2009 we started an investigation into compliance with legislation and police guidelines for using in-car video (ICV).

ICV is a key tool in modern traffic policing. It is an objective source of evidence and can be invaluable to establish or clearly refute allegations of misconduct.

Getting the best out of ICV, for the NSWPF and the public, relies on having appropriate guidelines that are reinforced by commanders and supervisors. It also relies on the NSWPF having procedures in place that ensure that ICV is used both as a source of evidence and as a tool for identifying and addressing risks in their command and fostering good police practice.

Since ICV was introduced in 2004, we have overseen a number of ICV related complaints. ICV evidence has often been invaluable in establishing whether misconduct has occurred – such as in case study 33. However we have also identified some ongoing concerns.

These concerns are:

- Police are not always activating audio when required. When they fail to activate audio, there is often no attempt to explain why or for investigators to act on non-compliance.
- ICV is not always used effectively as a source of evidence. Incidents are reviewed or investigated and statements prepared without looking at the ICV record.
- In a number of cases where assault is later alleged, the ICV shows the detained person being removed from the field of view of the ICV camera – and the reason for this is not adequately explored.

In May 2010, we gave the NSWPF a copy of the provisional findings and recommendations of our investigation. The NSWPF have since supported all of the recommendations made.

CS 33: Police officer detected not driving safely

ICV provides valuable evidence in pursuit matters. Reviewing ICV after a pursuit can also help senior police to find out whether the pursuit was conducted in accordance with best practice. Sometimes, ICV can even detect serious misconduct.

After a review of the ICV in one pursuit, a region traffic coordinator detected some very serious breaches of the safe driving policy by one of the vehicles involved. The officer driving the vehicle had activated the ICV, but not the audio. The ICV footage showed that, although the pursuit had been terminated, the officer continued to follow the subject vehicle – driving dangerously with no flashing lights or sirens and driving on the wrong side of the road up a crest. At the Safe Driver Panel convened to consider this officer's conduct, the region traffic coordinator commented that he had 'never seen such a blatant breach'.

Although we are not usually notified of breaches of the safe driving policy, in this matter we were. This was because of the seriousness of the breaches and the officer's poor complaint and driving history.

Significant management action was taken in relation to the driver of the police vehicle, including reducing his driving classification. He was also referred for consideration of reviewable management action.

Safe driving

Safe driving has been a prominent issue this year with the introduction of the *Crimes Amendment (Police Pursuits) Act 2010* in March.

In December 2006, we issued the NSWPF with a report about our audit of police compliance with the safe driving policy. We made 39 recommendations, with 18 relating to the terms of the safe driving policy. Police are the experts in police driving, so our aim was to prompt the NSWPF to genuinely evaluate their policy in light of the investigation findings. Of the 18 recommendations we made about safe driving, eight were not implemented and four were only partially implemented. Those not implemented included recommendations such as the use of ICV to routinely review pursuits, the review of all pursuits by the State Pursuit Management Committee, providing greater guidance to police drivers to assess the seriousness of the offence and the appropriateness of engaging in a pursuit, and guidance about what is required after a pursuit has been terminated.

We will continue to closely monitor complaints about police pursuits, ICV and other traffic policing situations.

Keeping the complaint system under scrutiny

The Ombudsman's role includes an obligation to the keep the overall police complaints system under scrutiny. This includes inspecting records to ensure NSWPF are complying with requirements under the Police Act, and examining the systems used by police to check how well they are operating. This year we have looked at systems and procedures in a number of areas – such as assessing and registering complaints, Working With Children Checks, handling domestic and family violence complaints (see page 81) and drug testing of police officers.

Registering complaints

Part 8A of the Police Act sets out how complaints about police conduct are to be handled. The NSWPF is required to register all complaints that fall within the terms of Part 8A on c@tsi, their complaint information system – including the details of the investigations conducted and the managerial actions taken to remedy complaints that are found to be 'sustained'.

Complaints that are resolved directly by police without our oversight are also registered on c@tsi.

Complying with this requirement is essential to the effectiveness of the complaint system. This is because:

- Complaint histories of individual police officers inform decision-making about new complaints, and are used by the NSWPF to assess the integrity of officers being considered for promotion.
- Recording complaints encourages consistency in decision-making and promotes transparency and accountability.
- We access c@tsi to audit complaint-handling and assess the reasonableness of complaint outcomes.
- Complaint records provide information about trends across the NSWPF, including levels of complainant satisfaction, and provide data that can be used to drive improvements to service delivery.

This year we started an investigation into the NSWPF's practices for deciding whether to register a complaint on c@tsi. We inspected over 3,000 records from across the state. Our provisional findings suggest a widespread failure to comply with the requirements for registering complaints. We found more than 250 complaints that the NSWPF had incorrectly assessed as being 'not Part 8A' complaints and therefore had not recorded on c@tsi – such as case study 34. Of these, 104 included allegations of serious misconduct that the NSWPF failed to notify to the Ombudsman, such as the example at case study 35.

The NSWPF has accepted our findings. In the next year we plan to work closely with the Professional Standards Command to improve police compliance with requirements for registering complaints on c@tsi.

CS 34: Road rage incident not notified

A local area command received a complaint alleging that an off-duty probationary constable used offensive language and improperly displayed his police badge during a road rage incident. The complaint was handled by informal resolution and the officer was counselled about his conduct. The NSWPF took steps to resolve the complainant's concerns and to address the officer's conduct, but then assessed that the complaint was 'not Part 8A'. As a result, the complaint was not registered on c@tsi or notified to the Ombudsman.

CS 35: Letter not classified as a complaint

A community worker from a drop in centre complained about the conduct of police officers who attended the centre and searched one of its visitors. The letter of complaint indicated that the complainant considered the use of force was unreasonable and excessive, with a number of officers forcing the visitor to the ground and using a taser to subdue him. They felt that the force used was unnecessary and could have been avoided, and said police had failed to recognise that the visitor was trying to cooperate with their directions. The local area command assessed the letter as not being a complaint under Part 8A, so it was not recorded on c@tsi or notified to the Ombudsman. We have asked the NSWPF to investigate this matter.

Child-related employment notifications and checks

In February 2008, the NSWPF finalised a class or kind agreement with the Commission for Children and Young People (CCYP). This agreement covers the NSWPF's obligations to notify the CCYP of completed employment proceedings – that is, proceedings against an employee relating to reportable conduct or acts of violence committed in the course of employment and in the presence of a child. These notifications are required so that the CCYP can provide Working With Children Checks for child-related employment.

This year we raised concerns with the NSWPF about delays in notifying the CCYP of employment proceedings completed before the class or kind agreement was finalised. The Professional Standards Command set up a project to identify and notify outstanding matters, and this resulted in 75 notifications to the CCYP. Of the 75 notified, 19 related to currently serving police officers.

We have also had ongoing discussions this year with the CCYP about the application of the child-related employment screening system to general duties sworn police officers. Only a handful of police positions – such as work in a Joint Investigation Response Team or with the Police Band – currently include a Working With Children Check as a requirement of their employment.

We are concerned that general duties police officers do not have to undergo a Working With Children Check when they join the NSWPF, as the CCYP does not consider they are engaged in child-related employment – as defined by section 33 of the *Commission for Children and Young People Act 1998* (CCYP Act).

Police officers have statutory responsibilities for protecting children under the *Children and Young Persons (Care and Protection) Act 1998*. For example, they make mandatory reports about children and young people at risk of significant harm, apply for apprehended violence orders on behalf of children, and remove children and young people who are at immediate risk of serious harm.

Given that policing activities involve significant contact with children and young people, we believe it is in the public interest that general duties officers have to undergo a Working With Children Check. We raised these concerns in our submission to the statutory review of the CCYP Act.

New drug testing procedures

The Police Act allows for the testing of police officers for prohibited drugs and steroids. This year the NSWPF introduced procedures for directing off-duty police to return to work for a drug test under section 211A of the Police Act. The power to do this was introduced in November 2006, but had not been previously used. Under the new procedures, the NSWPF will notify the Ombudsman within three days of a decision to direct a police officer to return to duty for a drug test. Since its introduction, the procedure has been used once and led to criminal charges being laid against the officer tested.

Policing domestic violence

A significant development this year was the passage of legislation to establish a 'domestic violence death review team' in NSW. Our 2006 report to Parliament, *Domestic violence: improving police practice*, drew attention to the benefits of a domestic homicide review process and since then we have reiterated our support for its establishment on several occasions. Disappointingly, the NSW Government has decided to establish the team in the office of the NSW Coroner, despite the majority of the expert advisory panel it convened recommending that the function be located in this office.

The advisory panel preferred this model based on our significant legislative functions, powers and expertise in relation to monitoring and reviewing child deaths as well as reviewing and investigating broader systemic issues, particularly the delivery of government and non-government community services and the policing of domestic violence. This infrastructure, which includes access to the NSW Police Force and Community Services databases and the National Coroners' Information System, would have enabled prompt implementation of the domestic violence death review model.

Importantly, locating the function in our office would have also avoided potential duplication of effort and resources in relation to reviewing child deaths. We note that the NSW Opposition has stated its opposition to the location of the domestic violence death review team within the office of the Coroner and indicated it will transfer the function to the Ombudsman if elected to government.

This year also saw the public release of the NSW Police Force's *Domestic and Family Violence Code of Practice*. The development of the code, which was launched by the Police Minister in December 2009, was one of the key recommendations of our 2006 report. We recommended that the code be developed to provide victims and their advocates with a document that clearly delineates and reinforces the responsibilities of police in responding to domestic violence. We provided feedback to police on a draft version of the code.

Auditing domestic and family violence complaints

This year we completed an audit of the NSWPF's handling of domestic and family violence complaints. The audit was carried out in accordance with s.160 of the *Police Act 1990*, which requires us to keep under scrutiny the systems established by the NSWPF for dealing with complaints.

The audit included both 'notifiable' and 'non-notifiable' complaints received and registered by the NSWPF in the 2008 calendar year. The objective was to generate a snapshot of the handling of domestic violence related complaints and the quality of the policing of domestic violence more generally.

Using a detailed questionnaire, approximately 400 complaints were reviewed to determine whether they were correctly classified by the NSWPF and satisfactorily handled, including whether police took appropriate action to resolve any immediate concerns raised by the complaint, whether the complaint was dealt with in a timely manner and whether the complainant was satisfied with the outcome.

In addition to providing an insight into how well the NSWPF handles complaints about domestic violence, the audit has revealed useful information about the most common complaint issues and demographic data about complainants. It has also extracted information about the number and details of complaints involving police officers alleged to be domestic violence offenders.

We have prepared a preliminary report to consult with NSWPF that sets out the findings of the audit and puts forward a range of recommendations designed to improve the handling of complaints about domestic violence and the quality of service delivery more generally in this critical area of policing.

Working with stakeholders

In August 2009 the Ombudsman was invited to give a keynote address at the annual conference for the NSWPF's Domestic Violence Liaison Officers. The Ombudsman used this opportunity to outline the different ways in which we work with police to improve the service they provide to the people of NSW. He also dispelled some of the myths surrounding our role in oversighting the police complaints system.

Following his address, the Ombudsman answered questions from attendees on a range of topics including recent initiatives aimed at better responding to domestic violence, changes to the child protection system and concerns about the ability of police officers and other workers to exchange information.

This year the NSWPF sought our feedback about the development of a new specialist domestic violence course for police prosecutors. Our 2006 report recommended that this training be provided. The course will be rolled out early in 2011. We were also invited by the NSWPF to sit on a committee convened to consider a proposal to introduce 'on-the-spot' apprehended domestic violence orders (ADVOs).

We canvassed this issue in our 2006 report and were pleased to have the opportunity to share the knowledge we have gathered about the operation of the ADVO system as a result of our unique role oversighting complaints about police. In September 2009 we also accepted an invitation to visit Sutherland LAC to observe the strategies used by that command to respond effectively to domestic violence.

Our inaugural Domestic Violence Community Stakeholders Forum in December 2009 was very positively received. The forum was organised to provide community workers in the domestic violence sector with an opportunity to speak directly to us about their issues and concerns in relation to the response by police and other agencies to domestic violence, and to enable us to update them about our ongoing work in this area.

The 60 workers who attended the forum were addressed by the Ombudsman, Community and Disability Services Commissioner and staff from our strategic projects division and police division. A range of issues was covered, including progress made by the NSWPF in implementing the recommendations of our 2006 report and changes to mandatory reporting and referral processes as a result of the Wood Inquiry. (For further details about the forum see page 28 in Stakeholder engagement).

As a result of feedback provided by participants at the forum, we subsequently raised a number of issues with the NSWPF's Corporate Spokesperson for Domestic Violence, including continuing concern about women being inappropriately charged with domestic violence offences because of the alleged failure of police to correctly identify the 'primary aggressor'.

This led to the NSWPF Corporate Spokesperson agreeing to support research conducted by the Domestic Violence Coalition which will track incidents involving women charged with domestic violence-related offences and/or where an ADVO is taken out against them. This will be checked against whether the woman also has a history as a victim of domestic violence. The feedback from the forum has also informed our domestic violence complaints audit.

In addition to our stakeholder forum we liaised with the domestic violence sector on a number of occasions throughout the year. We attended the NSWPF domestic violence stakeholder forum in September 2009 and met with the Domestic Violence Coalition, Women's Health NSW and the Women's Domestic Violence Court Advocacy Scheme (WDVCAS) Network to discuss a range of issues, including establishing a regular consultation mechanism to allow the WDVCAS Network to raise systemic matters with us.

During these discussions we often make suggestions to stakeholders about how best to approach resolving any concerns they may have with the NSWPF at a local and/or corporate level. We also participated in a focus group run by the Education Centre Against Violence about intersectoral domestic violence training needs.

This year we also maintained strong links with frontline domestic violence workers by partnering with Women's Legal Service (WLS) to provide domestic violence advocacy training to workers in the community, health and legal sectors as part of *Reaching out for Rights*, a project developed by WLS to provide workers with the skills needed to assist women experiencing family violence to successfully navigate the justice system. These training sessions were conducted across the state and gave us the opportunity to gather useful information to inform our domestic violence complaints audit. For further details see page 43 in Community education and training.

CS 36: Restoring confidence

After her ex-partner was convicted for seriously assaulting her, a woman approached us to complain about her treatment by police some years earlier. Prior to the assault for which he was convicted, the woman had contacted police on several occasions to report that her ex-partner had assaulted and was stalking her. She complained that police failed to investigate these matters and did not apply for an ADVO on her behalf at the earliest opportunity. While an ADVO was later sought and granted, the woman alleged that police then failed to act on her reports that the order had been breached. As a result of the poor service she felt she received, the woman reported that she eventually lost confidence in the ability of police to protect her.

Because of the ongoing trauma the woman experienced following the serious assault and subsequent, prolonged court proceedings, we arranged to receive her complaint verbally. After reducing it to writing and seeking the woman's views about what she would like to happen as a result of her complaint, we approached the NSWPF Corporate Spokesperson for Domestic Violence. He agreed to meet with the woman to provide her with the opportunity to tell her story, and to allow him to explain the changes that have taken place to the policing of domestic violence since her experience. The Corporate Spokesperson subsequently met with the woman at her home. As a result of her complaint, the woman's story will be featured in a training DVD for police officers. The woman was pleased with this outcome and contacted us to convey her appreciation for the assistance we provided.

Future directions

To be truly effective, good complaint systems need to fulfil four major functions. They need to provide:

- Accountability and a mechanism for citizens to have government agencies review their actions and decisions when they are thought to be wrong, unfair or unreasonable.
- An internal quality control mechanism for agencies to check that the individual conduct and decisions of their employees are proper and correct.
- A mechanism for redress and corrective action when things have actually gone wrong.
- Data that can shed light on the effectiveness of an organisation's policies and programs and lead to system and organisational improvements.

In our view, the police complaint system achieves the first two functions well. However, given the time and resources allocated to investigating and reporting on the more serious matters, inadequate attention is currently given to providing feedback and redress to the complainants and victims of incidents that generate complaints. The system primarily focuses on finding fault with individual officers. Little attention is paid to underlying causes of misconduct and the patterns and trends of complaints, or the implications these have for identifying useful changes or improvements that could be made to existing policies, procedures, training, communication or management practices at individual police commands.

NSWPF statistics for about 28,000 management actions taken in 2008-2009 arising from over 5,300 complaints showed that only 2% of all actions were about customer negotiation and resolution and only 3% of actions related to organisational improvements. In a presentation at the Police Academy in April 2010, Deputy Ombudsman Greg Andrews urged Professional Standards Duty Officers to pay more attention to providing fair redress for affected parties and identifying how complaints can inform service and process improvements.

In the coming year, we will be focusing on how well police are resolving complaints and how they are delivering and measuring complainant satisfaction.

Working with police to improve the complaint system

This year the Professional Standards Command commenced an important initiative called 'Project Lancaster'. It has involved a review of the disciplinary process within the NSWPF that aims, among other things, to improve the procedural fairness provided to police officers who are the subject of complaint investigations. The review examined the provision of information to these officers and the timeliness of disciplinary or reviewable actions taken under Part 9 of the Police Act.

A review was done of appeals by police officers to the Industrial Relations Commission (IRC) relating to decisions made under Part 9 of the Act to dismiss them or impose other penalties reviewable at the IRC – such as reducing their rank or seniority or deferring a salary increment.

As a result of the review, the NSWPF has indicated an intention to make greater use of non-reviewable management actions to deal with officer conduct that falls short of professional standards. This is in line with the principles in the 1997 report of the Royal Commission into the New South Wales Police Service which provided the framework for the current complaint system. In particular, Justice Wood said that:

- A presumption should exist that all members of the [NSWPF] are inherently capable of performing to the standard required, and that individual shortcomings can be addressed by counselling, monitoring and learning from mistakes.
- Mistakes and conduct falling short of the standard should be dealt with openly and fairly, not only from the standpoint of the police officer who is the subject of the inquiry, but also from the point of view of any person who brought the problem to notice.

We believe that these changes have the potential to deliver a range of positive benefits to the NSWPF, particularly if they encourage police to be more open in admitting wrong doing and making appropriate amends. Rather than having officers on suspension, they may be returned to work more quickly after appropriate training or counselling. If officers engage in further misconduct, there is a stronger case for dismissal or reviewable action if the matter is appealed to the IRC.

At the same time, the proposed changes bring new risks that serious misconduct may be treated too lightly and stronger disciplinary action avoided when it is clearly warranted. We will be monitoring the progress and implementation of this project and will continue to closely oversee the proposed management action taken on individual cases.

Reviewing the implementation of legislation

Since 1998, the NSW Parliament has required the Ombudsman to keep under scrutiny the powers conferred on police in over 25 new laws. We undertake an independent and impartial analysis of the exercise of these powers – taking into account the perspectives of police officers, agencies and the people upon whom the power is used.

Appendix B lists our legislative review activities in 2009–2010.

Terrorism powers

We have been tracking the implementation of recommendations we made in our review report on Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*. Under Part 2A a person can be detained by a court order for up to 14 days to prevent, or preserve evidence of, a terrorist act. Part 3 allows police and Crime Commission staff to obtain covert search warrants if this would help them prevent or respond to a terrorist act.

Out of the 20 recommendations we made for the NSWPF, 17 are awaiting implementation – including 13 recommendations about changes to the standard operating procedures (SOPs) for preventative detention, and two about developing a memorandum of understanding with Corrections NSW and Juvenile Justice. At the time of writing, the preventative detention SOPs were in draft form.

The Department of Justice and Attorney-General finalised a statutory review of the Act and provided a copy to us in late June 2010. The review is fully or partially supportive of 33 of the 37 recommendations in our report. The government introduced a Bill into Parliament on 24 June 2010, which implemented many of the legislative amendments we suggested. The Bill also proposed extending the Ombudsman's monitoring function of both the use of covert search warrants and preventative detention.

We are required to report further on the powers conferred on police under this Act as soon as practicable after December 2010.

Criminal organisations

The *Crimes (Criminal Organisations Control) Act 2009* came into operation on 3 April 2009. We are required to keep under scrutiny and report on the exercise of powers by police under the Act for the first two years of its operation.

This Act provides police with powers to apply to an eligible judge for an organisation to be declared a criminal organisation. It also allows police to apply to the Supreme Court for control orders on members of declared criminal organisations. The Act creates a range of offences – such as association between controlled members, recruiting people to join declared organisations, and failure to disclose identity upon request by police who are trying to serve control orders or suspect an association offence is being committed.

Controlled members can also be prevented from engaging in a range of prescribed activities. These include working in the security industry, carrying on a business buying, selling or repairing motor vehicles, possessing firearms licences and licences to sell liquor, operating a casino, operating a tow truck and a range of activities in the racing industries.

During the year we monitored the NSWPF's preparations to implement the new law, including observing meetings of the implementation committee. The first application to have an organisation declared was not made until July 2010.

Delays in tabling our reports

At the end of our reviews, we have to provide a report to the relevant Minister and the Attorney-General detailing our findings about the way the powers have been used. The legislation usually requires the Attorney-General to table our report in Parliament 'as soon as practicable' after we complete it.

In nine of the 17 legislative review reports we have finalised since 2005, it took six months or more for the Minister to table the report in Parliament (see Appendix B). We acknowledge that Ministers have competing priorities, but we are concerned that delays in tabling create a risk that the data may lose relevance and important 'public interest' issues may not be raised. For example, the criminal infringement notices (CINs) legislation requires our report to be tabled in Parliament as soon as practicable after receipt. However, the report we completed in August 2009 on the impact of CINs on Aboriginal communities was not tabled until July 2010.

Although it is ultimately a matter for Parliament, we consider that the independent review of new police powers could be more effective if we were given the responsibility to table the report in Parliament directly – as we do with our reports under the Ombudsman Act.

A better approach for implementing our recommendations

Our report on police powers to conduct personal searches on arrest and in custody, establish crime scenes and require the production of documents – under the *Law Enforcement (Powers and Responsibilities) Act 2002* – was tabled in Parliament in May 2009. We made 77 recommendations, many about improvements to police procedures and providing officers with sufficient training about the new powers. The NSWPF and the Department of Justice and Attorney-General are now undertaking a policy review, required by the Act, to check that the Act continues to meet the objectives Parliament intended.

Although it is now over a year since our report was tabled, we cannot report on the implementation of our recommendations. Police have declined to provide any information pending the finalisation of the policy review. We understand that the findings and discussions in our report may inform that policy review, but it is not clear why that process should delay implementing the recommendations primarily focused on operational issues – particularly given the powers are so regularly used by police.

Under the Ombudsman Act, we can require agencies to notify us of any action taken or proposed following our investigative reports. However, we have no general statutory power to require information about action taken in relation to legislative review reports. It is up to Parliament to decide what powers it wants us to review and the way new powers are exercised. We believe we could do our role more effectively if we were able to require information about the implementation of our recommendations. This would also make the review process more rigorous and transparent.

Witness protection

The witness protection program was established under the *Witness Protection Act 1995*. It aims to protect the safety and welfare of Crown witnesses and others who have given information to police about criminal activities. The Ombudsman is responsible for handling complaints from people in the program and hearing appeals about the exercise of certain powers.

Appeals

The NSW Commissioner of Police has the power to refuse someone entry to the witness protection program or remove them from the program. A person directly affected by such a decision can appeal to the Ombudsman. The Ombudsman must determine an appeal within seven days of receiving it and our decision overrides the Commissioner's decision. This year we received no appeals under the Act.

Complaints

Every person taken onto the witness protection program has to sign a memorandum of understanding with the Commissioner of Police. This memorandum sets out the basic obligations of the participant and includes provisions such as:

- prohibitions from engaging in specified activities
- arrangements for family maintenance, taxation, welfare or other social and domestic obligations or relationships
- matters relating to their identity
- the consequences of not complying with the provisions of the memorandum.

Witnesses must also be informed they have a right to complain to the Ombudsman about the conduct of police in relation to any matters covered in the memorandum.

Historically, we have received only a few complaints from participants in the witness protection program. When complaints have raised systemic issues, the police have responded positively and resolved those issues. This has contributed to the noticeable improvement in the management of the program and a related decrease in the number of complaints we receive. This year we received only one complaint from a participant.

Covert operations

The NSW Police Force, the NSW Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission have the power to do a range of things – as part of a covert operation – that would otherwise be illegal.

We are responsible for scrutinising the compliance of these agencies with accountability requirements relating to the use of telecommunications intercepts and surveillance devices, undercover operations, and covert and criminal organisation search warrants.

Agency compliance

Under the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and the *Surveillance Devices Act 2007,* they can intercept telephone conversations and plant devices to listen to and photograph or video conversations and track positions of objects. They can also carry out controlled or 'undercover' operations under the *Law Enforcement (Controlled Operations) Act 1997* that would otherwise involve committing breaches of the law – such as being in possession of illicit drugs. The Australian Crime Commission, the Australian Federal Police and the Australian Customs and Border Protection Service are also authorised to conduct controlled operations under the NSW legislation. To date, only the Australian Crime Commission has used their powers under the NSW Act. All of these powers are aimed at gathering evidence of criminal or corruption offences and disrupting the activities of criminal organisations.

As these kinds of operations involve significant intrusions into people's private lives, the agencies may only use these powers if they follow the approval procedures and accountability provisions set out in the relevant legislation. An important function of the Ombudsman is to review the compliance of these agencies with these requirements.

Controlled operations

Controlled operations are an important investigation tool. They allow law enforcement agencies to infiltrate criminal groups – particularly those engaged in drug trafficking and organised crime – to obtain evidence to prosecute perpetrators of criminal offences or expose corrupt conduct.

The chief executive officer of the law enforcement agency gives approval for controlled operations without reference to any external authority. To ensure accountability, the Ombudsman monitors the actual approval process.

Agencies must notify us within 21 days if an authority to conduct an operation has been granted or varied, or if a report has been received by the agency's chief executive officer on the completion of the operation.

We are required to inspect the records of each agency at least once every 12 months to ensure they are complying with the requirements of the Act. We also have the power to inspect agency records at any time – and make a special report to Parliament if we have concerns that should be brought to the attention of the public.

During 2009–2010, we inspected the records of 342 controlled operations.

We report in detail on our monitoring work under the *Law Enforcement (Controlled Operations) Act 1997* in a separate annual report that is available on our website. As well as reporting on compliance with the Act, the report includes details about the type of criminal conduct targeted in the operations and the number of people who were authorised to undertake controlled activities. It also provides some basic information about the results of those operations.

Telecommunications interceptions

The Ombudsman has been involved in monitoring compliance with the legislation for telecommunications interception since 1987.

A judicial officer or member of the Administrative Appeals Tribunal grants a warrant for a telephone interception, so, unlike controlled operations, we do not scrutinise compliance with the actual approval process.

We make sure that the agency carrying out the telecommunication interception complies with all the necessary record-keeping requirements. These records must document the issue of warrants and how the information gathered was used. Some records have to be given to the Attorney-General and all intercepted material must be destroyed once specified conditions no longer apply. All telephone intercept records have to be kept under secure conditions by the agency.

We have to inspect each agency's records at least twice a year, and also have a discretionary power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney-General. The *Telecommunications (Interception and Access) (NSW) Act 1987* prevents us from providing any further information about what we do under that Act in this annual report – or in any other public report we prepare.

Surveillance devices

The *Surveillance Devices Act 2007* came into operation on 1 August 2008 and repealed the Listening Devices Act. It includes the listening devices covered by the repealed Act, but has a much broader application. The new Act covers the installation, use and maintenance of listening, optical, tracking and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities and information obtained from their use. It empowers specific NSW law enforcement agencies to use surveillance devices to investigate crime and corrupt conduct and use the evidence obtained to identify, locate or prosecute offenders.

Under the Act, applications are made to:

- eligible judges for warrants to authorise the use of most surveillance devices
- eligible magistrates for tracking devices or retrieval warrants for tracking devices.

The Act imposes a number of record-keeping, reporting, use and security responsibilities on the law enforcement officers granted a warrant. It also requires the Ombudsman to inspect the records of each agency from time to time to check the extent of compliance with the Act by the agency and its law enforcement officers, and report to the Attorney-General at six monthly intervals on the results of those inspections.

We have carried out four inspections under the *Surveillance Devices Act 2007*. On 21 October 2009, we presented our report to the Attorney-General on our inspections of surveillance device records up to 30 June 2009. On 31 March 2010, we presented our report to the Attorney-General on our inspections of surveillance device records up to 31 December 2009. Both reports are available on our website.

Inspecting records of search warrants

Covert search warrants

On 7 April 2009, the NSW Government introduced new covert search warrant powers to combat organised crime. Supreme Court judges may now issue search warrants that enable police and other law enforcement officers to covertly enter and search premises to investigate serious criminal offences.

If necessary, the warrants also authorise entry to properties adjoining or providing access to the subject premises. They also authorise the executing officer to impersonate another person to execute the warrant and do anything else that is reasonable to conceal the covert entry.

The *Law Enforcement (Powers and Responsibility) Amendment (Search Powers) Act 2009* provides for the Ombudsman to inspect the covert search warrant records of the NSW Police Force (NSWPF), the NSW Crime Commission and the Police Integrity Commission every 12 months to check that the requirements of the Act are being complied with.

The Police Integrity Commission had not applied for any covert search warrants during the first year of the Act's operation. We have carried out three inspections of the records of the NSWPF and one of the warrant records of the Crime Commission under the Act and reviewed 48 files.

Our first annual report was issued to the Attorney-General and Minister for Police in July this year. It is available on our website.

Criminal organisation search warrants

The *Criminal Organisations Legislation Amendment Act 2009,* which was assented to on 19 May 2009, enables an eligible judge to issue a new form of search warrant – a criminal organisation search warrant. These warrants allow police to search in or on premises for things connected with an organised criminal offence. These are serious indictable offences arising from, or occurring as a result of, organised criminal activity. This means any activity that is carried out to advance the objectives of committing serious violence offences or gaining material benefit from such conduct. The activity needs to be carried out on more than one occasion and involve more than one participant. This new type of search warrant was part of a package of new laws made in response to concerns about criminal conduct associated with outlaw motorcycle gangs.

The powers conferred in these warrants are the same as for existing search warrants, except they operate for seven days instead of 72 hours and have a lower evidentiary threshold. 'Reasonable suspicion' applies to these warrants, compared to 'reasonable belief' for ordinary search warrants. Applications to the Supreme Court must be approved by a police officer of the rank of superintendent or above.

Under the legislation, we have to inspect the records of the NSWPF every two years and report on the results of that inspection to ensure that the requirements of the Act are being complied with.

4 Public Administration

Our public administration division deals with complaints from members of the public who consider they have been treated unfairly or unreasonably by government.

This section reports on our work with NSW departments and authorities, the adult correctional system, local councils, freedom of information and protected disclosures.

Highlights

- Nearly 80% of the suggestions to departments were adopted, including giving apologies, changing or reviewing a policy and implementing training. SEE PAGE 88
- Investigated a range of issues around managing asbestos in NSW, including agency responses when asbestos is identified, confusion about responsibilities, and the information about asbestos available on council websites. SEE PAGE 92
- Spent 160 person days visiting 48 correctional centres around NSW, meeting with inmates and staff and observing conditions, routines and programs. SEE PAGE 96
- Made 24 recommendations to Manly Council to improve their administrative practices, supervision of staff, decision-making, and the way they handle complaints. SEE PAGE 101
- Released a discussion paper to the local government sector and stakeholders about the role of Internal Ombudsman positions in councils. SEE PAGE 104
- Established ties with the new Office of the Information Commissioner including signing an information sharing agreement. SEE PAGE 104

Departments and authorities

One of the traditional functions of Ombudsman across the world is dealing with complaints from members of the public who consider they have been treated unfairly or unreasonably by government.

Decisions by government departments and local councils can have a significant impact on both individuals and the community. Our work in this area is an essential part of keeping NSW government agencies accountable and improving the standard of public administration.

The broad range of issues we have dealt with this year is a reflection of the large number of NSW government agencies and their diverse roles and functions. We concentrate our resources on dealing with complaints about issues that affect a large number of people, as well as those that have a serious impact on individuals.

Figure 43: Formal complaints finalised

- Preliminary or informal investigation 646 **(46%)**
- Assessment only 649 **(46%)**
- Conduct outside our jurisdiction 114 **(8%)**
- Formal investigation 5 **(0%)**

Current investigations at 30 June 2010	No.
Under preliminary or informal investigation	86
Under formal investigation	3
Total	89

Figure 44: Formal and informal matters received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Formal received	1,329	1,158	1,348	1,349	1,438
Formal finalised	1,317	1,167	1,354	1,310	1,414
Informal dealt with	3,625	3,465	3,962	3,949	3,777

Data does not include complaints about public sector agencies that fall into the categories of local councils, the correctional system, police, community services, freedom of information and protected disclosures.

Complaint trends and outcomes

Overall complaint numbers have remained constant this year. We received 1,438 complaints in writing (which we call 'formal complaints') and 3,777 complaints over the telephone or in person (which we call 'informal complaints', see figure 44). Compared to last year, this is an increase of 6% in formal complaints and a decrease of 4% in informal complaints.

After improvements to our website and online complaint form, we received fewer complaints this year about conduct we cannot look at because it is outside our jurisdiction. Providing more detailed information on our website about alternative sources of help for these types of problems has helped save people time and prevent some of the frustration people feel when they are referred to different agencies.

This year, we conducted 646 preliminary or informal investigations and five formal investigations that involved using the Ombudsman's coercive investigation powers (see figure 43). See figure 45 for the issues people complained about.

Nearly 80% of the suggestions we made to departments and authorities were adopted – including apologising, changing or introducing a policy, implementing training, and reviewing and changing decisions.

A full list of the agencies we received complaints about this year and how we dealt with those complaints is in Appendix G.

Figure 45: What people complained about

This figure shows the complaints we received in 2009–2010 about NSW public sector agencies other than those complaints concerning police, community services, councils, corrections and freedom of information, broken down by the primary issue in each complainant. Please note that while each complaint may contain more than one issue, this table only shows the primary issue.

Issue	Formal	Informal	Total
Approvals	57	350	407
Charges/fees	149	396	545
Child abuse-related	1	1	2
Complaint-handling	206	346	552
Contractual issues	111	319	430
Correspondence	9	21	30
Charges/fees	4	12	16
Customer service	218	556	774
Enforcement	126	316	442
Information	80	163	243
Management	55	60	115
Misconduct	33	66	99
Natural justice	18	32	50
Issue outside our jurisdiction	88	342	430
Object to decision	199	453	652
Officer misconduct	0	1	1
Other administrative issue	28	169	197
Policy/law	56	167	223
Records	0	7	7
Total	1,438	3,777	5,215

How we bring about change

Resolving problems

Whenever possible, we work cooperatively with agencies to resolve problems. When we receive a complaint we generally telephone an agency to find out their side of the story. We ask them to provide us with evidence of the action they have taken and, if an error has been made, we expect the agency to recognise this. We then discuss what needs to be done to fix the problem – both for the individual complainant and to stop it happening to someone else. We resolve many complaints in this way, resulting in some significant improvements (see case studies 37 to 40).

CS 37: Invoices finally paid

A contractor provided temporary bus shelters for RailCorp in early 2007, but was unable to remove them at short notice due to restricted access to the site. The contractor claimed that, although the accounts department were willing to pay him, the staff member he was dealing with at RailCorp was refusing to approve the payment. He contacted RailCorp several times but the matter remained unresolved. We contacted RailCorp and found that full payment was not being made because some invoices were missing. The contractor agreed to provide copies of these missing invoices and RailCorp agreed that the contractor would be paid. After trying to resolve the problem for over three years, the contractor was very happy with this outcome.

CS 38: Inspectors, dealers and faulty cars

The owner of a new car believed that it was faulty and took the matter to the Consumer, Trader and Tenancy Tribunal or CTTT. The CTTT asked the Office of Fair Trading (OFT) to provide a report on the car. In an attempt to resolve the complaint, the OFT inspector met with the car dealer and the owner at the dealership – but had met in private with the car dealer before the meeting. This and other actions caused the car owner to believe the inspector was biased and had a previous relationship with the car dealer.

He wrote to the OFT complaining about the inspector and making allegations of bias and corruption. He received a very brief response that dismissed his allegations. He complained to us that the response was inadequate. On contacting OFT we were given more information about how the matter had been investigated. Our inquiries established that the allegations of corruption were not reported as required, the internal complaint-handling system was not followed, there was limited analysis of complaints, and the procedures manual used to guide inspectors was out of date. Although we did not agree with the car owner that there was any evidence of wrong conduct on the part of the inspector, we agreed that OFT's response was inadequate.

We suggested to OFT that they send an apology letter to the car owner for the way his complaint was handled, review their complaint-handling system, provide complaints data to managers, update their procedures manual, and produce a fact sheet to explain the role of inspectors in matters referred by the CTTT. We were particularly concerned that regional offices should report complaints as a way of monitoring potential risks and encouraging accountability. We were pleased that OFT accepted our suggestions which should result in a more effective and transparent complaint-handling system.

CS 39: Helping customers with a disability

Our inquiries about a complaint from a disability advocacy service established that a RTA motor registry had refused to provide a customer with an Auslan interpreter to help her complete a transfer of registration for her vehicle. As a result of our suggestions, the RTA agreed to provide disability awareness training for staff at all motor registries and develop a disability policy, as part of their Disability Action Plan, to help staff provide assistance to customers with special needs. The RTA also passed on their apologies to the customer and assured her that action was being taken to ensure that the difficulties she had experienced would not be encountered by other customers.

CS 40: Driving licence unfairly cancelled

An advocate complained that an asylum seeker had his driving licence cancelled on the basis that it was obtained fraudulently. He had arrived in Australia on a passport in a false name due to concerns about his safety in his country of origin. His original residency application was lodged in his real name nine years ago and it was not known when it might be finalised. Although the Department of Immigration had recently accepted his real name, the RTA refused to issue another licence until he was granted permanent residence. As a result of our intervention, the RTA reviewed their original decision and issued the man with a new driving licence at no extra cost.

Performance indicators

2009–2010 criteria	Target	Result
Percentage of complaints assessed within two days	90	93
Average time taken to finalise complaints (not including complaints about FOI)	7 weeks	5.5 weeks
Complaints resolved by providing advice or through constructive action by the public sector agency (%)	65	67
Formal investigation reports recommending or suggesting changes to law, policy or procedures (%)	90	100
Recommendations made in investigation reports that were implemented by public sector agency/authorities (%)	80	96

Housing

In last year's annual report we noted the continuing expansion of the community housing sector and changes to how the sector is regulated, including the appointment of a Registrar of Community Housing. NSW is still in the early stages of a 10-year plan to more than double the number of homes in the sector, by supplying new housing and by transferring public housing properties to community housing providers. These providers are generally non-government organisations.

Significantly, public housing tenants who transfer to community housing are also moving outside of our jurisdiction. This means we are unable to investigate complaints about a community housing provider.

In December 2009 we met with the Registrar and Community Housing Division (CHD) of Housing NSW to discuss the handling of complaints about community housing providers under the new regulatory framework. We sought and received clarification about the respective roles of the Registrar and CHD in relation to the receipt, referral and investigation of complaints. We also established a regular liaison arrangement with the Registrar and CHD.

Helping people with a mental illness access and sustain social housing

In November 2009 we tabled a special report to Parliament about the findings and recommendations of our investigation into the implementation of the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGOS). As we reported last year, the investigation found that the overall implementation of the JGOS has been ineffective and has failed to achieve systemic improvements.

Our report detailed the reasons for this failure and outlines three key areas where reform is needed:

- discharge planning for mentally ill people leaving hospital
- the ability of government and non-government service providers to exchange information about clients when their safety, welfare or wellbeing is at risk
- the availability of supported accommodation for people with a mental illness and other complex needs.

As part of monitoring the implementation of our recommendations, we have sought advice from Housing NSW about the development of a new Housing and Mental Health Agreement – an outcome of our investigation – as well as a range of other issues including the adequacy of guidance provided to housing workers about factors that should be considered prior to taking action against tenants before the Consumer, Trader and Tenancy Tribunal, and the circumstances in which a tenant's personal information can be shared with other agencies.

Resolving complaints from public housing tenants

In relation to tenants who remain in public housing, this year we finalised 223 formal complaints and conducted preliminary or informal investigations into 129 (or 58%) of these matters. We dealt with a broad range of issues including tenants' concerns about delays in the provision of maintenance or repairs, debt recovery and enforcement issues and objections to decisions. We have also received complaints about poor communication by NSW Housing, inadequate provision of information and deficient complaint-handling.

In many cases, we deal with complaints initially by referring tenants to NSW Housing local offices to resolve matters. However, if a complaint or a series of complaints indicates that there may be a systemic issue, we may respond by making our own inquiries or meeting with senior agency managers (see case study 41).

CS 41: Debt recovery practices

This year we received complaints from individual tenants and from advocacy and legal services concerning a debt recovery program that NSW Housing initiated.

These complaints were about letters NSW Housing sent to more than eight thousand tenants about repaying outstanding rent, water charges and miscellaneous debts. The correspondence did not provide any particulars of the debts, including the meaning of 'miscellaneous' debts. In some cases, complainants said they were being directed to repay debts that were more than six years old and thus beyond the time period for legally recoverable debt.

Further, when the tenants or their advocates asked NSW Housing to clarify its demands, they claimed that they got no response, other than (in some cases) follow up letters requiring tenants to make immediate arrangements to pay back the debts. Some complainants believed that they would be in danger of eviction unless they settled the matter. Given the number and scope of these complaints, we met with NSW Housing to discuss the issues involved. We will report on the results of our approach next year.

Submissions to inquiries

We also use information from complaints to inform submissions we make to inquiries and reviews to bring about more systemic change. This year we provided information to parliamentary inquiries into the taxi industry, education for students with a disability, and substitute decision-making for people lacking capacity.

In our submission about substitute decision-making, we drew attention to the problems faced by some clients of the NSW Trustee and Guardian (NSWTG) who, for example:

- pay significant bank fees because they inadvertently overdraw their accounts and make withdrawals from the ATMs of other banks
- incur multiple fines that are then dealt with by the State Debt Recovery Office.

As a result of our submission, these problems were raised at the public hearings of the Inquiry and the NSWTG made a commitment to resolve them. For more details, see case study 42.

CS 42: Saving bank fees

The NSW Trustee and Guardian manages the financial affairs of people who are unable to make their own financial decisions. Many clients are on Centrelink benefits and some can pay hundreds of dollars in bank fees. As a result of our inquiries about a number of complaints we had received, we learned that the NSWTG does not always know this is happening because bank statements often go directly to the client. In some cases, they will ask the bank to refund the fees, but there is no systematic way of doing this. The fines can cause significant hardship and may not leave enough money for individuals to buy food and other basic necessities.

We asked the NSWTG to look at this issue in a 'bigger picture' way to try to prevent fees from being incurred in the first place. They did an audit of client files and, as a result, have established contacts at each of the major banks to resolve issues of clients unnecessarily incurring fees and charges. They are also going to:

- include information in their newsletters about low fee accounts and monthly account fee exemptions and reductions
- introduce a new category in their client payment system to identify and track clients who incur bank fees, and run monthly reports to identify such problems and any action that needs to be taken.

Investigating public interest issues

We also investigate issues – such as ongoing problems with school heaters – on our own initiative if we identify a matter of significant public interest. There has been considerable community debate about the appropriateness of using unflued gas heaters in schools. Our concerns about heating in schools date back to 1989 when we conducted a formal investigation into the issue.

That investigation established that the Department of Education and Training (DET) had been aware of health concerns about unflued gas heaters since 1988, after a study of a number of schools was completed by AGL.

Levels of nitrogen dioxide found in sample schools had ranged from acceptable to unusually high. A three phase study was conducted as a consequence of these results. The department advised us at that time that, in response to the reports, they were spending $4 million on a program of leak detection and inspecting every unflued gas heater in state schools. Sub-odour leaks were eliminated and heaters beyond economical repair were disconnected and replaced with newly designed low NOx burners. Low NOx heaters were installed in schools in very cold climates.

Our final investigation report identified the need to set a safe indoor upper limit for nitrogen dioxide. Although the National Health and Medical Research Council was considering the issue at that time, they had not set a standard – but had identified this as a priority area for further research. Such research apparently did not take place and further action to establish a safe indoor limit does not appear to have been taken until early 2009, when DET and NSW Health agreed to jointly sponsor an application to the research council.

We have made the department aware of our concern that some twenty years after they first became aware of the significance of this issue, they have yet to develop a long-term evidence-based strategy for heating in schools. We will be closely monitoring their response to the recent research results with the expectation that a considered and robust strategy is developed to make sure heating in schools is both appropriate and safe.

Promoting better communication

Clear and accurate communication with members of the public is essential. For agencies with complex responsibilities, it is particularly important that they are able to explain complicated requirements in simple terms. For example, inquiries to us suggest that many people find correspondence from the RTA hard to understand and its website difficult to navigate. We have given this feedback to the RTA, along with some specific examples of problems that people have experienced (see case study 43).

CS 43: Confusion about registering vehicles

We received several complaints from pensioners and other concession holders – who do not have to pay registration fees – saying that RTA information about registering their vehicles was confusing and misleading. The information on the registration renewal papers gave concession holders the impression that their vehicles were registered after they had completed online payments for green and pink slips. However, they later found out they had been driving unregistered cars as they had failed to complete a necessary validation step. In one instance, the concession holder drove unregistered for five months until she was stopped by the police. Her insurance was also invalid because her car was unregistered, despite the fact she had paid for green slip third party liability insurance.

We found that the information on the registration labels was indeed confusing and open to misunderstanding. The labels contained advice that pensioners claiming a concession must ensure they receive a receipt number from the RTA for the Certificate of Registration. However the label also stated that no receipt was required when registration was renewed online.

The RTA has modified the message on the labels to state in bigger font that pensioners must obtain a receipt number. However, as the message is still potentially unclear, we have suggested a number of ways in which further clarification could be given to concession holders about what they need to do to register their vehicles. The RTA has agreed to consider these suggestions.

Websites are a useful and important way for agencies to provide easily accessible and up-to-date information. However, it is important that the same rigour is applied to the quality and accuracy of this information as any other government communication. Unfortunately, this is not always the case (see case study 44).

CS 44: Inappropriate website content

We found that the Game Council had published inappropriate material on their website, including a paper that misquoted and misrepresented the work of a conservation advocacy group.

We wrote to the Director General of the Department of Industry and Investment, the super department responsible for the Game Council, about our concerns that:

- the Game Council had not corrected the quote voluntarily when asked to do so
- the content and tone of other articles on the website was inappropriate for a statutory authority
- the advocacy role played by the Game Council might potentially conflict with their regulatory function of administering the licensing system for game hunters
- the Game Council's complaint-handling policy was inadequate.

The Director General expressed his disappointment that the Game Council had not voluntarily amended the quote and agreed some of the media releases on their website appeared to be inconsistent with what would normally be associated with a government department. He said he believed the Game Council could undertake an advocacy role as well as a regulatory function, but advised that in the future the super department's media unit will check all material before it goes on the Game Council's website. Game Council staff will also be given clear information about the super department's policies and procedures, including those to do with complaint-handling.

Highlighting **35 years**

In the last 35 years, there have been five Ombudsman:

1975 – Mr Ken Smithers

1981 – Mr George Masterman QC

1988 – Mr David Landa

1995 – Ms Irene Moss AO

2000 – Mr Bruce Barbour

Communication between agencies is also important. A failure by agencies with common clients, or dealing with a related issue, to discuss policy and practice issues with each other can have significant consequences (see case study 45).

CS 45: Information hard to get

The NSW Trustee and Guardian does not always have information to hand that families and relatives expect. A complainant told us he was having difficulties getting information about his mother's housing situation. He was told by Housing NSW that they were only authorised to give information to the NSWTG. This was a source of conflict between the son and both the NSWTG and Housing NSW.

It became apparent that the complaint was more about who was able to get information, rather than how the estate was being managed. We contacted Housing NSW and asked if there was any problem with supplying information to the client's son if NSWTG agreed to this. Housing NSW was happy to note this on their system for future reference, and the NSWTG agreed – on condition that the client's son could access the information but did not have authority to make decisions on his mother's behalf.

NSWTG also said that there were times when they needed to speak with Housing NSW, as many NSWTG clients live in public housing, but were unsure about how to do this. We suggested a memorandum of understanding (MOU) with Housing NSW to ensure good and ongoing communication – and this suggestion has been adopted by both agencies.

Improving enforcement

Many government agencies play an important role in enforcing legislative or administrative requirements that have a significant impact on people's lives. Last year we reported on two major investigations we were conducting. One was into WorkCover's handling of an asbestos exposure incident and the other was into the adequacy of the then Department of Water and Energy's action on complaints about the illegal damming of a river. We are now able to report on the changes brought about by those investigations, as well as further work we are doing to examine the adequacy of asbestos management procedures in NSW.

Key compliance changes being implemented

Last year we investigated a complaint about the then Department of Water and Energy (now the Office of Water) and found that they had failed to take adequate enforcement action against illegal damming of a river. We are pleased to report the department has been gradually complying with our recommendations. They have formally apologised and paid an ex-gratia payment to the complainant and are taking action to implement key changes. These changes include:

- implementing a new case management system and reviewing compliance branch documentation and file management practices

Managing asbestos in NSW

As a result of our investigation last year into the management of an asbestos incident, WorkCover agreed to implement some of our recommendations. They will also be taking many of the issues we raised to Safework Australia – to be considered as part of ongoing consultations about the standardisation of national occupational health and safety legislation.

After the release of our investigation report, the CEO of WorkCover set up an Asbestos Co-regulators Working Group – made up of representatives of all government agencies that have responsibilities for asbestos issues – to look at how each agency deals with asbestos and how they interact. We were pleased to be invited to participate as an observer at the working group meetings and we look forward to seeing their report, which is due to be released in March 2011.

We are also investigating the response of various agencies to the identification of friable and bonded asbestos at the Wallaga Lake Aboriginal community. In November 2007, the Eurobodalla Shire Council and the Department of Environment, Climate Change and Water were advised of the presence of friable asbestos at an unofficial tip some 500m from the nearest residence. Bonded asbestos was identified at residences in April 2009. After intense media coverage, attempts to process applications and obtain government funding to remove the asbestos finally bore fruit.

Although some work had been done before this to clean up the tip site, the actual cleanup by licensed asbestos removalists did not start until November 2009. We inspected the site before and after the clean up and were concerned about the adequacy of the work done. Broken bonded asbestos was still scattered around residences, in driveways and in neighbouring bush land. Consultants provided a report to the council and the community stating there was no danger to the residents from the remaining bonded asbestos.

This advice was given despite most authorities, including the World Health Organisation, stating there is no safe level of exposure to asbestos.

We have also looked at how councils throughout NSW deal with asbestos and, in particular, how members of the public can access information on asbestos through council websites. We found that many council websites contained out-of-date or inaccurate information on asbestos or no information at all. We wrote to all councils suggesting they review their websites and local policies – and we were pleased to see that the majority of councils responded favourably.

We remain concerned about how asbestos incidents at workplaces and in residential settings are coordinated by government agencies. In November 2009, we started our own investigation into how NSW Government agencies deal with asbestos. Our work to date has raised issues about coordination between the various agencies involved, gaps in legislation and confusion about responsibilities. We hope to report on the outcome of this investigation before the end of 2010.

- preparing templates for commonly-used compliance actions and a reasons for decision document
- developing a training module on custody of evidence and document management
- finalising a complaint management policy
- developing a certification system to ensure records management practices are adequate, a compliance branch corruption prevention plan, guidelines on providing legal advice on compliance matters, and a compliance business plan to match existing resources with priority areas.

Our investigation found that the department's failure to deal appropriately with the complaints had been due to significant under-resourcing of their compliance function. We are pleased to note that the Office of Water has recently submitted a case for increased compliance resources as part of the IPART pricing review.

Good record-keeping

Good record-keeping helps improve accountability and transparent decision-making. Poor record-keeping practices are often associated with poor complaint-handling. If records of conversations are not made, reasons for decisions are not recorded, and emails and letters are not placed on files, it can be difficult for complaints to be properly investigated (see case studies 46 and 47).

CS 46: No record of conversations

The son-in-law of a Housing NSW tenant complained to us about the way Housing NSW had dealt with his complaints and not responded to his emails and phone calls. Our inquiries established that the Housing officer had not made any record of the conversations he claimed to have had with the complainant. We have identified poor record-keeping as an issue in other complaints about Housing NSW, so we asked them to develop a record-keeping policy – pointing out that this is also a requirement of the State Records Act. They have responded positively to this suggestion.

CS 47: Lack of policies rectified

A complainant wrote to us about the Department of Premier and Cabinet's apparent lack of a complaint-handling policy and records management program. In addition to failing to comply with Premier's memoranda on complaint-handling and breaching the State Records Act, the complainant said he had personal experience of how the lack of these policies was having a detrimental impact on the ability of the department to deal efficiently and effectively with complaints and track correspondence. Our inquiries showed that the complainant was correct and the department did not have these policies. The department responded promptly – they have developed appropriate policies and put their new complaint-handling policy on their website. In our closing correspondence to the department, we strongly suggested that they review their existing policies and procedures to make sure they are complying with other statutory obligations and policy directives – and set a good practice example to other agencies.

Corrections

In our corrections work, we try to see as many matters as possible resolved – either by giving people information about who they can approach for help or assisting to actually resolve their problems.

We find people in the correctional system are very likely to know about the Ombudsman and what we do. Inmates, correctional staff and management, and people who have family or friends who are imprisoned generally understand that – if they believe something is not going right and they cannot fix it themselves – they can ask for help from the Ombudsman.

Working to resolve issues

Most matters about corrections are raised with us by phone. Inmates can call us on a freecall number from the phones in their centre, and the call is not monitored by correctional staff. Inmate calls to the Ombudsman are limited to 10 minutes – so our staff must quickly assess whether the issue is something we can help with, or if we can provide advice about what else they could do to fix their problem.

Complaints often arise from a lack of communication between inmates and centre management, so we put significant resources into providing information to inmates (and other complainants) that they should have been given by Corrective Services NSW, GEO (which operates Junee and Parklea Correctional Centres) or Justice Health in the first place. However, relationships in a correctional system are different from those in society generally. There is distrust and fear on both sides, and a significant power imbalance between inmates and staff – often increased by the lack of information shared between the two groups. In these circumstances, we are often a necessary circuit breaker and can help work out ways for important information to be shared.

Communication can sometimes also be a problem for us when we try to resolve complaints with Corrective Services NSW. While the quality of the response we receive on some issues can be very good, on other occasions the quality of information given to us is poor, and often involves us having to repeat the same questions. This in turn also causes delays – which at times can be quite lengthy – and ultimately affect the usefulness of our inquiries. We remain committed to liaising with Corrective Services at all levels, including between the Commissioner and the Ombudsman, as a way of communicating and achieving good results as quickly as possible.

Inmates with special needs

A large number of inmates have a mental illness and find the correctional system frightening and confusing. Frequently, they do not understand what they have been told or what they are supposed to do. Sometimes they need to be told the same thing many times because they cannot retain the information. In many instances these people present as 'challenging' to correctional staff, particularly those who are not in designated mental health areas.

Inmates with a mental illness are particularly vulnerable and will often contact us for information or reassurance about something they have been told. Sometimes they make quite serious allegations of abuse – and assessing the validity of their complaints is an increasing challenge for us.

We have trained our staff in mental health awareness, including things we can do to help understand and assess the concerns of complainants who have a mental illness. Without significant changes to the outside environment that continues to bring mentally ill people into the custodial correctional system, this is an area that will continue to provide challenges for both us and Corrective Services.

Figure 46: Formal complaints finalised

Preliminary or informal investigation 573 **(79%)**

Assessment only 135 **(19%)**

Conduct outside our jurisdiction 13 **(2%)**

Formal investigation 1 **(0%)**

Current investigations at 30 June 2010	No.
Under preliminary or informal investigation	102
Under formal investigation	1
Total	103

Giving reasons for decisions

Over several years we have stressed to the Commissioner the importance of giving inmates reasons for decisions made about them. Barring any potential harm to the security of the correctional system or the safety of the community, people should be told why decisions have been made, especially if those decisions are detrimental to them – such as removing privileges other inmates enjoy. In times when the correctional system holds many serious offenders, including those convicted of terrorist-related activities, it is important we do not lose sight of the importance of reasonable, fair and humane treatment.

The role of the Ombudsman is to help those who run the correctional system to do so in a way that is fair, reasonable, accountable and transparent. Helping people to resolve their complaints is one way we do this. We also investigate systemic problems and make suggestions and recommendations to the Commissioner about a range of matters. Achieving positive outcomes sometimes takes considerable time.

Wall mounted restraints

In last year's report, we explained our concerns about wall mounted rings that are used to attach inmates by their handcuffs in interview rooms and beside phones in the segregation unit of some correctional centres. We believed the metal rings were an unauthorised instrument of restraint.

As a result of our inquiries, the Commissioner firstly directed that these restraints were not to be used unless they were specifically authorised by him. He asked for information from relevant centres about their restraints and the procedures that could be adopted for their use. No restraints were subsequently authorised by him.

However when our staff visited John Morony Correctional Centre in March 2010, they were surprised when an inmate they interviewed was attached by his handcuffs to the wall mounted ring in the segregation unit's interview room. As a direct result of further inquiries with the Commissioner, the general manager of each centre where the restraints were in place was called by their relevant Assistant Commissioner and directed to remove them from the walls and phones immediately.

Extra bunks in cells

Over the past two years we have been making ongoing inquiries with Corrective Services, Justice Health and NSW Health about extra bunks being put into cells in correctional centres which had only recently been built. Specifically, we questioned the exemptions that had been given by the Minister for Health when the extra bunks in cells at centres such as Wellington contravened the minimum space allowed under the Public Health Regulation.

We have also identified additional bunks at the Mid North Coast Correctional Centre as potentially breaching the regulation, as well as plans for even further changes at Wellington requiring attention by NSW Health. Wellington Correctional Centre was inspected by Justice Health and we are still waiting for further advice about the outcome of the exemption application made by Corrective Services as a result of that inspection.

Trends and issues

In 2009–2010 we were contacted on approximately 4,000 occasions about matters relating to the correctional system. This is a similar number of contacts to the previous year, probably because the inmate population in NSW finally remained relatively stable at just under 10,500 over the 12 month period.

The issues that were raised with us, and the frequency with which they were raised, has also been relatively similar from year to year. For example, over the past three years we have received around 350 complaints each year about inmate property issues and around 250 complaints a year about visits.

Figure 47: Formal and informal matters received about correctional centres and Justice Health

	05/06	06/07	07/08	08/09	09/10
Formal					
Correctional centres, CSNSW and GEO	772	566	779	686	671
Justice Health*	80	69	61	64	53
Sub-total	852	635	840	750	724
Informal					
Correctional centres, CSNSW and GEO	3,242	3,010	2,902	2,825	3,096
Justice Health*	218	266	241	237	303
Sub-total	3,460	3,276	3,143	3,062	3,399
Total	4,312	3,911	3,983	3,812	4,123

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

When we begin to see changes over a period of time, such as allegations of unfair discipline – which have increased from 118 three years ago, to 137 last year and up to 165 this year – we begin to consider causes and look at conducting our own motion inquiries. Some other areas where we have received increased numbers of complaints are more easily attributed to a specific reason. For example, this year's increase in the daily routine category is probably due to the overall changes made by Corrective Services to the way correctional centres operate.

Investigating the use of force

This year we decided to investigate issues around the use of force on inmates as we had received many complaints about this over the past three years.

It is often necessary for force to be used on inmates who will not comply with lawful directions of custodial staff – such as to move out of their cell, to submit to a search or to stop fighting. It is important that correctional staff are properly trained in how to use force and how to report when it has been used. All uses of force must also be reviewed by more senior officers to ensure that policies and procedures are being complied with.

We worked collaboratively with Corrective Services to increase both the efficiency of the process and the effectiveness of the recommendations made.

The primary concerns we wanted to address included:

- The adequacy of investigations into uses of force – including those that were complained about and those identified through internal review as needing further assessment.
- The level of guidance provided to senior staff who are responsible for assessing the adequacy and appropriateness of all uses of force within a correctional centre or at other departmental locations.
- The systems for monitoring and scrutinising the use of force.
- The training provided by Corrective Services for staff in the use of force.
- How Corrective Services might best use complaints about uses of force for risk assessment and risk management purposes.

Figure 48: What people complained about

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

Issue	Formal	Informal	Total
Buy-ups	14	112	126
Day/other leave/works release	8	42	50
Classification	29	146	175
Daily routine	88	574	662
Legal problems	9	31	40
Officer misconduct	62	205	267
Probation/parole	13	91	104
Records/administration	47	154	201
Visits	48	213	261
Other administrative issue	19	161	180
Fail to ensure safety	23	41	64
Unfair discipline	32	133	165
Medical	15	169	184
Case management	26	101	127
Food and diet	14	45	59
Segregation	20	72	92
Property	83	263	346
Transfers	29	243	272
Mail	20	60	80
Periodic/home detention	7	13	20
Work and education	18	102	120
Issue outside our jurisdiction	7	12	19
Court cells	1	2	3
Community programs	0	2	2
Security	19	70	89
Information	20	39	59
Total	671	3,096	3,767

Our investigation methodology included reviewing policy and procedural documents, auditing a variety of use of force reports, and talking to key people within Corrective Services about operational aspects of using, recording, monitoring and scrutinising force being used.

The investigation identified where improvements could be made in each of the areas we investigated. As a result, we formulated a series of recommendations – in consultation with Corrective Services. The recommendations covered areas such as:

- An overall review of the policy and procedures for using force on inmates.
- Guidance to staff who review each use of force.
- Refresher training for all general custodial staff and a training needs analysis for some specialist groups of staff.
- Data collection and analysis about the use of force in the correctional system.
- Investigation of uses of force which do not comply with policy and procedures.
- Approving arrangements at privately managed correctional centres.

Corrective Services have adopted an action plan to implement the recommendations over the coming months and we will continue to receive regular advice about this implementation process as it progresses.

Visiting correctional centres

Providing access to Ombudsman staff who can assist with inquiries or complaints is just one of the focal points of our visits to correctional centres. These visits originally started to assist inmates with low literacy levels, who were unable to make a formal written complaint, to be able to lodge their grievances.

Despite the increased access inmates now have to telephones to call us to discuss their issues, the 10 minute time limit is sometimes not enough to provide all the relevant information. Often inmates who have difficulty outlining their complaint over the phone are at a similar loss if we ask them to write it down and send it to us. Many inmates also still have a lingering distrust about the confidentiality of phone calls and letters to our office and want to talk directly to us.

We have significant experience in dealing with Corrective Services and recognise the importance of working with correctional staff to achieve outcomes and change. This experience, in part, comes from our long history of visiting correctional centres. During our visits we also take the opportunity to understand the operations of individual centres and become acquainted with managers and frontline staff.

This knowledge informs our work with corrections generally. For example, if there is a change to local procedures or policies that impacts on a complaint we may be inquiring about by phone, it can often be easily explained to us because of the general picture we already have about that centre.

At other times, we use our visits to resolve complaints we have already received over the phone or by letter, or to assess the implementation of actions already agreed upon. For example, during our visits this year we assessed the level of compliance with a direction the Commissioner of Corrective Services issued for all operational staff to wear a badge with either their name or some identifying number on. If inmates can't properly identify staff it makes it impossible for them to raise, and for us to pursue, complaints about staff conduct.

After the instruction was issued, we noted on our visits a lack of badges being worn by staff – especially at some centres. We have asked the Commissioner to follow up on this and provide us with further advice about how he intends to address the lack of compliance with his instruction.

We also find on our visits that inmates are more likely to raise systemic issues, conditions or procedures with us that they feel are generally unreasonable – but would find it hard to convey the impact of these by phone or in writing. In some cases, it is only after you see the fourth or fifth inmate in a row who complains about something that has happened that the real impact is understood.

After some of our visits we have also written to the Commissioner of Corrective Services directly, raising with him our concerns about the physical conditions provided for some inmates. During the past year we found it necessary to do this for the Mid North Coast Correctional Centre. Inmates with an A2 (maximum security) classification were sharing cells with inmates holding a medium or minimum security classification. This caused anxiety to both classes of inmates.

Lower security inmates, especially those serving short sentences, will live and act very differently to a maximum security inmate who may still have many years of a sentence to serve. We also raised our concerns about:

- The poor condition, especially the lack of privacy, for inmates who have to sleep in dormitory style accommodation in the minimum security area of the Grafton Correctional Centre known as 'the units'.
- The inability of Corrective Services to provide each inmate with a cell they can occupy by themselves, unless they need to share due to medical or other sufficient reason – as is required under clause 33 (1) and (2) of the Crimes (Administration of Sentences) Regulation 2008.

After several months we are still waiting for the Commissioner's response to these important issues.

CS 48: Returned to sender

Several inmates at the Mid North Coast Correctional Centre complained that property sent in by their friends and families – that the management had deemed was unsuitable to be handed to the inmate – was being returned to the sender at the inmate's expense. This included things like books and magazines, so postage costs were sometimes quite high. After we raised this with the general manager, he introduced a new process – the inmate would be told about any unsuitable mail items and could then decide to have them returned at their cost, destroyed or donated to an appropriate place such as the library.

CS 49: Charging inmates for damaged property

At Glen Innes Correctional Centre, all of the inmates in one of the units were reimbursed $5 they had each been charged for replacing a damaged fire extinguisher. Although such damage is not condoned, Corrective Services is not legally entitled to take compensation from any inmate unless they have first been found guilty of a correctional offence. In this case the culprit could not be identified, so no one had been charged for the damage. We also reminded the inmates the fire extinguisher would only be a life saver in an emergency if it was in good working condition.

CS 50: A more positive focus

When our staff visited Kariong Juvenile Correctional Centre, a number of the young inmates complained they only ever got 'bad' case notes. Staff at Kariong use the case notes written about the inmates as part of the process for deciding if they can earn additional privileges. We felt it was particularly important that case notes should reflect the overall behaviour of these young inmates and not just focus on any negatives. We took the issue to management who agreed they would remind staff about the need to include positive case notes in the inmate's case files so a more complete picture was available to the people making decisions about them.

Better information and communication

A lot of information is needed to make sure a correctional system operates in a secure manner and provides fair and reasonable treatment. This information must be communicated to all staff – as well as generally to inmates.

Many times a complaint is appropriately resolved when correctional management agree to remind staff of information which is already recorded in Corrective Services policies and procedures. Occasionally problems are caused because there was some misunderstanding about how the policy or procedure should have applied. At other times, our inquiries point to the need for new policies or for existing ones to be reviewed.

CS 51: Frightened of other inmates

When an inmate was told he would be transferred from the Metropolitan Special Programs Centre (MSPC) to Parklea Correctional Centre he spoke to staff about fears he had for his safety, advising them he had previously been assaulted by other inmates at Parklea. He said he had told correctional staff which inmates he did not want to associate with in future because of the assault. MSPC staff checked the OIMS computer system but could find no record of the association alert. The inmate then called us because he was fearful of being returned to Parklea. When we made inquiries, MSPC staff checked again and found the inmate had been assaulted at Parklea, and arranged for the relevant association alerts to be entered onto the OIMS system. The inmate's transfer to Parklea was cancelled and he was transferred to a more appropriate centre.

CS 52: Procedures for drug tests

Urinalysis – the testing of urine samples for the presence of drugs – is conducted on inmates either randomly, as part of a program, or targeted because of a concern they may be using prohibited substances. Before the inmate is asked to provide the urine sample, they are strip searched by officers to make sure they do not have a container of 'clean' urine in their possession or any other form of contraband. When one inmate was strip searched at Dawn de Loas Correctional Centre, he was not allowed to put his clothes back on before being required to provide the sample. He complained to us and we found out that a manager, who had since left Corrective Services, had incorrectly told staff this was the procedure for urine testing. The manager we spoke to ensured that all staff were instead informed about the correct way to conduct both the strip search and the urinalysis collection.

We also find there can be communication problems between Corrective Services and other agencies that have an impact on inmates and lead to complaints to our office. One of the major areas where we see this is between corrections and the health system, mainly via Justice Health. Communication between these two agencies is integral to inmates getting timely and proper access to medical services.

CS 53: Providing safe transport

Justice Health recommended that an inmate with an advanced chronic cardiac illness should be transported in a car or a van – instead of the large trucks used by Corrective Services to move inmates – to minimise the risk of aggravating his medical condition. However, he was continuously moved between correctional centres and courts in a truck and on one occasion needed hospitalisation as a result. Our initial inquiries led to the Commissioner introducing new procedures for inmates who need this type of special transport. Unfortunately, the inmate continued to be moved by truck.

Our next inquiries were with both Corrective Services and Justice Health, and we found two causes for the problem. Justice Health's recommendations for special transport, even for chronic conditions, had to be reviewed every two months by a doctor – but it can sometimes take several months to be seen by a doctor for all but emergency needs. There was also a problem with the way the corrective services and health databases communicated about the need for special transport.

As a result of our investigation, Corrective Services have developed a new alert for appropriate cases where special medical transport will not need to be continually reviewed by a doctor. Justice Health and Corrective Services are also upgrading their databases to allow proper communication and maintenance of information about these types of alerts.

CS 54: Unfair drug test results

When inmates have a positive urine test come back from the laboratory, correctional staff check with Justice Health about any prescribed medications the inmate may be taking that could account for the result. If the test shows the presence of an unprescribed or illicit drug, the inmate is charged and punished. An inmate who contacted us when he was charged for a positive test was adamant he had been prescribed the drug by Justice Health, despite their note on his result sheet saying it was 'unprescribed'. He had tried to have this reviewed, but the general manager had already advised him the charge would stand.

When we called the general manager he asked Justice Health to review the inmate's prescribed medications. They then advised their initial information had been incorrect. This appeared to be a 'one-off' oversight. The inmate's charge was dismissed and he was no longer banned from receiving visits for 42 days.

When people first come into custody because they are refused bail they are often held in a police or court cell complex. This is sometimes for very short periods, but occasionally can be for up to a week. These complexes, which are operated by Corrective Services, are usually basic and cannot provide offenders with the same level of facilities or services they would have in a correctional centre.

CS 55: Giving clear information about facilities

One woman who spent several days in two different police/court cell complexes complained about her treatment while she was there and the general lack of facilities, especially for women – such as access to showers and feminine hygiene products. When there are large numbers of offenders in the cell complexes, the lack of facilities can make it difficult to provide regular, private access to showers and we were told offenders are given verbal advice about this when they arrive.

We thought it might be difficult to provide clear and consistent information to offenders when these complexes were especially busy, so suggested notices providing information about medical, legal, visits and personal hygiene matters would be useful. Corrective Services agreed and sent us a copy of the notice that was made available.

Inmate discipline

Often the complaints we receive about inmate discipline processes are also about communication and providing information. This is a two way process – in corrections problems can arise when information is not willingly received, as much as when it is not provided. An inmate may complain to us because they feel they were not given the opportunity to provide all of the relevant information about an alleged correctional offence before a decision is made about their guilt. If the adjudicating officer does not have all the relevant information to hand, then the result may be an unsafe decision. Another area of complaint about the disciplinary process is when there is a question about the reasonableness of the decision or the punishment. Case studies 56 and 57 illustrate these points.

CS 56: An unfair punishment

For sound security reasons, inmates can only make telephone calls to specific numbers and can only use telephones for personal calls that can be recorded and monitored. Emergency calls can be made in the interests of an inmate's welfare, but again these are carefully controlled. A woman from the Silverwater Women's Correctional Centre had been punished for allegedly using the welfare staff telephone account to access the inmate telephone system and running up a bill for $90. The woman claimed she was being unfairly punished as she had not made the calls.

Our inquiries prompted a review of her case and it was found that the evidence used against her in the misconduct hearing was incorrect and the calls were actually made by someone else. The charges were dismissed and punishment removed.

CS 57: Returning confiscated clothing

Three different inmates called us from Junee Correctional Centre alleging their clothes had been taken as part of their punishment for correctional offences. They were not disputing the disciplinary action, but were upset about the clothes as they were items they had bought themselves on the inmate 'buy-up'.

When we spoke with managers at Junee we were told they were a 'withdrawable privilege' as they were personal property. Technically this is correct, but Junee later agreed the reference to 'private property' was usually taken to be recreational type items – not clothing purchased to supplement the very basic inmate clothing entitlement. They reversed the decisions and returned the items of clothing to the inmates.

Segregation and separation

Each year we receive complaints from inmates who believe they are unfairly segregated and those who claim they are kept in conditions equivalent to segregation but are not subject to a lawful segregation direction. The *Crimes (Administration of Sentences) Act 1999* provides for the Commissioner or his delegate to remove an inmate from association with all inmates, or from specific inmates, for reasons of good order and security or the personal safety of any person. This is known as administrative segregation and is not a punishment for a correctional offence. When an inmate is segregated under these provisions, various reports have to be made. The longer they remain segregated, the more reports have to go to more senior managers in the correctional system. After six months the reports must go to the Commissioner, who must then advise the Minister in writing.

Most importantly, the legislation allowing segregation also provides for an independent review of the segregated custody direction by the Serious Offenders Review Council (SORC) once the inmate has been segregated for more than 14 days. After application by the inmate, SORC reviews the reasons for the ongoing need for segregation and may retain, revoke or vary the conditions of the segregation order.

This year we have made various inquiries with the Commissioner about his staff's understanding of their responsibilities for the levels of reporting required for segregated inmates. We have also raised concerns about the adequacy of the department's policies and procedures to support their staff in complying with legislative requirements. We expect to receive further advice from the Commissioner about this in the near future.

With large numbers of offenders coming into custody who are associated with various gangs, including 'bikies', we have also seen Corrective Services using the separation powers introduced during 2009 into the Crimes (Administration of Sentences) Act. This retrospectively gave the Commissioner the ability to separate inmates without the use of a segregation direction.

Unfortunately separation, as opposed to segregation, was hurriedly introduced by the Parliament in response to a decision of the court that would have found that the then High Risk Management Unit was in effect a segregation unit. When the Commissioner was given the ability to separate inmates, Parliament did not include any procedures for ensuring they were fairly treated or provide any right of review – such as there is for those who are segregated.

Offenders who are separated from the mainstream inmate population are usually managed on restricted regimes that previously may have constituted segregated custody. In relation to the 'bikies', Corrective Services have advised this was done in response to the need to protect these inmates from others and various groups of inmates from other groups. When we received complaints from these separated groups, we tried to ensure the inmates were not isolated from all other inmates wherever this was possible, that they were still able to associate with at least one other inmate, exercise out of their cell, have visits and in-cell property. Because of the legislative amendments there was little other action we could take.

Justice Health

Justice Health provides health services within the correctional system, including having nursing staff available in some court cell complexes to deal with the immediate needs of offenders when they first come into custody.

Health services provided by Justice Health (which is part of the wider NSW Health system) are generally equivalent to those received in the public health system. However, Justice Health must also work within the daily regimes and security requirements of a correctional centre and this can make delivering the services difficult.

In regional areas there is also sometimes difficulty in acquiring sufficient professional services – such as dentists, optometrists etc – to regularly go into the centres and provide treatment. Many inmates are brought out into the community for medical services. This requires a high level of coordination with Corrective Services staff to provide security escorts for the inmates. Some of the case studies in this chapter have illustrated how communication between the two agencies sometimes breaks down and the effect it can have on the provision of medical services.

We regularly receive calls from inmates who believe they should be going to an outside medical appointment – but do not know if it has been booked, when it might happen, or if they have missed it because they are not told the date of the appointment for sound security reasons. Often we will contact Justice Health to find out if an appointment has been made, and they will tell us when it will take place. Although we also cannot tell the inmate when the appointment will be, they are mostly satisfied to know there actually is something booked for them.

Working proactively

From a combination of our complaint work, visits and general interaction with various people and agencies associated with the criminal justice system we are in a unique position to observe the NSW correctional system. Often this leads us to make formal inquiries using the Ombudsman's own motion powers. We are also able to make suggestions for improving how the correctional system is managed.

This year we have identified several issues that we have raised both directly and indirectly with Corrective Services. We will also monitor them in the coming year to check they are addressed. Those issues include the following:

- There needs to be a transparent classification and case management system for serious offenders, including providing reasons for decisions made about inmates. Both the efficiency and transparency of the current system could be improved by the Serious Offenders Review Council (SORC) being the actual decision-maker about the classification and case management of serious offenders. Under existing legislative provisions, SORC assesses serious offenders and makes recommendations to the Commissioner of Corrective Services.

  The Commissioner is not required to accept those recommendations, nor give reasons for his decision. As SORC is headed by a judicial officer, they would be able to properly manage and consider any confidential information and intelligence about serious offenders that is currently made available by law enforcement agencies to the Commissioner. The SORC could also consult with the Commissioner on appropriate placement and programs. In our view the current arrangements do not provide adequate independence and transparency in the decision-making about these offenders.
- The different needs of Aboriginal inmates are well documented due to the impact of past government policies on Aboriginal people. The correctional system needs to support its staff to understand some of the specific challenges facing Aboriginal inmates to help them better address their needs in a culturally appropriate way. While this often occurs, this is not always the case. Aboriginal inmates at Goulburn have raised a number of issues with us, including that:
  - they are not permitted to have an inmate from among their own unit take on the role of unit domestic worker (or sweeper),
  - their cells have additional security grills to those in other wings which reduces airflow,
  - they also have lesser access to education and work than other inmates at Goulburn who are also deemed high risk.

  Responses to our repeated inquiries have indicated the management of Aboriginal inmates was in response to union concerns and objections. Originally, there were sound reasons for Aboriginal inmates at Goulburn being managed in this way – the centre was the scene of a very serious incident in 2002 when Aboriginal inmates attacked staff resulting in serious injuries to several staff members. Many of the staff involved still work in the centre, however, most of the inmates who are now in Goulburn were not there at the time of the incident. Eight years after the incident, action to ensure equal and fair treatment of Aboriginal inmates at Goulburn would be more likely to reduce any residual tension between inmates and staff, instead of fostering it as the current regime appears to do.
- The inmate disciplinary system does not seem to provide an appropriate/reasonable safe level of procedural fairness. The current informal system is not governed by clear and sufficient rules and procedures to ensure inmates charged with correctional offences receive a 'fair trial'. Compared with other jurisdictions, this hampers any later examination of the procedures followed or the reasonableness of the outcome.
- Young offenders at Kariong Juvenile Correctional Centre are managed on a behavioural program largely modelled on the program operated at the High Risk Management Correctional Centre – the state's most restricted regime for adult inmates. We are concerned that inmates who are under 21 (and sometimes under 18) can spend several months in segregated conditions while they strive to move beyond the basic program level. A fundamental component of the program should be to ensure it recognises the lack of maturity, impulse control and general development of these offenders and seeks to manage them in a positive manner.

Local government

For most of us, our local council provides many of the community services and amenities that we enjoy. They also play a major role in administering a range of laws that regulate our daily lives. Often, people turn to the council when things in their neighbourhood go wrong. Over the many years we have dealt with council complaints, we have maintained a primary focus on effective, consistent, transparent and accountable regulation.

Effective complaint-handling and proper regulation fit well together, as it is often through complaints that councils learn about problems that need a regulatory solution. Our interventions in these two processes enable us to help improve standards of administration in local government.

Complaint trends and outcomes

We received 20% more formal complaints this year than last year (see figure 49) and there was a small rise of 2.5% in overall complaints. It was pleasing to see 17% fewer complaints about community services and corporate and customer service issues in councils and a 9% decrease in complaints about misconduct. This outcome was, however, offset by some concerning increases in complaints about rates, charges and fees (54%), development (43%), enforcement (42%), environmental services (32%) and engineering services (19%).

Figure 49: Formal and informal matters received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Formal received	744	841	768	702	843
Formal finalised	720	837	788	672	875
Informal dealt with	1,891	1,992	1,965	1,795	1,720

Figure 50: What people complained about

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

Issue	Formal	Informal	Total
Community services	19	12	31
Corporate/customer service	231	283	514
Development	93	290	383
Enforcement	132	240	372
Engineering services	74	179	253
Environmental services	54	194	248
Management	4	16	20
Misconduct	40	64	104
Issue outside our jurisdiction	27	32	59
Objection to decision	78	100	178
Rates, charges and fees	79	209	288
Strategic planning	10	33	43
Uncategorised	1	68	69
Wrong procedure	1	0	1
Total	843	1,720	2,563

The past year saw a three-fold increase in people objecting to the decisions made by councils. See figure 50 for the issues people complained about.

Our reduced resources, combined with a 20% increase in formal complaints, impacted on our capacity to help as many members of the public with their problems with councils as we would have liked. We have however completed three formal investigations and have five formal investigations still underway. We completed 302 preliminary investigations (see figure 51) which is 37 less than last year.

In 2008–2009 we conducted preliminary investigations into a little over 50% of complaints, whereas this year we were only able to conduct preliminary investigations into 35% of complaints. This is because we have less staff available to deal with local government complaints.

We were able to obtain 143 positive outcomes in the matters we formally investigated or made inquiries into during 2009–2010. These positive outcomes included councils:

- changing policies and procedures
- making an apology
- providing further information
- providing reasons for decisions
- mitigating the consequences of their actions or decisions
- changing their decisions
- implementing a variety of specific remedies for problems brought to our attention.

Towards better regulation

The Regulations that councils administer can be a burden and a blessing, depending on where you stand. They aim to create a harmonious community – whether through planning controls or the prevention of harm. Complaints about the exercise of regulatory powers make up more than a third of all the local government matters raised with us.

Failing to deal adequately with these complaints can seriously undermine a council's credibility in the eyes of their community.

Not all complaints require regulatory action, and it is important for councils to manage the expectations of complainants and explain the reasons for their decisions. When we review complaints we look at the council's processes for complaint-handling, how they assess relevant issues and materials, investigate and gather evidence, keep records and supervise staff, as well as their internal communications and the written guidance they provide to assist decision-making.

Having good complaint-handling and enforcement policies and procedures is an important way for a council to ensure they competently, fairly and consistently enforce the law.

Figure 51: Formal complaints finalised

Preliminary or informal investigation 302 **(35%)**

Assessment only 537 **(61%)**

Conduct outside our jurisdiction 33 **(4%)**

Formal investigation 3 **(0%)**

Current investigations at 30 June 2010	No.
Under preliminary or informal investigation	30
Under formal investigation	5
Total	35

Over the past year, we have investigated where councils:

- Inconsistently and ineffectively applied planning controls when processing development applications.
- Failed to properly investigate and keep appropriate records of decisions.
- Advised people to mediate when council had a responsibility as a regulator to make an appropriate decision.
- Acted without proper authority.
- Took enforcement action on the basis of personal perceptions about complainants and property owners.
- Gave contradictory and incorrect advice to complainants.
- Shopped around for or ignored legal advice that did not confirm their own views.
- Had no written policies, procedures or guidelines to assist staff exercise regulatory powers.

Pages 101–104 illustrate how our intervention made a difference.

Failure to take appropriate enforcement action

Manly Council's poor administrative practices and decision-making were key issues in a major investigation into two complaints.

Three couples lodged development applications around the same time for very similar new homes on adjacent blocks of land. One of the couples complained to us that their council planner assessed their application inflexibly and offered them little assistance. However, at the same time, a different planner smoothed the way for both their neighbours' homes to be built quickly. The couple said they had further problems during construction as the council pursued them for allegedly breaching consent. When they complained about the conduct of the regulatory manager, council dismissed their complaints with a warning not to defame their staff.

Shortly after we received this complaint, the owner corporation of an apartment block complained that when they contacted Manly Council about illegal works being built on the roof of an adjacent building, council failed to properly investigate their concerns.

They told us council had assured them the developer could not construct the items on the roof, but were then unable to prevent the work proceeding. They were concerned because council's records were inadequate and did not provide any certainty about approvals for the site.

We investigated council's complaint-handling and record-keeping, and their policies and processes for assessing development applications, investigating non-compliance with consent, and dealing with code of conduct complaints.

We found that planning staff were inadequately supervised and – in the absence of any adopted guidelines – were left to interpret development controls according to their own views about particular developments. Information provided by applicants was not thoroughly checked, planning reports and consents were poorly drafted, and an inconsistent format and approach was used to assess the requirements of planning instruments.

Routine failures to check details before determinations were issued, or to securely store copies of approved plans, hampered council's ability to deal competently with any later compliance issues that arose.

The problems that both complainants raised were not isolated incidents. Even though the general manager made changes to DA processing in 2003, by mid-2005 the Department of Local Government's Promoting Better Practice Review still saw the need for improvement in DA processing.

An external consultant's comprehensive review of DA processing in late 2006 also identified community dissatisfaction with council's systems and the need for a significant overhaul. There were no written procedures to guide assessment decisions, and no business rules for ensuring DA information was correctly entered into council's systems or obligations under the State Records Act were met.

Council's investigation of alleged breaches of consent reflected similar deficiencies in administration. Compliance staff, like planning staff, were inadequately supervised and there were no policies and procedures to guide enforcement action.

After our intervention, an enforcement policy and a revised complaints management policy were drafted – but, in our opinion, both documents were inadequate for ensuring effective, consistent, transparent and accountable decision-making.

We also found examples where staff had ignored advice from council's legal advisers and incurred significant legal costs with little or no regard for the public interest, council's budget, or their obligations under council's code of conduct and the *Local Government Act 1993.*

Of further concern, was council's management of allegations that the regulatory manager involved in both these matters had fraudulently made an affidavit to the court that he had legal qualifications, had presented evidence to the court that had been withdrawn when it was claimed the signature was false, and had withheld email documents required by notice of the court.

Council did not conduct a proper investigation of these complaints and had no procedures to guide the handling of complaints about breaches of council's code of conduct. After our intervention, council required the regulatory manager to produce his legal qualifications. However when he was unable to do so, he was allowed to resign from council and given good references that helped him obtain a position as a compliance officer in two other councils.

We made 24 recommendations. We issued our report under section 26 of the Ombudsman Act in early September and will include information about the final outcome of the investigation in the next annual report.

Opportunities for proper enforcement missed

A resident complained to Sutherland Shire Council about a structure that was being built in his neighbour's back yard. The neighbour had lodged a complying development application for two retaining walls, but subsequently built a third wall. He also filled and turfed the area between the walls which increased the ground level of the backyard to within approximately 40 cm of the top of the boundary standard height fence. This also gave the neighbour extraordinary visual access into the resident's property. The resident questioned the structural adequacy of the retaining wall along the boundary fence and the redirection of stormwater runoff onto his property.

We became involved because it appeared to us that council had not taken appropriate action to resolve the matter. We identified inadequacies in council's processing of complying development applications, complaint-handling, record-keeping, and investigative practices and decision-making.

The complying development certificate should not have been issued because the neighbour's application was incorrect and incomplete. When the retaining walls were being built, council did not conduct the mandatory critical stage inspections that would have detected the problems early on. After the resident complained about the structure, council's advice that it could not take any action was based on an inadequate investigation and misinterpretation of internal legal advice which indicated the illegal wall did not comply with planning controls.

Council's Internal Ombudsman's office intervened as a result of our inquiries. We discovered that the Internal Ombudsman had expressed concern that we had correctly identified problems and if council responded to us they could not successfully explain their inconsistent decision-making. The Internal Ombudsman 'took over' the complaint and told us council would arrange mediation between the resident and neighbour and, if that failed, consider ordering the illegal structure to be demolished.

The resident and the neighbour reached an agreement at the mediation, but serious issues for the resident were unable to be resolved. The engineering opinion supplied by the neighbour inadequately dealt with the soundness of the structure and the drainage problems, a survey report revealed the retaining wall encroached onto the resident's property and the suggested privacy screen that was to be built was ultimately rejected by council.

The resident continued to complain to the council and to us. When the inadequacy of the mediated outcome was raised, council made undertakings about enforcement action but they failed to carry this through. When council finally did a proper assessment and obtained external legal advice, they were told they could not successfully take enforcement action – the opportunity to properly enforce planning controls had been missed. If council had done a timely and competent investigation when the resident first complained, the complying development certificate could have been invalidated and the illegal work rectified.

In response to our proposed recommendations, council agreed to apologise to the resident for their poor handling of the matter, write to the neighbour about mandatory inspections of the structure, and require the neighbour to plant trees to reduce visual access to the resident's property. Council also agreed to:

- train all compliance staff in the statutory requirements for complying development
- review all their procedures for processing complying development applications
- prepare guidelines for using mediation in compliance matters
- develop a record-keeping policy to help staff comply with the State Records Act
- revise their customer response policy to improve their complaint-handling processes.

On this basis we decided to discontinue our investigation. Following the finalisation of our investigation council issued a building certificate for the property, despite having declined to do so in 2008 because the retaining wall encroached onto the neighbouring property and the engineer's opinion was inadequate. The encroachment is clearly disclosed in a survey report that is identified in the building certificate. The grounds upon which council has now decided to issue the building certificate for the structure are not clear.

A significant issue for us arising in this investigation was the role played by council's Internal Ombudsman Office in the handling of the resident's complaints.

We have long-held concerns about Internal Ombudsman positions in councils being promoted as impartial and independent. Because of our belief that Sutherland Shire Council's Internal Ombudsman's Office was acting to protect the council during our inquiries, we released a discussion paper on the role of Internal Ombudsman seeking comments from local government and other interested bodies about this issue. See page 104 in this chapter for more details about our discussion paper.

In 1975, we received 2,381 formal written complaints and 3,600 telephone inquiries. This year we received 8,712 formal complaints and notifications and 23,797 informal complaints and inquiries to our office.

Highlighting 35 years

CS 58: Conflicting advice and lack of coordinated action

A man complained about Canterbury City Council's handling of his complaints. His mother owned a cliff top house and a portion of a 20 metre high cliff face that had been formed by quarry excavations at the turn of the 20th century. The cliff face required stabilisation after a series of rock falls, but council denied liability as the cliff was private land. Owners of another portion of the cliff took legal action against the man's mother in the Supreme Court, where liability for the stabilisation work was apportioned between the land owners.

The man wrote numerous times to council about the large debt his mother had acquired, the safety risks from the rock falls, and the need for council to take responsibility for the stabilisation. He claimed staff had not properly informed council of important facts about unacceptable risk to people and property in the geotechnical reports prepared for the court. He said council lost the file on the matter for nearly six months and did not keep records of meetings and inspections. After the court decision, council told his mother it was going to issue an order to rectify drainage issues discussed by the judge, but the order never arrived and council did not explain why. Although some staff had advised the complainant's family the cliff stabilisation works required a development application, other staff later told them it was not required and would hold up the work. When the man complained of illegal works on his mother's neighbour's property on the cliff top and how his mother was being treated, council responded in such a way as to discredit his concerns.

We made extensive inquiries about the handling of the man's complaints. Council was unable to explain their inaction on the matter for nearly six months or the actions taken after the other family members contacted senior management about the rock falls from the cliff face. There were few records of phone calls and no records of meetings, site visits or inspections.

Directions were issued by senior managers for an investigation and legal advice, but cross-divisional referrals were not acted on and senior managers failed to follow up on their own directions. No one took a coordinating role to ensure the required actions were completed and explanations given to the complainant.

Even though the complainant raised the issue of an illegal retaining wall and fill on a neighbour's land that might have been affecting the stability of the cliff face, it was not investigated. Council told the complainant that a building certificate was issued for the wall which we discovered was not true. Although the geotechnical reports were sent to council after the rock falls, the safety issues were not assessed.

When the Supreme Court reviewed the geotechnical reports they identified the need for stormwater drainage issues at the cliff top to be addressed within two years. After three years, council had still not finalised their technical assessments of the drainage matter, even though their own legal adviser had urged them to expedite this task not long after the court case.

Council responded positively to the deficiencies we identified. They apologised to the man and his family for the poor handling of their complaints and wrote to them after investigating the illegal work on the neighbour's property, the drainage issues at the cliff top, and the legal status of the stabilisation work. They also agreed to:

- review the workload of the regulatory manager to ensure statutory and other obligations could be met
- audit their records management processes
- review their policies and internal procedures for conducting inspections and for better managing cross-divisional complaints
- provide training for staff to improve investigation work and properly implement council's enforcement and prosecutions policy and complaint management policy
- remind staff of their obligations under council's code of conduct and the State Records Act.

CS 59: Unauthorised spraying destroys trees

Castlereagh-Macquarie County Council employed a contractor to spray a residential mining lease as part of a Hudson pear eradication program. In the process, most of the plants on the property – including a 50 year-old Kurrajong tree and many valuable cacti – were destroyed. The resident complained to us after council refused to clean up the unsightly mess left at his property and denied their contractor was even on the resident's land at the time.

Before using their regulatory powers, council did not inspect the property to find out if Hudson pear was present – and then did not know if any of the noxious weed had in fact been eradicated by spraying the property. Although they advertised in the local media that they would be spraying, council had not notified private land owners or occupiers of their intention to spray their property – this was contrary to the requirements of the legislation. In addition, they did not keep records of who carried out spraying and lent spraying equipment to individuals who were not licensed to use the chemicals. The contractor's denial that he had been on the resident's land was a hand written note in his diary.

We established that council's contractor had in fact sprayed the resident's property, even though council was not authorised to spray land that was not under it's control. We also discovered that the contractor had received a previous caution from the Environment Protection Authority about his failure to keep adequate records, as required by law.

Council responded positively to our intervention – they paid for the resident's land to be cleaned up and for 20 Kurrajong trees to be planted. They sought legal advice about their obligations when spraying land not controlled by council and sent two staff for training on implementing the Noxious Weeds Act and the Pesticide Act. They also agreed to review their pesticide notification plan.

CS 60: Mediation not the best option

Residents in a rural residential area complained numerous times to Lake Macquarie City Council about noise from six to eight German shepherds and the use of kennels on a property for breeding. Initially, council raised the expectations of the residents by issuing a notice of intention to impose a nuisance dog order and advising they would take action on the kennels being used for breeding. When the residents complained that they had not heard anything further from council, they were told to mediate with the owner of the dogs.

We advised council that asking complainants and dog owners to mediate in circumstances where there was ongoing nuisance barking and strained relationships was not appropriate. These matters required council to make an informed decision about the use of their regulatory powers. Public sector agencies and their staff should be prepared to make decisions even when the matter is contentious – not just tell complainants to try and sort it out themselves.

After our intervention, council investigated the issues raised again. In the end they decided not to exercise their regulatory powers, but they did inform the complainants of the reasons for their decision.

CS 61: Unfair fine waived

A resident complained that Pittwater Council had unfairly issued a fine and order for the rectification of unauthorised earthworks on a driveway without having any communication with her about the matter. The resident, who was a former council employee, claimed that the staff involved chose that course of action because of previous problems in the workplace and dismissed her complaints without proper explanation.

After we intervened, council admitted there were workplace relationship issues that were being addressed and that staff had not discussed the matter with the resident before issuing the fine and order as would normally be the case. They also had no complaint-handling policy, enforcement policy or written investigation procedures to assist staff.

Because the complaint involved different sections of council, no one had taken responsibility for coordinating a comprehensive response to the resident. Council reviewed the way they had handled the complaint and waived the fine. They apologised to the resident and provided a more detailed explanation as a result of their review. They also adopted a compliance and enforcement orders policy, a new investigations procedure and new complaint-handling procedures and guidelines.

The role of councils' Internal Ombudsman Office

Through our handling of complaints about councils, we have observed a number of issues about the role and functioning of councils' Internal Ombudsman Offices. Although they can be an important source of redress for people with grievances against council, there are a number of obstacles – both in terms of perception and reality – to their proper functioning.

Over the years, there have been a number of questions raised about whether an Internal Ombudsman can ever operate independently – given that council Internal Ombudsman report to the general manager, have no protection from dismissal by council, and have no formal protections against breaches of confidence, defamation law, privacy law or freedom of information legislation.

This year we decided to publish an issues paper discussing the role of Internal Ombudsman, which we circulated to councils in NSW and other interested bodies. In the paper we suggested that legislative backing for the role could be one means of assuring it operates independently. If there was no support for amending this legislative backing, we recommended that the office have a different title – such as a 'Complaints Commissioner'.

We received submissions from 14 councils as well as individual submissions from the Division of Local Government and the ICAC. The seven Internal Ombudsman chose to submit a joint submission. There was little support for providing legislative backing for the role – except from Internal Ombudsman themselves – and some strong views were expressed by councils about the independence of their Internal Ombudsman. There was, however, recognition that such offices can strengthen internal complaint-handling and other governance mechanisms in councils. We will publish a final paper with our recommendations later in the year.

Freedom of information

End of an era

This year marked the 21st anniversary of the *Freedom of Information Act 1989* and also its last year of operation. On 1 July the *Government Information (Public Access) Act 2009* (the GIPA Act) commenced. Earlier in the year, the NSW Government appointed an Information Commissioner whose role is to ensure compliance with the new regime for accessing government held information.

Our long standing role in dealing with freedom of information (FOI) complaints and reviews has come to an end, although we will continue to receive FOI complaints in the coming months – under the transitional provisions of the GIPA Act – about applications that were lodged before the start of GIPA.

The GIPA Act brings some major changes in how government held information can be accessed. It gives people the right to obtain access to information held by NSW government authorities, Ministers, councils and other public agencies unless there is an overriding public interest against its release.

The GIPA Act also requires government agencies to make certain information easily available to the public, without an application having to be made. This is known as open access information and includes:

- an agency's current publication guide
- information about the agency in any document tabled in Parliament by or on behalf of the agency
- policy documents
- disclosure logs of all the information released in response to applications
- a register of government contracts.

Agencies must also make a record of a decision not to make any open access information publicly available.

This requirement for proactive release of information is one of the major reforms of the GIPA Act. We welcome the appointment of the new Information Commissioner and have started building strong ties between our two offices.

We have signed information sharing agreements that will enable us to refer complaints to the Information Commissioner and also receive complaint referrals from them. In our FOI review role, we have traditionally been able to review complaints with 'two hats' – also identifying any possible broader administrative issues revealed in the documents that are the subject of the FOI application.

We are confident that the provision in the GIPA Act authorising liaison between the Ombudsman and the Information Commissioner, the information sharing agreement with the Information Commissioner's Office, as well as regular liaison meetings between our staff, will enable us to continue to deal with any broader administrative matters that may arise out of access to information complaints.

FOI Complaints

This year we received 145 formal complaints about the handling of FOI applications by agencies and local councils (see figure 52). This compares to 186 complaints received last year and 225 the year before. The downward trend in FOI complaints continues.

As predicted last year, we think this trend can be attributed to greater openness by agencies following memoranda by the Premier encouraging proactive release of information by government agencies. Another reason is the consistent decrease in complaints about the NSW Police Force (NSWPF) due to it having substantially reduced its backlog in processing FOI applications.

As is usual, the majority of complaints were about refusal of access to documents. We also received complaints about wrong procedures, failure to make a determination, delays, excessive charges as well as failure to identify documents the subject of applications (see figure 53).

Figure 52: Formal and informal matters received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Formal received	188	208	225	186	145
Formal finalised	198	205	197	224	136
Informal dealt with	294	316	422	407	263

Figure 53: What people complained about

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

Issue	Formal	Informal	Total
Access refused	90	36	126
Agency inquiry	0	33	33
Amendments	3	5	8
Charges	2	6	8
Documents not held	10	11	21
Documents concealed	0	2	2
Documents destroyed	0	0	0
General FOI inquiry	0	63	63
Information	1	1	2
Issue outside our jurisdiction	1	6	7
Other	0	1	1
Pre-application inquiry	0	35	35
Pre-internal review inquiry	0	47	47
Third party objection	8	7	15
Wrong procedure	30	10	40
Total	145	263	408

Figure 54: Significant outcomes achieved in relation to complaints about FOI finalised in 2009–2010

Outcome	No.
Policy/procedure change	3
Training implemented	2
Authority pays compensation	1
Authority makes apology	5
Other remedy	1
Authority reviews case	8
Further information provided	14
Authority admitted and corrected errors	4
Authority reviewed and changed decision	6
Authority provides reasons	5
Agreement reached through informal means	1
FOI documents released	23
FOI refund/remission of fees	1
FOI search made and documents found	4
Total	78

We finalised 136 complaints achieving 78 positive outcomes (see figure 54). The reduction in our overall funding in the last few years has had a very real impact on the work we can do. In order to use our decreasing resources more efficiently, this year we restructured the public administration division, where our staff who deal with FOI complaints are located.

The division has been organised into an assessment and resolution stream and an investigation stream. While the restructure has improved the overall efficiency of the division, it has continued the unfortunate trend over many years of fewer resources being available to deal with FOI complaints. For this reason we have finalised less complaints than in previous years.

As a result of our involvement, agencies released many documents previously held exempt and in some cases carried out further searches resulting in more documents being found. We also caused policy and procedure changes, provision of training to staff and in some cases persuaded agencies to apologise to complainants for errors. We formally investigated three complaints. All other complaints were dealt with through preliminary inquiries and making informal suggestions under the FOI Act.

University executives' pay and performance

Last year we reported that, following an investigation, we had recommended that the Department of Premier and Cabinet (DPC) consider amending the annual reporting regulations to require disclosure of the pay and performance information of senior university executives.

In July 2010, the Director General of DPC advised us that the annual reporting regulation is due to be repealed on 1 September 2010. When the regulation is re-drafted the Government proposes to include provisions that will give effect to our recommendation.

CS 62: Caught in a 'catch 22' situation

A member of the public complained about Blacktown City Council's handling of his request for information about the owner of a dog that had attacked his dog. The complainant attempted to report the dog attack to both council and the police. However, council advised him that he could not lodge a formal complaint unless it was about a specific individual. As the complainant did not know the name of the dog's owner but wanted to take civil action against him, he followed council's advice and made an FOI application to obtain the owner's name and address.

Council in turn refused to provide any information due to privacy considerations under the *Companion Animals Act 1998* which treats certain information relating to the administration of the Act as confidential. The Act allows the disclosure of the name of the owner of a companion animal to a person to bring legal proceedings if the animal's behaviour had been reported to a police officer or a council. However council said that the name could not be disclosed as no official complaint had been received by either the pound or the police. Quite obviously, the complainant found himself in an impossible situation.

It appeared the complainant had made a verbal complaint to council but, in a 'catch 22' type situation, couldn't lodge a formal complaint because he did not have the name of the dog's owner. However, there was no reason why council staff could not treat the complainant's attendance at council to report the attack as a formal complaint for the purposes of the Companion Animals Act and give him access to the dog owner's name under that Act. We wrote to council and suggested that the complainant should have been given access to the information free of charge under the Companion Animals Act. As a result of our suggestion, council decided that all future reports about alleged dog attacks, including verbal ones, would be formally recorded by council. The names of the owners will be given to people who ask for the information in writing, without resort to the FOI Act. Council also agreed to refund the FOI application fee in this case.

FOI and other ways of accessing information

FOI is not always the only way to provide information to a member of the public. It is sometimes inappropriate to make people submit FOI applications for information that could be provided informally or through other means. This is now an important element of the new GIPA Act.

In case study 63, we found that it was inappropriate to refuse to process an application under the FOI Act and direct people to a more costly access to information scheme instead.

CS 63: Incident reports too expensive

A Legal Aid solicitor complained that the NSWPF had declined to process his client's application for access to an incident report under the FOI Act. The FOI Unit advised his client to redirect the application to the Police Insurance Services Unit. The cost of obtaining the relevant document from the Insurance Services Unit was $73, substantially higher than the cost under the FOI Act. This would have been only $15 as the client was a pensioner. This frustrates the objects of the FOI Act as it means less people, particularly those suffering financial hardship, would be able to afford the cost of accessing documents held by the police.

We suggested that the Insurance Services Unit should process applications from individuals using the same fee structure as the FOI Act. We felt that people who could otherwise have obtained the information under the FOI Act should be charged $30 for applications for their personal information. They should also be eligible for a discount if they could demonstrate that they were suffering financial hardship.

The NSWPF refused to comply with this suggestion. They said that the Insurance Services Unit fee structure reflected the cost recovery and user charges guidelines established by the NSW Treasury, and adopting the FOI Act fee structure would not adequately recover the costs associated with processing applications. It would also affect the NSWPF's capacity to maintain the service. They advised us that they recognise that applicants may be suffering financial hardship and so the Insurance Services Unit does not charge for applications received from Legal Aid. We have significant concerns about this response from the NSWPF and will be actively pursuing this issue.

FOI and business

Agencies are usually reluctant to release documents that contain information about a private business, regardless of whether they are legitimately exempt under the FOI Act. Case studies 63 to 67 show that a fear of offending business customers may exist among several government agencies.

CS 64: Is information about water usage confidential?

A journalist applied to Sydney Water under the FOI Act for documents about the amount of water used by the top 50 commercial users in past financial years. Sydney Water released information about aggregate data, but maintained that the documents disclosing the names of the companies were exempt as they concerned the business affairs of the companies and were therefore confidential.

Sydney Water argued that its customer contract obliged it to keep confidential information about the water use of its commercial customers, and – although information about water usage was not confidential in itself – in combination with the names of the users it 'could provide an opportunity to other competitors.' They did not consult the affected businesses before making this decision.

Although the release of the documents may provide a 'window of information' to competitors, the fact that information is disclosed is not sufficient to make the documents exempt from release. The release of the documents must have an adverse effect on the business affairs of the company involved or lead to a diminution in the commercial value of information. Many of the companies listed in the documents regularly publish information about their water use on their websites and in their annual corporate social responsibility or environmental reports, as well as in Sydney Water's own publication, *The Conserver.* It is unlikely that any of these businesses would have published this information if it could have alerted competitors to operational factors that might give them a substantial competitive advantage. Our review of the Customer Contract also showed that it contained no undertakings of confidentiality to Sydney Water customers regarding information about water usage.

In recent years, private water consumers have been subjected to increasing restrictions on their water usage and have been encouraged to undertake water-saving initiatives. The water consumption of businesses and any initiatives that businesses are taking to reduce their water consumption are therefore matters of public interest. In our view, members of the public have a right to know which businesses are consuming the most water in NSW and whether or not those businesses are taking action to reduce their water consumption.

We suggested to Sydney Water that the release of the documents was in the public interest. They declined to take up our suggestion so we started a formal investigation into their conduct. After an initial meeting, the CEO advised us that Sydney Water was now consulting with some of its top 50 customers and seeking their views about our arguments in favour of releasing the information.

We received submissions from a law firm representing one of the commercial water users and several organisations representing the interests of businesses in NSW. The submission did not, in our view, establish that the documents sought by the journalist were exempt. We subsequently recommended that Sydney Water release the documents.

CS 65: The right to know about council contracts

A former Greens councillor from Shellharbour City Council complained about council's handling of her FOI application for documents about a large development known as the Shell Cove Marina. Council signed a development contract with the Australand Corporation in 1993. The development, which is to be completed by 2016, includes a large marina, golf course and a shopping centre.

Council gave the former councillor access to some information about the development, but refused access to reports that had been created in the last seven years because they contained sensitive business information about negotiations with Australand.

At an initial meeting with council, they told us that they were prepared to release monthly and annual reports about the marina that had been created more than three years ago but nothing more recent. We disagreed and pointed council to section 15A of the FOI Act, which sets out information that needs to be made public in contracts between government agencies and the private sector.

We also referred to the public interest in the release of the information in the reports, particularly as council receives revenue from the development and will receive half the profits made once it is complete. Council agreed to review their original decision and release further documents to the complainant.

CS 66: Rally conditions not released

We received a complaint from an environmental organisation about a decision by the Department of Industry and Investment to refuse access to a document containing conditions imposed on the holding of the World Rally Championship North Coast Event. The department argued that the rally organiser had provided the information in the notice of conditions in confidential circumstances. They also argued that the conditions of the event were the proprietary information of the rally organiser, so their release would have an unreasonable adverse effect on their business affairs.

We considered there was nothing in the notice of conditions that indicated it was a confidential document. It merely set out the conditions under which the rally was to be held and did not contain proprietary information of the rally organiser as claimed by the department. The department agreed with our suggestion to release the document.

CS 67: Claims for exemption not substantiated

In November 2006, the NSW Government announced a decision to build Tillegra Dam in the Hunter Valley. In late 2008 the No Tillegra Dam Group, which was opposed to the construction of the dam, applied for documents about decisions relating to its construction. The Hunter Water Corporation claimed that all documents were exempt because they were either internal working documents or cabinet documents. It was unclear how many documents had been identified as Hunter Water did not prepare a schedule of documents.

In response to our investigation, Hunter Water provided a certificate from the Department of Premier and Cabinet that showed only five of the documents were in fact cabinet documents.

They claimed 23 other documents should also remain exempt because they contained sensitive business or confidential information or their release would undermine Hunter Water's financial or property interests.

We could see no good reason for any of the documents to be exempt as they were created in late 2006 and many were from before the NSW Government decided to build Tillegra Dam.

After considering our suggestion to redetermine the application, Hunter Water agreed to release virtually all the information in the 23 documents.

When should information be collated?

Agencies occasionally receive applications, typically from journalists, that require them to collate information that they do not normally collate in order to satisfy the inquiry. If the information is easily put together, agencies are normally happy to oblige.

However, from time to time, agencies argue that it would take an unreasonable amount of resources to collate the information requested. The challenge for us in those cases is to gain an understanding of the agency's systems so we can test the veracity of their claim, and then decide whether the information requested is in the public interest and should therefore be collated by the agency. Case studies 68 and 69 illustrate this dilemma.

CS 68: Data unreliable so not released

A journalist complained about the Roads and Traffic Authority's (RTA) determination of his FOI application for documents about the top ten locations of vehicle collisions or incidents with pedestrians. The journalist wanted the information to identify and publish a list of black spots in NSW. The RTA advised him that it did not hold documents disclosing such information although, according to the journalist, they had published similar lists in the past.

Through our inquiries, we found that the RTA does not compile crash statistics listing locations with the greatest number of crashes because this information of itself is not helpful in determining the areas that need the most attention. In most cases, the total number of crashes simply signifies that an area is busy and has high traffic volumes. According to the RTA, the crashes may be relatively minor and so would not indicate that there is a 'black spot'.

The RTA also told us that the information they had provided to the media in the past (up until 1997) was an annual listing of black spot intersections in NSW, ranked on the total number of crashes over the most recent two year period and then by a severity index. The severity index included various weightings for fatal, serious injury, minor injury and non-casualty crashes – but only for the most recent year of crash data. This was possible in the past as a distinction was able to be made between serious and minor injuries.

However the recording of data on injury severity was found to be unreliable and attempts to distinguish between serious and minor injuries were abandoned in the mid 1990s. According to the RTA, the list of black spot intersections became defunct once the severity of the crashes could no longer be analysed. We wrote to the journalist advising him that we were satisfied that the RTA did not hold the documents he had requested.

After we concluded our inquiries the Daily Telegraph published a list of the state's top ten accident 'hotspots'. It had obtained the information from a list showing where the RTA had determined to place its new mobile speed cameras. We made further inquiries with the RTA as this appeared to be a list of 'black spot' locations.

The RTA advised us that the analysis performed in order to determine the appropriate locations of the mobile speed cameras was not based upon 'black spots' but rather on locations that had been previously used by the NSW Police Force for their own mobile speed cameras. The RTA had used this as a starting point in assessing the suitability of the sites. The RTA confirmed that it did not hold data regarding 'black spot' locations in NSW.

CS 69: Collating hoax calls too hard to do

A journalist made an FOI application to the NSW Ambulance Service for copies of examples of hoax calls made to the triple-0 line. The service had refused the application on the basis that processing it would be an unreasonable diversion of its resources.

After making detailed inquiries and viewing the systems used for tracking calls made to the triple-0 line, including the computer-assisted dispatch system used to locate and respond to calls from members of the public, we were satisfied that collating information on hoax calls would be an unreasonable diversion of resources.

The service explained to us that they generally cannot identify if a call is a hoax call until the ambulance has been dispatched to the site. If the attending paramedics attend the site of the call and are able to determine that the call was a hoax, they will enter an 'unable to locate' outcome on their mobile unit. It is worth noting that this 'unable to locate' outcome does not necessarily mean the call was a hoax.

For example, a passer-by may call an ambulance for an individual who appears to be injured by the side of the road but by the time the ambulance arrives the person may have recovered and moved on. The paramedics will record any details of a hoax on the paper patient record, but no specific details about the hoax are required to be captured in the electronic system.

FOI and legal professional privilege

Every year we receive complaints that appear to us to involve an unreasonable refusal to allow access to documents based on legal professional privilege.

Alternatively, in cases where privilege can appropriately be claimed, there appears to often be an unreasonable reluctance to exercise discretion to release documents. Case studies 70 and 71 show examples of the inappropriate use of legal privilege to prevent access to information.

CS 70: Photo of car released, but with a proviso

A man who received a parking fine from the Hills Shire Council applied under FOI for a copy of the photo of the car taken by the council ranger as proof of the offence.

Council refused access on the basis that the document was exempt because it 'contained matter that would be privileged from production in legal proceedings on the ground of legal professional privilege'.

In fact, the photograph was not exempt. If the man chose to challenge the fine in court it would have formed part of the brief of evidence and would have had to be shown to the defendant. We also noted that the Roads and Traffic Authority and many councils provide photographs of vehicles on request for a small fee.

Following our inquiries, council's general manager wrote to the complainant releasing the photograph. However he noted that he was not convinced the photograph was anything but an exempt document.

CS 71: Using legal professional privilege as an excuse

A serving police officer applied for documents from two legal files concerning litigation he had been involved in with the NSWPF. The NSWPF claimed legal professional privilege over the entire contents of the files, arguing that all the documents were either copied or gathered for legal proceedings or providing legal advice.

Some of the documents claimed as privileged were not even copies of documents supplied to legal advisers to obtain advice or use in litigation. Invoices, correspondence with Treasury Managed Fund, transcripts of judgments, publicly available documents as well as documents created by the applicant and his advisors were found to be in this category.

For a number of other documents, we considered that – even if it could be shown that they were copied for a privileged purpose – it was difficult to see what the public interest in maintaining such privilege was. Both cases had been finalised and there appeared to be no indication of further pending litigation, the matter related to the affairs of the applicant, and the information in the documents was largely innocuous and otherwise able to be accessed from other files within the same agency. In the circumstances, we considered the NSWPF should have used their discretion to release the documents even if privilege could be argued.

We were also concerned that the exemption had been applied in what appeared to be a wholesale approach to several files of documents, simply because they were located in legal files and without regard to the content and purpose of each individual document. This approach has the potential to be seen as frustrating the objects of the FOI Act. Access to documents should not be prevented by placing copies of the documents in a 'legal file' and then claiming privilege. Although access to the original documents was still possible, the agency did not provide a schedule of documents to the applicant – so he could not make an informed decision about whether and how to request access to non-privileged original documents. Following our investigation, the NSWPF agreed to review their determination.

FOI and law enforcement

This year the NSWPF's decision to arm all frontline police officers with tasers or stun guns has continued to receive public and media attention. Case study 72 shows that despite the heightened public interest in this issue, the NSWPF appears reluctant to release information about the use of these weapons.

CS 72: Releasing videos of taser use

A journalist applied to the NSWPF for copies of five videos of police officers using tasers to subdue offenders. Every taser has a built-in video that films its use. The NSWPF identified five videos and then determined that all five were exempt because their release would be an unreasonable disclosure of the personal affairs of the people who were filmed. They also claimed that release of the taser videos may lead to an unfair trial for any of the people charged as a result of the incident for which they had been tasered.

We wrote to the NSWPF asking for copies of the videos. For several weeks they refused to provide the videos, even though we regularly review and access taser videos as part of our policing oversight role. Regrettably, it was only after advising that we could compel the NSWPF to produce the videos by using our Royal Commission powers, they sent them to us.

After reviewing the videos we considered they could and should be released as long as the identity of the people who were tasered could be obscured. The NSWPF refused to comply with our suggestion because they feared that it would result in them being inundated with applications for videos of taser use. The NSWPF then wrote to the journalist with a two line letter saying it refused to agree to our suggestion. The letter set out no reasons at all to support its decision. They claimed to us they did not have the resources needed to obscure the images of the people appearing in videos.

Because the release of taser videos could well have implications for applications made for the videos under the new GIPA Act, we discussed this case with the Information Commissioner, who will review any future complaints about the determination of GIPA applications made for taser videos. We determined that it was in the public interest for the videos in this case to be released and therefore commenced a formal investigation into the NSWPF's handling of this matter. We recommended that the NSWPF release the taser videos to the journalist and in doing so, obscure the faces of the people who were tasered.

Protected disclosures

The *Protected Disclosures Act 1994* (the PD Act) aims to encourage the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector. Our office is one of the investigating authorities, along with the Independent Commission Against Corruption (ICAC), the Auditor-General and the Police Integrity Commission, to which a public official can make a protected disclosure.

We also provide advice to those thinking about making a disclosure, as well as helping public authorities to implement the PD Act effectively and fairly. We provide practical training, in partnership with the ICAC, to staff from public authorities across the NSW.

Parliamentary review of whistleblower legislation

Since its enactment in 1994, the *Protected Disclosures Act 1994* (PD Act) has been reviewed by a parliamentary committee four times. The latest review was conducted by the committee on the Independent Commission Against Corruption in 2008-2009 and their report was published in November 2009. As we reported in last year's annual report, we made written submissions to the committee and the Deputy Ombudsman gave evidence at a public hearing.

One of the central recommendations in the committee's final report was the need for greater ownership of the protected disclosures legislation by a central agency. In recognition of the active role that we have taken since the Act came into operation – for example, producing guidelines and providing advice to public sector staff and agencies about protected disclosures – the committee recommended that we should be funded to provide monitoring, auditing, education and advisory functions in this area.

On our estimation, the resources we would need to do this would be similar to those recently provided to the Information Commissioner to perform similar functions in relation to the new access to government information scheme.

The committee's intentions were to give one agency the responsibility for ensuring that the scheme was achieving its central purpose – that is, giving the public sector more opportunities to identify and fix problems by encouraging public sector staff to report wrongdoing without fear of reprisal. At present, nobody is in a position to know if that purpose is being effectively achieved.

As previous committees have done, this committee also recommended that stricter legal requirements be placed on agencies to properly deal with protected disclosures and provide adequate protection to those who come forward. Currently agencies are under no such obligation.

We are hopeful that the NSW Government will seriously consider the committee's report as a template for reform in this area. In December 2008, they indicated to us that they were open to considering comprehensive reform of the current Act. We have therefore delayed updating the 6th edition of our Protected Disclosures Guidelines until we know what, if any, reforms may be made to the current system. These guidelines continue to be in high demand, being downloaded over 16,000 times this year, an average of 1,380 times per month.

Super departments

One of the pitfalls for public sector staff wanting to make a disclosure is the possibility of making it to the wrong person. Under the PD Act, protections will only apply if certain conditions are met. These conditions include making the disclosure to one of the people specifically authorised by the Act to receive them – such as the 'principal officer of a public authority'.

In July 2009, the NSW Government restructured the public service and placed all existing government departments under the umbrella of 12 super departments. Some have remained largely separate agencies with an extra level of management (the Director-General of the super department), while others have been substantially merged into other entities.

This year we answered an inquiry from an agency that is part of the super department called the Department of Human Services NSW. There are seven separate agencies within that super department, each with their own Chief Executive.

Before the creation of super departments, it seemed clear that the 'principal officer of a public authority' was the person who headed that organisation – whatever their official title. The question now is whether this 'principal officer' is the Director-General of the super department to which an agency belongs or the agency's own Chief Executive.

As the actual legal position is not entirely clear, our advice to agencies is that they should ensure that their internal reporting policies provide that both the Director-General and the Chief Executive may receive protected disclosures, and make it clear that each policy is effectively a policy of the super department. That way, a member of staff wanting to report wrongdoing will not unintentionally miss out on the protections of the Act because they made the disclosure to the wrong 'boss'.

We are concerned that people who work in agencies without such an internal reporting policy may miss out on the protections of the Act through no fault of their own. We hope that some clarity can be brought to this issue if the Act is reformed as recommended by the Parliamentary Committee. We have written to the Department of Premier and Cabinet to bring their attention to this issue.

Changes made by the *Government (Information Access) Act 2009*

The *Government Information (Public Access) Act 2009* (GIPA Act) made changes to the PD Act to provide that a public official may make a disclosure to the Information Commissioner about a 'failure to exercise functions properly' in accordance with the GIPA Act. Unfortunately, the Act did not make a number of consequential amendments to the PD Act that would provide protection for a disclosure about this issue made internally to an agency (as is the case with other categories of conduct covered by the Act).

We are concerned that anyone who tries to bring to light a failure by their agency to exercise their GIPA functions properly, by reporting the problem internally, will not receive protection.

Together with the Information Commissioner, we have suggested that the Department of Premier and Cabinet make the appropriate legislative changes or encourage agencies to adopt or amend their existing internal reporting policies to ensure that they advise their staff to report these kinds of concerns directly to the Information Commissioner – or take steps to properly manage these disclosures and provide protection from reprisals.

Training workshops

This year the Deputy Ombudsman continued his work in providing training to management and staff in agencies who handle protected disclosures. In conjunction with the ICAC, he presented six workshops in Sydney and regional centres such as Orange.

These workshops also provide us with an opportunity to gauge the current issues facing practitioners in this area. One continuing area of confusion concerns the implementation of confidentiality in relation to whistleblowing. For a number of years, we have challenged the traditional view that keeping the identity of the whistleblower secret always provides the best outcome. Our experience has been that, often despite the best efforts of agencies, these kinds of secrets are in practice badly kept.

We therefore advocate a risk management approach. The aim is to ensure that people feel safe coming forward and that when they do report wrongdoing they will remain safe and genuine problems will be fixed.

We have found that the best practical outcomes result when agencies assess the circumstances of each particular case. They then need to decide:

- If confidentiality can be maintained, given the nature of the allegations and the practical steps that would be required to investigate them. For example, there may be a way of investigating the allegations – such as a routine audit –without disclosing that a complaint is the reason for the investigation.

› If not, whether with a more open approach – that would send a clear message to staff that retribution against the whistleblower will not be tolerated – that retribution is less likely.

The agency can then take realistic and practical measures to ensure the person is supported and protected. For more details, see our information sheet called 'Confidentiality – Practical alternatives for the protection of whistleblowers'.

Complaints

This year the number of complaints and inquiries we received about protected disclosure issues has dropped compared to the last two reporting years. As highlighted in the latest review of the Act, there is currently no database of information that would allow us to explain fluctuations in our complaint numbers. If we were given the responsibility for monitoring the implementation of the PD system, we would be in a better position to understand trends in both complaint numbers and the outcomes of complaints.

It is important that agencies are responsive to those who complain to them. When those complainants are also employees, clear and regular communication becomes absolutely critical. This year we attempted to resolve a long-standing dispute between an academic and the university where he worked. This dispute had been partly caused by the University's failure to recognise that the academic had made an official complaint and properly process and communicate with him about the outcome. This led to a perception that the University was actively taking detrimental action against the academic for having made the complaint in the first place (see case study 73).

CS 73: Complaints about plagiarism poorly handled

An academic at a university complained to us that the university had mishandled a situation of systemic plagiarism by international students studying a Masters course. The academic first brought his concerns to the attention of the University's Vice-Chancellor in November 2006, but almost three years later he continued to be dissatisfied with their response and claimed that he had suffered detrimental action for coming forward.

After making informal inquiries, it appeared to us that the university had treated the plagiarism allegations very seriously. They had convened a panel of senior university administrators, including two former Vice-Chancellors, to look into the matter and make recommendations. In addition to considering complicated issues – such as what to do with Masters degrees that had already been conferred on past students who had submitted plagiarised work – the panel recommended a wider investigation into the course and those responsible for running it. Over the three years, the course was dismantled and certain staff were the subject of formal disciplinary investigations and misconduct processes.

Unfortunately, it also appeared that the university had not processed the academic's complaint in accordance with any formal complaints policy. No assessment was made about whether or not it was technically a 'protected disclosure' so no process was put in place to ensure that he was advised of the progress or the outcome of his complaint. The result was that for two years the only correspondence the academic received was a letter advising that he was to be the subject of an investigation. Someone had made allegations that he failed to report the plagiarism as soon as he became aware of it. The academic saw this as retribution and became increasingly frustrated and disillusioned. He felt that the university had deliberately dragged its heels rather than deal with the plagiarism issue promptly, allowing further cohorts of students to complete their degrees with possibly plagiarised work.

By 2009, he had made further complaints – essentially about his 2006 complaint being ignored by the university. The university's response was, in part, to argue about whether or not his original complaint was technically a 'protected disclosure'. By July 2009, the academic was fed up and shared his frustrations with a national newspaper. The university clarified that he did this under that part of the PD Act that provides protection for whistleblowers who disclose to the media.

The Vice-Chancellor finally met with the academic late in 2009 but was unable to address his concerns. After our involvement, and with the appointment of a new Vice-Chancellor, the university acknowledged that the 2006 complaint should have been handled better. They agreed to apologise to the academic and communicate to him that he had done the right thing in bringing the plagiarism to light. The university also agreed to review its policies relating to protected disclosures and disseminate a communication from the Vice-Chancellor about the importance of protected disclosures and ensuring those who make them are protected from retribution.

Figure 55: Protected disclosures received

Matters	05/06	06/07	07/08	08/09	09/10
Informal	68	42	53	47	43
Formal	52	34	43	42	35
Total	120	76	96	89	78

Highlighting 35 years

In our first year, we received complaints about 138 different public authorities. This year, we dealt with complaints about almost 1,000 agencies and organisations. These included both public and private sector bodies, providing a broad range of services. This number may well increase with future changes to our jurisdiction.

Removing nine words

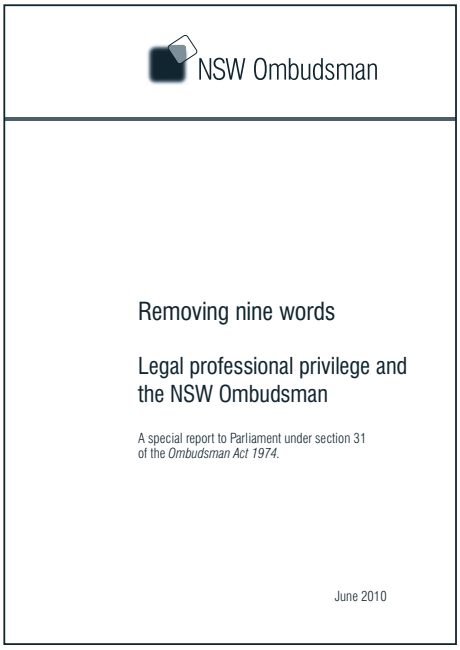
In June, the Ombudsman tabled a special report to Parliament entitled: *Removing Nine Words: Legal Professional Privilege and the NSW Ombudsman*. The New South Wales Ombudsman Act is the only Parliamentary Ombudsman Act in Australia that permits agencies to refuse to provide us with information on the grounds of a claim of legal professional privilege. In NSW, the Police Integrity Commission and the Independent Commission Against Corruption do not operate under such a restriction. Former Commonwealth Ombudsman John McMillan commented that:

> We have found that information of this kind, especially requests for legal advice and the advice itself is a source of high quality investigation information. It commonly provides, in a considered and researched way, a reliable statement of an agency's understanding of a matter.

The report outlined the basic amendment needed. Nine words, 'other than a claim based on legal professional privilege', which are repeated twice in the Ombudsman Act, would need to be removed. This would bring the Act into line with other Ombudsman Acts and watchdog legislation in NSW.

The report also documented the Ombudsman's attempts to get this amendment made to the Act over the last two years. The issue has been raised repeatedly in correspondence from the Ombudsman and our Parliamentary Committee to the Premier. The Ombudsman noted in the report that it was 'unclear why there is such reluctance to put forward this simple but important amendment.'

After the report was tabled, the Independent Member for Port Macquarie, Mr Peter Besseling, introduced a private member's bill making the necessary amendment to the Ombudsman Act. The Bill passed the Legislative Assembly on 2 September. At the time of writing, the Bill was yet to be considered by the Legislative Council.



The need for a strong integrity framework

On 9 September this year, the Ombudsman delivered one of the keynote addresses at the annual Corruption Prevention Network Conference. In his speech, entitled *Keeping up the Standards*, the Ombudsman outlined the importance of ethics and integrity, supported by a strong integrity framework for the public sector.

The Ombudsman explained why maintaining strong ethical standards is important:

> As public servants, we have a unique relationship with the community. We provide them with most of the essential services they need to go about their lives. We get them to and from work, we treat them when they are sick, we protect them from crime, we educate their kids, we provide some with housing, and so on. Our actions and decisions have a real impact on people's everyday lives.
>
> These relationships have in common the fact that they are built around trust. If that trust is eroded, it leads to cynicism, and suspicion.

He stressed the need for such an integrity framework to be built around ethical leadership, a clear public sector wide code of conduct, supported by public sector ethics legislation, and strong, independent watchdog bodies.

Financial management

Highlights

- Received an unqualified audit report from the NSW Audit Office for our financial records and systems. See page 118
- Established an audit and risk committee that will strengthen our governance framework and provide additional assurance to the Ombudsman on our financial processes. SEE PAGE 114
- Generated $436,000 in revenue, mostly through our training courses such as managing unreasonable complainant conduct, and used this revenue to support our complaint-handling and other core work. SEE PAGE 114
- Paid 100% of our accounts on time, an improvement on 2008–2009. SEE PAGE 115
- We used our capital funding to replace our desktops and to upgrade our case management system. SEE PAGE 114
- We continued to proactively manage our leave liabilities, reducing the value of untaken recreation leave. SEE PAGE 115

The financial statements provide an overview of our financial activities during 2009–2010. These statements, our supporting documentation, and our systems and processes have all been reviewed by our own auditors and the NSW Audit Office. We received an unqualified audit report.

This year we established an audit and risk committee to support our governance systems. This committee, which is required under the NSW Treasury policy on internal audit and risk management, provides an independent review of our financial and business activities. The committee will oversight the development of an internal audit plan as well as our review of our risk management program.

We focused on generating more revenue from sources other than the government, receiving $436,000. We will continue to identify opportunities to generate revenue from training and publications sales to support our core work.

Our financials

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

During the year we implemented a comprehensive structural change, with the major imperative being to cut costs. As over 80% of our expenses are employee-related, our cost cutting will inevitably mean a reduction in staffing levels – and this will have an impact on the services we can provide to the community. The Ombudsman has raised the ongoing funding issue with the government, Members of Parliament, the Parliamentary Joint Committee on the Ombudsman and Police Integrity Commission and with NSW Treasury.

As mentioned last year, we had reviewed our internal budgeting and reporting to make sure that the information that we provide to our managers was comprehensive, relevant and timely. Our review looked at staffing projections, leave management and capturing commitments as well as the format of our expenditure reports. We also considered training and other ongoing professional development for managers on interpreting financial information, acknowledging the importance of our senior staff being able to use financial information in their business planning and for decision-making. During the year we refined these changes and included financial management training in our executive leadership training program.

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

The Ombudsman receives funding from the NSW Government. Although we account for these funds on an office-wide basis, as reflected in our financials, internally we allocate them between our three business branches and our corporate team.

For NSW state budget purposes, we also report against service groups. As we do not budget internally this way, the figures reported for service groups are estimates only and can vary depending on workload, priorities and staffing levels. Figure 56 shows the net cost of services by service group for the last five years. Following a review of our service groups by NSW Treasury, the Ombudsman will only be reporting on one service group – which will be called 'Complaint Advice, Referral, Resolution or Investigation' – from the 2010–2011 financial year.

Figure 56: Net cost of services by service group

Service groups	05/06 $'000	06/07 $'000	07/08 $'000	08/09 $'000	09/10 $'000
Complaint advice, referral, resolution or investigation	8,675	9,263	9,755	10,405	9,447
Oversight of agency investigation of complaints	3,863	4,124	4,344	4,633	4,206
Scrutiny of complaint-handling systems	5,873	6,272	6,604	7,043	6,814
Review of the implementation of legislation	613	1,194	1,087	273	233
Total	19,024	20,853	21,790	22,354	20,700

Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditure. Consolidated funds are accounted for on the statement of comprehensive income, after the net cost of service is calculated to allow for the movement in accumulated funds to be determined for the year. The government also makes provision for certain employee entitlements such as long service leave.

Our initial 2009–2010 recurrent consolidated fund allocation was $19.827 million and our final allocation was $19.833 million. Included in the Ombudsman's allocation is funding for our review of the implementation of new police powers. Details of these reviews can be found in the Policing chapter. Figure 57 shows the amount provided for the legislative reviews over the last five years. $233,000 was provided for our legislative review work in 2009–2010, which represents 1.17% of the Ombudsman's total recurrent allocation.

Figure 57: Legislative reviews

Year	Revenue $'000
09/10	233
08/09	273
07/08	1,085
06/07	1,073
05/06	633
04/05	433

In 2009–2010 we budgeted that the Crown Entity would accept $860,000 of employee benefits and other entitlements. However, the actual acceptance was about $948,000. This variance is primarily due to adjustments to our long service leave liability after actuarial advice in June 2010.

We were allocated $785,000 for our capital program but spent $34,000 less than the allocation. Our capital program included replacing our desktops and laptops, upgrading hardware, purchasing new office equipment, and updating and improving our fit-out.

We generated $436,000 through sales of our publications, bank interest, fee-for-service training courses and our consultancy services we provide to other Ombudsman's offices through AusAid programs (see figure 58). Figure 59 provides a breakdown of our revenue, including capital funding and acceptance of employee entitlements.

Figure 58: Other revenue sources

Revenue from other sources	Revenue $'000
Workshops and publication sales	317
Bank interest	50
Other revenue	69
Total	436

Figure 59: Total revenue 2009–2010

Government	Revenue '000
Recurrent appropriation	19,833
Capital appropriation	751
Acceptance of certain employee entitlements	948
Total government	21,532
From other sources	436
Total	21,968

Expenses

Most of our revenue is spent on employee-related expenses such as salaries, superannuation entitlements, long service leave and payroll tax. Our statement of comprehensive income shows that this year we spent more than $16.9 million, or 80.42% of our total expenses, on employee-related items.

Salary payments to staff were 3.8% less than the previous year. As a result, our superannuation expenses also decreased as did our payroll tax-related items. Our long service leave expenses decreased by $365,000 – this was partly due to adjustments requested after an actuarial review. After a higher than anticipated adjustment in 2008-2009, our workers compensation costs were back to a reasonable level of $80,000.

The day-to-day running of our office costs us over $3.8 million a year. Our significant operating items are rent ($1.8 million), fees such as contractor costs ($654,000), travel ($415,000), maintenance ($173,000) and stores ($113,000). There were no consultants engaged during 2009–2010.

The financial statements show that $330,000 was expensed for depreciation and amortisation. As we spent $751,000 on our capital program, we had an increase in our non-current asset base.

Although capital funding is shown on the statement of comprehensive income, capital expenditure is not treated as an expense – it is reflected on the statement of financial position.

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. However, there are some instances where this may not be possible – for example, if we dispute an invoice or don't receive it with enough time to pay within the specified timeframe. We therefore aim to pay all our accounts within the specified timeframe 98% of the time. During 2009–2010 we paid 100% of our accounts on time. This exceeded our target and is a slight improvement in our performance from last year. We have not had to pay any penalty interest on outstanding accounts.

Figure 60: Total expenses 2009–2010

Expenses category	Total $'000
Employee-related	16,997
Depreciation and amortisation	330
Other operating expenses	3,808
Total	21,135

Performance indicator: Accounts paid on time

Quarter	Paid $'000	Paid on time $'000	Target %	Result %
Sep 2009	1,573	1,573	98	100
Dec 2009	1,740	1,740	98	100
Mar 2010	2,154	2,154	98	100
Jun 2010	2,637	2,637	98	100
Total	8,104	8,104	98	100

Note: this table does not include direct salary payments to staff, but includes some Employee-related payments such as payments to superannuation funds.

Assets

Our statement of financial position shows that we had $3.363 million in assets at 30 June 2010. The value of our current assets increased by $1,083,000 from the previous year, while the value of our non-current asset base increased by $418,000.

Just over 50% of our assets are current assets, which are categorised as cash or receivables. Receivables are amounts owing to us and include bank interest that has accrued but not been received, fees for services that we have provided on a cost recovery basis, and GST to be recovered from the Australian Taxation Office. Also included in receivables are amounts that we have prepaid. We had $427,000 in prepayments at 30 June 2010. The most significant prepayments were for rent and maintenance renewals for our office equipment and software support.

Our cash balance includes a $43,000 advance payment from the New Zealand, Commonwealth and other state Ombudsman to cover costs for developing guidelines and training Ombudsman staff in dealing with unreasonable complainant conduct. We also had a liability to the consolidated fund of $519,000. We cannot use these funds for any other purpose so it is classified as a 'restricted asset'.

Our non-current assets, which are valued at $1.651 million, are categorised as:

- plant and equipment – this includes our network infrastructure, computers and laptops, fit-out and office equipment
- intangible assets – these include our network operating and case management software.

We were allocated $785,000 in 2009–2010 for asset purchases and spent $751,000. This is reflected in our capital consolidated fund appropriation. We used this money to buy new desktops and laptops, other computer hardware and office equipment as well as undertaking some fit-out modifications. We also upgraded our case management system Resolve, as well as starting a project to enhance its functionality, which will be completed in early 2010–2011.

We also piloted desktop virtualisation to streamline IT processes and reduce IT costs. The pilot was successful and we are now implementing a virtual desktop environment. We upgraded our internal intranet, making it more user friendly, and also continued our project to redesign our website. We will receive $314,000 capital funding in 2010–2011.

Liabilities

Our total liabilities at 30 June 2010 are $2.675 million, an increase of $669,000 over the previous year. Over 55% of this amount is the provision that we make for employee benefits and related on-costs, including accounting for untaken recreation (annual) leave which is valued at $836,000. The Crown Entity accepts the liability for long service leave. We also had a liability to the consolidated fund of $519,000. This liability is due to funds being drawn down against the appropriation but not needed.

We owe about $291,000 for goods or services that we have received but have not yet been invoiced. The value of accounts on hand at 30 June 2010 was $93,195. Please see figure 61. We monitor the amounts that we owe on a regular basis to make sure that we are paying accounts within terms.

Figure 61: Analysis of accounts on hand at the end of each quarter

	Sep 2009 $	Dec 2009 $	Mar 2010 $	Jun 2010 $
Current (ie within due date)	157,281	23,685	95,524	93,195
Less than 30 days overdue	–	3,976	–	–
Between 30 days and 60 days overdue	–	–	–	–
Between 60 days and 90 days overdue	–	–	–	–
More than 90 days overdue	–	–	–	–
Total accounts on hand	157,281	27,661	95,524	93,195

Audited financial statements

Our financial statements are prepared in accordance with legislative provisions and accounting standards. They are audited by the NSW Auditor-General (or delegate), who is required to express an opinion as to whether the statements fairly represent the financial position of our office. The audit report as well as the financial statements follow.

GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDITOR'S REPORT

OMBUDSMAN'S OFFICE

To Members of the New South Wales Parliament

I have audited the accompanying financial statements of the Ombudsman's Office (the Department), which comprise the statement of financial position as at 30 June 2010, the statement of comprehensive income, statement of changes in equity, statement of cash flows, service group statements and a summary of compliance with financial directives for the year then ended, a summary of significant accounting policies and other explanatory notes.

Auditor's Opinion

In my opinion, the financial statements:

- present fairly, in all material respects, the financial position of the Department as at 30 June 2010, and its financial performance for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2010

My opinion should be read in conjunction with the rest of this report.

Department Head's Responsibility for the Financial Statements

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the PF&A Act. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Department's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Department Head, as well as evaluating the overall presentation of the financial statements.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does not provide assurance:

- about the future viability of the Department
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal controls
- about the assumptions used in formulating the budget figures disclosed in the financial statements.

Independence

In conducting this audit, the Audit Office of New South Wales has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PFBA Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.

Peter Achterstraat
Auditor General

22 September 2010
SYDNEY

NSW Ombudsman

Level 24 580 George Street
Sydney NSW 2000
Phone 02 9286 1000
Fax 02 9283 2911
Tollfree 1800 451 524
TTY 02 9264 8050
Web www.ombo.nsw.gov.au
ABN 76 325 886 267

16 September 2010

Statement by the Ombudsman

Pursuant to section 45F of the *Public Finance and Audit Act 1983* and to the best of my knowledge and belief I state that:

(a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), 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 Regulation 2010 and the Treasurer's Directions;

(b) the statements exhibit a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2010, and transactions for the year then ended; and

(c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

Bruce Barbour
Ombudsman

Start of the audited financial statements

Ombudsman's Office

Statement of comprehensive income for the year ended 30 June 2010

	Notes	Actual 2010 $'000	Budget 2010 $'000	Actual 2009 $'000
Expenses excluding losses				
Operating expenses				
Employee-related	2(a)	16,997	17,661	18,020
Other operating expenses	2(b)	3,808	3,656	4,079
Depreciation and amortisation	2(c)	330	364	506
Total expenses excluding losses		**21,135**	**21,681**	**22,605**
Revenue				
Sale of goods and services	3(a)	317	82	162
Investment revenue	3(b)	50	9	27
Grants and contributions	3(c)	–	–	54
Other revenue	3(d)	69	40	8
Total revenue		**436**	**131**	**251**
(Gain)/loss on disposal	4	**1**	**–**	**–**
Net cost of services	17	**20,700**	**21,550**	**22,354**
Government contributions				
Recurrent appropriation	5(a)	19,833	19,827	19,969
Capital appropriation	5(b)	751	785	543
Acceptance by the Crown Entity of employee benefits and other liabilities	6	948	860	1,333
Total government contributions		**21,532**	**21,472**	**21,845**
Surplus/(deficit) for the year		**832**	**(78)**	**(509)**
Other comprehensive income				
Other comprehensive income for the year		–	–	–
Total comprehensive income for the year		**832**	**(78)**	**(509)**

Statement of changes in equity for the year ended 30 June 2010

	Notes	Accumulated funds $'000	Asset revaluation surplus $'000	Other reserves $'000	Total $'000
Balance at 1 July 2009		(144)	–	–	(144)
Surplus/(deficit) for the year		832	–	–	832
Other comprehensive income					
Total other comprehensive income		–	–	–	–
Total comprehensive income for the year		**832**	**–**	**–**	**832**
Balance at 30 June 2010		**688**	**–**	**–**	**688**
Balance at 1 July 2008		365	–	–	365
Surplus/(deficit) for the year		(509)	–	–	(509)
Other comprehensive income					
Total other comprehensive income		–	–	–	–
Total comprehensive income for the year		(509)	–	–	(509)
Balance at 30 June 2009		(144)	–	–	(144)

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of financial position as at 30 June 2010

	Notes	Actual 2010 $'000	Budget 2010 $'000	Actual 2009 $'000
Assets				
Current assets				
Cash and cash equivalents	8	1,084	185	194
Receivables	10	628	241	435
Total current assets		**1,712**	**426**	**629**
Non-current assets				
Plant and equipment	11	1,173	1,338	873
Intangible assets	12	478	316	360
Total non-current assets		**1,651**	**1,654**	**1,233**
Total assets		**3,363**	**2,080**	**1,862**
Liabilities				
Current liabilities				
Payables	13	585	716	457
Provisions	14	1,482	1,529	1,468
Other	15	590	36	63
Total current liabilities		**2,657**	**2,281**	**1,988**
Non-current liabilities				
Provisions	14	18	26	18
Other		–	(5)	–
Total non-current liabilities		**18**	**21**	**18**
Total liabilities		**2,675**	**2,302**	**2,006**
Net assets/(net liabilities)		**688**	**(222)**	**(144)**
Equity				
Accumulated funds		688	(222)	(144)
Total equity		**688**	**(222)**	**(144)**

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of cash flows for the year ended 30 June 2010

	Notes	Actual 2010 $'000	Budget 2010 $'000	Actual 2009 $'000
Cash flows from operating activities				
Payments				
Employee-related		(15,950)	(16,635)	(16,525)
Other		(4,368)	(3,396)	(4,728)
Total payments		**(20,318)**	**(20,031)**	**(21,253)**
Receipts				
Sale of goods and services		358	82	177
Interest received		23	18	56
Other		475	95	543
Total receipts		**856**	**195**	**776**
Cash flows from Government				
Recurrent appropriation		20,352	19,827	19,969
Capital appropriation (excluding equity appropriations)		751	785	543
Net cash flows from Government	17	**21,103**	**20,612**	**20,512**
Net cash flows from operating activities		**1,641**	**776**	**35**
Cash flows from investing activities				
Purchases of leasehold improvements, plant and equipment and infrastructure systems		(751)	(785)	(548)
Net cash flows from investing activities		**(751)**	**(785)**	**(548)**
Net increase/(decrease) in cash		**890**	**(9)**	**(513)**
Opening cash and cash equivalents		194	194	707
Closing cash and cash equivalents	8	**1,084**	**185**	**194**

The accompanying notes form part of these financial statements.

Ombudsman's Office

Supplementary financial statements – Service group statements for the year ended 30 June 2010

	Service group 1*		Service group 2*		Service group 3*		Service group 4*		Not attributable*		Total	
	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000
Agency's expenses and revenues												
Expenses excluding losses												
Operating expenses												
Employee-related	7,727	8,363	3,440	3,723	5,600	5,661	230	273	–	–	16,997	18,020
Other operating expenses	1,770	1,922	788	856	1,247	1,301	3	–	–	–	3,808	4,079
Depreciation and amortisation	155	239	69	106	106	161	–	–	–	–	330	506
Total expenses excluding losses	**9,652**	**10,524**	**4,297**	**4,685**	**6,953**	**7,123**	**233**	**273**	**–**	**–**	**21,135**	**22,605**
Revenue												
Sale of goods and services	(149)	(76)	(67)	(34)	(101)	(52)	–	–	–	–	(317)	(162)
Investment revenue	(24)	(13)	(10)	(5)	(16)	(9)	–	–	–	–	(50)	(27)
Grants and contributions	–	(26)	–	(11)	–	(17)	–	–	–	–	–	(54)
Other revenue	(33)	(4)	(14)	(2)	(22)	(2)	–	–	–	–	(69)	(8)
Total revenue	**(206)**	**(119)**	**(91)**	**(52)**	**(139)**	**(80)**	**–**	**–**	**–**	**–**	**(436)**	**(251)**
Loss on disposal	1										1	–
Net cost of services	**9,447**	**10,405**	**4,206**	**4,633**	**6,814**	**7,043**	**233**	**273**	**–**	**–**	**20,700**	**22,354**
Government contributions**	–	–	–	–	–	–	–	–	(21,532)	(21,845)	(21,532)	(21,845)
(Surplus)/deficit for the year	**9,447**	**10,405**	**4,206**	**4,633**	**6,814**	**7,043**	**233**	**273**	**(21,532)**	**(21,845)**	**(832)**	**509**
Total comprehensive income	**9,447**	**10,405**	**4,206**	**4,633**	**6,814**	**7,043**	**233**	**273**	**(21,532)**	**(21,845)**	**(832)**	**509**

Ombudsman's Office

Supplementary financial statements – Service group statements cont'd.

	Service group 1*		Service group 2*		Service group 3*		Service group 4*		Not attributable*		Total	
	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000
Agency's assets & liabilities												
Current assets												
Cash and cash equivalents	511	91	227	41	346	62	–	–	–	–	1,084	194
Receivables	296	205	132	91	200	139	–	–	–	–	628	435
Total current assets	**807**	**296**	**359**	**132**	**546**	**201**	**–**	**–**	**–**	**–**	**1,712**	**629**
Non-current assets												
Plant and equipment	553	412	246	183	374	278	–	–	–	–	1,173	873
Intangibles	226	170	100	75	152	115	–	–	–	–	478	360
Total non-current assets	**779**	**582**	**346**	**258**	**526**	**393**	**–**	**–**	**–**	**–**	**1,651**	**1,233**
Total assets	**1,586**	**878**	**705**	**390**	**1,072**	**594**	–	–	**–**	**–**	**3,363**	**1,862**
Current liabilities												
Payables	276	215	123	96	186	146	–	–	–	–	585	457
Provisions	698	692	311	308	473	468	–	–	–	–	1,482	1,468
Other	278	30	124	13	188	20	–	–	–	–	590	63
Total current liabilities	**1,252**	**937**	**558**	**417**	**847**	**634**	**–**	**–**	**–**	**–**	**2,657**	**1,988**
Non-current liabilities												
Provisions	8	8	4	4	6	6	–	–	–	–	18	18
Total non-current liabilities	**8**	**8**	**4**	**4**	**6**	**6**	**–**	**–**	**–**	**–**	**18**	**18**
Total liabilities	**1,260**	**945**	**562**	**421**	**853**	**640**	**–**	**–**	**–**	**–**	**2,675**	**2,006**
Net assets/(liabilities)	**326**	**(67)**	**143**	**(31)**	**219**	**(46)**	**–**	**–**	**–**	**–**	**688**	**(144)**

* The names and purposes of each service group are summarised in Note 7.

** Appropriations are made on an agency basis and not to individual service groups. Consequently, government contributions must be included in the 'Not attributable' column. The office does not budget internally around service groups, so the figure reported are estimates only and can vary depending on work load, priorities and staffing levels.

Ombudsman's Office

Summary of compliance with financial directives for the year ended 30 June 2010

	2010				2009			
	Recurrent app'n $'000	Expenditure/ net claim on consolidated fund $'000	Capital app'n $'000	Expenditure/ net claim on consolidated fund $'000	Recurrent app'n $'000	Expenditure/ net claim on consolidated fund $'000	Capital app'n $'000	Expenditure/ net claim on consolidated fund $'000
Original budget appropriation/expenditure								
› Appropriation Act	19,827	19,827	785	751	19,986	19,969	559	543
› Additional appropriations	–	–	–	–	–	–	–	–
› Section 21A PF&AA – special appropriation	–	–	–	–	–	–	–	–
› Section 24 PF&AA – transfers of functions between departments	–	–	–	–	–	–	–	–
› Section 26 PF&AA – Commonwealth specific purpose payments	–	–	–	–	–	–	–	–
	19,827	**19,827**	**785**	**751**	**19,986**	**19,969**	**559**	**543**
Other appropriations/expenditure								
› Treasurer's advance	763	525	–	–	–	–	–	–
› Section 22 – expenditure for certain works and services	–	–	–	–	–	–	–	–
› Transfers to/from another agency (s.31 of the Appropriation Act)	–	–	–	–	2	–	–	–
› Other (payroll tax adjustments)					(19)			
	763	**525**	**–**	**–**	**(17)**	**–**	**–**	**–**
Total appropriations/expenditure/net claim on consolidated fund	**20,590**	**19,833**	**785**	**751**	**19,969**	**19,969**	**559**	**543**
Amount drawn down against appropriation		**20,352**		**751**		**19,969**		**543**
Liability to consolidated fund*		**519**		**–**		**–**		**–**

The Summary of compliance is based on the assumption that Consolidated fund monies are spent first (except where otherwise identified or prescribed).

* If there is a 'Liability to consolidated fund', this represents the difference between the 'Amount drawn down against appropriation' and the 'Total expenditure/net claim on consolidated fund'.

Notes to the financial statements for the year ended 30 June 2010

1 Summary of significant accounting policies

(a) Reporting entity

The Ombudsman's Office is a NSW Government Department. Our role is to make sure that public and private sector agencies and employees within our jurisdiction fulfill 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.

The office is a not-for-profit entity (as profit is not its principal objective) and we have no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial statements for the year ended 30 June 2010 has been authorised for issue by the NSW Ombudsman on 16 September 2010.

(b) Basis of preparation

Our financial statement is a general purpose financial report, which has been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and Regulations; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

The financial statements have been prepared in accordance with the historical cost convention.

Judgments, key assumptions and estimations made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

The accrual basis of accounting and applicable accounting standards have been adopted.

(c) Statement of compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Insurance

Our 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, and is calculated by our past claims experience, overall public sector experience and ongoing actuarial advice.

(e) Accounting for the Goods and Services Tax (GST)

Incomes, expenses and assets are recognised net of GST, except that:

- the amount of GST incurred by us 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, and
- receivables and payables are stated with GST included.

Cash flows are included in the statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(f) Income recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

(i) Parliamentary appropriations and contributions

Parliamentary appropriations and contributions from other bodies (including grants) are generally recognised as income when we obtain control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to this is when appropriations remain unspent at year end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are accounted for as liabilities rather than revenue. The liability is disclosed in Note 15 as part of 'Other current liabilities'.

(ii) Sale of goods

Revenue from the sale of goods such as publications are recognised as revenue when we transfer the significant risks and rewards of ownership of the assets.

(iii) Rendering of services

Revenue from the rendering of services such as conducting training programs, is recognised when the service is provided or by reference to the stage of completion, for instance based on labour hours incurred to date.

(iv) Investment revenue

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

(g) Assets

(i) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by us.

Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

(ii) Capitalisation thresholds

Individual plant and equipment and intangible assets costing $5,000 and above are capitalised. For those items that form part of our IT network, the threshold is $1,000 individually.

(iii) Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-1). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment.*

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative uses, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market buying price, the best indicator of which is depreciated replacement cost.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluating non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against each other within a class of non-current assets, but not otherwise.

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset revaluation reserve in respect of that asset is transferred to accumulated funds.

Our assets are short-lived and their costs approximate their fair values.

(iv) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, we are effectively exempted from AASB 136 *Impairment of Assets* and impairment testing. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

(v) Depreciation of plant and equipment

Depreciation 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.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

Depreciation rates used:

- Computer hardware 25%
- Office equipment 20%
- Furniture & fittings 10%

Amortisation rates used:

- Leasehold improvements Useful life of 10 years (or to the end of the lease, if shorter).

(vi) Restoration costs

Whenever applicable, the estimated cost of dismantling and removing an asset and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

(vii) Maintenance

The costs of day-to-day servicing or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.

(viii) 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.

Operating lease payments are charged to the statement of comprehensive income 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.

(ix) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation.

Our intangible assets are amortised using the straight-line method over a period of 5 years.

The amortisation rates used are:

- Computer software 20%.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss. However, as a not-for-profit entity, the office is effectively exempted from impairment testing (refer to Note 1(g)(iv)).

(x) Receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets are recognised initially at fair value, usually based on the transaction cost or face value.

Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are recognised in the surplus/(deficit) for the year when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(h) Liabilities

(i) Payables

These amounts represent liabilities for goods and services provided to us as well as other amounts. Payables are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(ii) Employee benefits and other provisions

(a) Salaries and wages, annual leave, sick leave and on-costs

Liabilities for salaries and wages (including non-monetary benefits), and annual leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Long-term annual leave that is not expected to be taken within 12 months is measured at the present value in accordance with AASB119 *Employee Benefits.* Market yields on government bonds rates of 5.095% are used to discount long-term annual leave.

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 benefits 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 benefits to which they relate have been recognised.

(b) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. We account 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 benefits and other liabilities'.

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits.* This is based on the application of certain factors (specified in NSWTC 09/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for defined contribution superannuation schemes (Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For defined benefit superannuation schemes (State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(i) Equity

(i) Accumulated Funds

The category accumulated funds includes all current and prior period retained funds.

(ii) Separate reserve accounts are recognised in the financial statements only if such accounts are required by specific legislation or Australian Accounting Standards (asset revaluation reserve and foreign currency translation reserve).

(j) Budgeted amounts

The budgeted amounts are drawn from the budgets formulated at the beginning of the financial year with any adjustments for the effects of additional appropriations approved under s.21A, s.24 and s.26 of the *Public Finance and Audit Act 1983.*

The budgeted amounts in the statement of comprehensive income and statement of cash flow 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 actual amounts; that is per audited financial report (rather than carried forward estimates).

(k) Comparative information

Except when an Accounting Standard permits or requires otherwise, comparative information is disclosed in respect of the previous period for all amounts reported in the financial statements.

(l) New Australian Accounting Standards issued but not effective

At the reporting date, the following new Accounting Standards (which include Australian Accounting Interpretations) have not been applied and are not yet effective as per Treasury mandate:

- AASB 7 Financial Instruments: Disclosure – February 2010;
- AASB 139 Financial instruments: Recognition and measurement October 2009;
- Interpretation 14 AASB 119 – The limit on a Defined Benefit Asset, minimum funding requirements and their interaction June 2009;
- Interpretation 19 Extinguished financial liabilities with Equity Instruments December 2009;
- Withdrawal of AAS 29 Financial Reporting by Government Departments – AASB undertook a short-term review of the Australian-specific standards, including AAS 29 and decided to relocate the requirement (where necessary) substantively unamended (with some exceptions), into topic-based statements.

The office had adopted AASB 2009–6 amendments to Australian Accounting Standards which make changes to financial statements terminology to better align with IFRS requirements. Our primary financial statements have been replaced with 'statement of comprehensive income', 'statement of financial position' and 'statement of changes in equity'.

(m) Going concern

The Ombudsman's Office is a 'going concern' public sector agency. We will receive Parliamentary appropriation as outlined in the NSW Budget Papers for 2010–2011 in fortnightly instalments from the Crown Entity.

As at 30 June 2010 our total assets exceeded our total liabilities, although our current liabilities were more than our current assets.

Current liabilities include provision for leave of $1.4 million of which $1,112,000 is expected to be payable within the next 12 months.

Also refer to Note 14.

2 Expenses excluding losses

	2010 $'000	2009 $'000
(a) Employee-related expenses		
Salaries and wages (including recreation leave)	13,961	14,512
Maintenance – Employee-related*	82	76
Superannuation – defined benefit plans	425	445
Superannuation – defined contribution plans	1,042	1,031
Long service leave	500	865
Workers' compensation insurance	80	128
Payroll tax and fringe benefit tax	798	846
Payroll tax on superannuation	80	82
Payroll tax on long service leave	29	35
	16,997	**18,020**

* Reconciliation – Total maintenance

	2010 $'000	2009 $'000
(b) Other operating expenses include the following:		
Auditor's remuneration – audit of the financial statements	25	25
Operating lease rental expense – minimum lease payments	1,873	1,824
Insurance	12	12
Fees	654	812
Telephones	97	142
Stores	113	104
Training	101	125
Printing	107	135
Travel	415	412
Books, periodicals & subscriptions	49	56
Advertising	3	20
Energy	53	52
Motor vehicle	25	30
Postal and courier	26	31
Maintenance – non-Employee-related*	173	206
Other	82	93
	3,808	**4,079**
* Reconciliation – Total maintenance		
Maintenance expenses – contracted labour and other	173	206
Employee-related maintenance expense included in Note 2(a)	82	76
Total maintenance expenses included in Notes 2(a) and 2(b)	**255**	**282**
(c) Depreciation and amortisation expense		
Depreciation		
Plant, equipment and leasehold improvements	209	320
Total depreciation expense	**209**	**320**
Amortisation		
Intangible assets	121	186
Total amortisation expense	**121**	**186**
Total depreciation and amortisation expenses	**330**	**506**

3 Revenue

(a) Sale of goods and services		
Sale of publications	1	1
Rendering of services	316	161
	317	**162**
(b) Investment revenue		
Interest	50	27
	50	**27**
(c) Grants and contributions		
Unreasonable Complainants Conduct Project	–	19
Young People and Internet Project	–	35
	–	**54**
(d) Other revenue		
Miscellaneous	69	8
	69	**8**

	2010 $'000	2009 $'000
4 Gain/(loss) on disposal		
Loss on disposal	1	–
	1	**–**

The office incurred a $2,000 loss when a laptop was lost during transit. A gain of $770 was made on the disposal of a photocopier.

5 Appropriations

(a) Recurrent appropriation		
Total recurrent draw-downs from Treasury (per Summary of compliance)	20,352	19,969
Less: Liability to Consolidated Fund (per Summary of compliance)	519	–
	19,833	**19,969**
Comprising: Recurrent appropriations (per Statement of comprehensive income)	19,833	19,969
	19,833	**19,969**
(b) Capital appropriation		
Total capital draw-downs from Treasury (per Summary of compliance)	751	543
	751	**543**
Comprising: Capital appropriations (per Statement of comprehensive income)	751	543
	751	**543**

6 Acceptance by the Crown Entity of employee benefits and other liabilities

The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
› Superannuation – defined benefit	425	445
› Long service leave	500	865
› Payroll tax on superannuation	23	23
	948	**1,333**

7 Service groups of the agency

(a) Service group 1: complaint advice, referral, resolution or investigation

Objectives: This service group covers providing independent complaint advice and referral, handling complaints and dealing with protected disclosures. It also includes hearing witness protection appeals and conducting information and education programs for agencies and the community.

(b) Service group 2: oversight of agency investigation of complaints

Objectives: This service group covers oversight of the NSW Police Force's handling of complaints about police and oversight of agency handling of allegations of child abuse.

(c) Service group 3: scrutiny of complaint-handling and other systems

Objectives: This service group covers scrutiny of systems to prevent child abuse, dealing with police complaints and certain systems in the community services sector. It also includes review of the situation of vulnerable people, review of compliance with certain legislation and coordination of the official community visitor program.

(d) Service group 4: review of implementation of legislation

Objectives: This service group reviews implementation of legislation that expands the powers of NSW Police Force.

Notes to the financial statements for the year ended 30 June 2010

	2010 $'000	2009 $'000
8 Current assets – cash and cash equivalents		
Cash at bank and on hand	1,084	194
	1,084	**194**

For the purposes of the statement of cash flows, cash and cash equivalents include cash at bank and on hand.

Cash and cash equivalent assets recognised in the statement of financial position are reconciled at the end of the year to the statement of cash flows as follows:

› Cash and cash equivalents (per statement of financial position)	1,084	194
› Closing cash and cash equivalents (per statement of cash flows).	**1,084**	**194**

Refer Note 19 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

9 Restricted assets – cash		
Unreasonable Complainants Conduct Project	43	43
Liability to Consolidated Fund	519	–
	562	**43**

As discussed in previous years, the Ombudsman received funding from the Commonwealth and other State Ombudsman offices as well as the New Zealand Ombudsman for the Unreasonable Complainant Conduct project. This project has now commenced phase 2. Amounts not expensed at 30 June 2010 are treated as a restricted asset for use in future year.

10 Current assets – receivables		
Transfer of leave	–	3
Workshops	34	7
Bank interest	34	7
GST receivable	97	82
Legal fees	36	36
Prepayments	427	300
	628	**435**

We consider all amounts to be collectible and as such, no allowance for impairment was established.

Details regarding credit risk, liquidity risk and market risk, including financial assets that are either past due or impaired, are disclosed in Note 19.

Prepayments		
Salaries and wages	18	5
Maintenance	96	103
Prepaid rent	157	162
Worker's compensation insurance	81	–
Subscription/membership	12	14
Training	19	–
Motor vehicle	1	2
Employee assistance program	6	6
Insurance	16	–
Cleaning	8	–
Travel	3	–
Other	10	8
	427	**300**

11 Non-current assets – plant and equipment

	Plant and equipment $'000	Leasehold improvement $'000	Furniture and fitting $'000	Total $'000
At 1 July 2009 – fair value				
Gross carrying amount	1,572	1,285	554	3,411
Accumulated depreciation	(1,339)	(881)	(318)	(2,538)
Net carrying amount	**233**	**404**	**236**	**873**
At 30 June 2010 – fair value				
Gross carrying amount	1,781	1,356	737	3,874
Accumulated depreciation	(1,401)	(928)	(372)	(2,701)
Net carrying amount	**380**	**428**	**365**	**1,173**

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

Year ended 30 June 2010				
Net carrying amount at start of year	233	404	236	873
Additions	258	71	183	512
Disposals	(49)	–	–	(49)
Depreciation write back on disposal	46	–	–	46
Depreciation expense	(108)	(47)	(54)	(209)
Net carrying amount at end of year	**380**	**428**	**365**	**1,173**

We disposed of nine printers, two laptops and other office equipment at an original cost of $48,552 but which had a written down values of $2,222 at the time of disposal.

At 1 July 2008 – fair value				
Gross carrying amount	1,605	1,092	512	3,209
Accumulated depreciation	(1,280)	(809)	(270)	(2,359)
Net carrying amount	**325**	**283**	**242**	**850**
At 30 June 2009 – fair value				
Gross carrying amount	1,572	1,285	554	3,411
Accumulated depreciation	(1,339)	(881)	(318)	(2,538)
Net carrying amount	**233**	**404**	**236**	**873**

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

Year ended 30 June 2009				
Net carrying amount at start of year	325	283	242	850
Additions	108	193	42	343
Disposals	(141)	–	–	(141)
Depreciation write back on disposal	141	–	–	141
Depreciation expense	(200)	(72)	(48)	(320)
Net carrying amount at end of year	**233**	**404**	**236**	**873**

12 Non-current assets – intangible assets

	1 July 2009 $'000	1 July 2008 $'000	30 June 2010 $'000	30 June 2009 $'000
Software				
Gross carrying amount	3,080	2,875	3,116	3,080
Accumulated amortisation	(2,720)	(2,534)	(2,638)	(2,720)
Net carrying amount	**360**	**341**	**478**	**360**

	2010 $'000	2009 $'000
Reconciliation		
A reconciliation of the carrying amount of software at the beginning of and end of financial years is set out below:		
Net carrying amount at start of year	360	341
Disposals	(203)	–
Depreciation write back on disposal	203	–
Additions	239	205
Amortisation expense	(121)	(186)
Net carrying amount at end of year	**478**	**360**

In June, we disposed of obsolete software after a consultation with our IT department, the original costs of the software was $202,635, but had a nil written down value at the time of disposal.

13 Current liabilities – payables

Accrued salaries, wages and on-costs	294	211
Creditors	291	246
	585	**457**

14 Current/non-current liabilities – provisions

Current employee benefits and related on-costs		
Recreation leave	836	899
Annual leave loading	170	167
Payroll tax on recreation leave	47	49
Workers' compensation and superannuation on recreation leave	69	11
Payroll tax on long service leave	180	171
Other on-costs on long service leave	180	171
	1,482	**1,468**
Non-current employee benefits and related on-costs		
Payroll tax on long service leave	9	9
Other on-costs on long service leave	9	9
	18	**18**
Aggregate employee benefits and related on-costs		
Provisions – current	1,482	1,468
Provisions – non-current	18	18
Accrued salaries, wages and on-costs (Note 13)	294	211
	1,794	**1,697**

The value of annual leave and associated on-costs expected to be taken within 12 months is $1,072,000. The office has a proactive annual leave management program, whereby all staff are encouraged to take their full entitlement each year.

The value of long service leave on-costs expected to be settled within 12 months is $40,000 and $338,000 after 12 months.

15 Current/non-current liabilities – other

Current		
Unreasonable Complainants Conduct Project	43	43
Prepaid income	28	11
Liability to Consolidated Fund	519	–
Lease incentive	–	9
	590	**63**

16 Commitments for expenditure

(a) Operating lease commitments

Future non-cancellable operating lease rentals not provided for and payable:		
Not later than one year	2,636	2,011
Later than one year and not later than five years	8,812	2,014
Total (including GST)	**11,448**	**4,025**

The leasing arrangements are generally for leasing of property, which is a non-cancellable operating lease with rent payable monthly in advance. During the year, we exercised our option to extend our accommodation lease for a further five-year term. The total operating lease commitments include GST input tax credits of $1,040,789 (2009: $365,894) which are expected to be recoverable from the Australian Taxation Office.

	2010 $'000	2009 $'000
16 Commitments for expenditure cont'd.		
(b) Commitments for Other Expenditure		
Future expenses not provided for and payable:		
Not later than one year	82	12
Total (including GST)	**82**	**12**

We have purchase commitments of $82,000 included GST input tax credits of $6,941 (2009: $1,067) which are expected to be recoverable from the Australian Taxation Office.

17 Reconciliation of cash flows from operating activities to net cost of services

Net cash from operating activities	1,641	35
Cash flows from Government/Appropriations	(21,103)	(20,512)
Acceptance by the Crown Entity of employee benefits and other liabilities	(948)	(1,333)
Depreciation and amortisation	(330)	(506)
Decrease/(increase) in provisions	(15)	(87)
Increase/(decrease) in prepayments	127	148
Increase in payables	(128)	(100)
Increase/(decrease) in receivables	66	(73)
Decrease/(increase) in other liabilities	(8)	74
Net gain/(loss) on sale of plant and equipment	(2)	–
Net cost of services	**(20,700)**	**(22,354)**

18 Budget review

Net Cost of Services

The actual net cost of services is lower than budget by $850,000 due to a number of factors. We took a proactive approach to revenue generation during the year, particularly by increasing our external training programs. This resulted in a $305,000 increase in our revenue, over budget. The benefits of our office restructure also contributed to the lower Net Cost of Service, as did the impact of the public sector recruitment freeze. Our overall Employee-related expenses were $664,000 less than budget. Our other operating expenses increased by $152,000 when compared to our budget mainly due to the increases in our rental and associated expenses. The office also received $525,000 additional funding from NSW Treasury for three new functions.

Assets and Liabilities

Current assets are higher than budget by $1,286,000 which significantly improved our cash flow this year. Our total liabilities were $373,000 higher than budget due to a combination of lower leave liabilities and unspent appropriation needing to be returned to the Crown Entity.

Cash flows

Net cash flows from operating activities were higher than budget by $865,000. Total payments were higher than budget by $287,000 and total receipts by $661,000. Government contributions were higher than budget by $491,000, due to additional funding being provided for three new functions.

19 Financial instruments

The office's principal financial instruments which are outlined below, arise directly from our operations. We do not enter into or trade financial instruments for speculative purposes. We do not use financial derivatives.

(a) Financial instrument categories

Class	Note	Category	Carrying Amount 2010 $'000	Carrying Amount 2009 $'000
Financial assets				
Cash and cash equivalents	8	N/A	1,084	194
Receivables[1]	10	Receivables (at amortised cost)	104	53
Financial liabilities				
Payables[2]	13	Financial liabilities measured at amortised cost	585	457

Notes

[1] Excludes statutory receivables and prepayments (not within scope of AASB 7).

[2] Excludes statutory payables and unearned revenue (not within scope of AASB 7).

(b) Credit risk

Credit risk arises when there is the possibility of the Ombudsman's debtors defaulting on their contractual obligations, resulting in a financial loss to the Ombudsman's Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment). Credit risk arises from the financial assets of the Ombudsman's Office, including cash, receivables and authority deposits. No collateral is held by the Ombudsman's Office and the office has not granted any financial guarantees.

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.

Receivables – trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that we will not be able to collect all amounts due. The credit risk is the carrying amount (net of any allowance for impairment, if there is any). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 14-day terms.

Other assets

All other assets are current and are mainly prepaid rent and maintenance agreements. The credit risk is the carrying amount. There is no interest earned on prepayments.

	Total* $'000	Past due but not impaired* $'000	Considered impaired* $'000
2010			
< 3 months overdue	26	26	–
3 months – 6 months overdue	–	–	–
> 6 months overdue	36	36	–
2009			
< 3 months overdue	5	5	–
3 months – 6 months overdue	33	33	–
> 6 months overdue	3	3	–

* Each column in the table reports 'gross receivables'. The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7 and excludes receivables that are not past due and not impaired. Therefore, the 'total' will not reconcile to the receivables total recognised in the statement of financial position.

(c) Liquidity risk

Liquidity risk is the risk that the Ombudsman's Office will be unable to meet its payment obligations when they fall due. The office continuously manages risk through monitoring future cash flows planning to ensure adequate holding of high quality liquid assets.

Bank overdraft

The office does not have any bank overdraft facility. During the current and prior years, there were no defaults or breaches on any loans payable. No assets have been pledged as collateral. The office exposure to liquidity risk is deemed insignificant based on prior periods data and current assessment of risk.

Trade creditors and accruals

The liabilities are recognised for amounts due to be paid in the future for goods and services received, whether or not invoiced. 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 month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. We did not pay any penalty interest during the year. The table below summarises the maturity profile of the Ombudsman's Office financial liabilities.

			Interest rate exposure			Maturity dates		
Payables	Weighted average effective interest rate	Nominal amount# $'000	Fixed interest rate	Variable interest rate	Non-interest bearing	< 1 yr	1–5 yrs	5 yrs
2010								
Accrued salaries, wages and on-costs	–	294	–	–	294	294	–	–
Creditors	–	291	–	–	291	291	–	–
	–	**585**	**–**	**–**	**585**	**585**	**–**	**–**
2009								
Accrued salaries, wages and on-costs	–	211	–	–	211	211	–	–
Creditors	–	246	–	–	246	246	–	–
	–	**457**	**–**	**–**	**457**	**457**	**–**	**–**

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earlier date on which the office can be required to pay.

19 Financial instruments cont'd.

(d) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Ombudsman's Office exposure to market risk are primarily through interest rate risk. The Ombudsman's Office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on the result and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Ombudsman's Office operates and the timeframe for the assessment (until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the statement of financial position date. The analysis is performed on the same basis for 2009. The analysis assumes that all other variables remain constant.

		–1%		+1%	
	Carrying amount $'000	Results $'000	Equity $'000	Results $'000	Equity $'000
2010					
Financial assets					
Cash and cash equivalents	1,084	(11)	(11)	11	11
Receivables	104	N/A	N/A	N/A	N/A
Financial liabilities					
Payables	585	N/A	N/A	N/A	N/A
2009					
Financial assets					
Cash and cash equivalents	194	(2)	(2)	2	2
Receivables	53	N/A	N/A	N/A	N/A
Financial liabilities					
Payables	457	N/A	N/A	N/A	N/A

(e) Fair value

Financial instruments are carried at cost. The fair value of all financial instruments approximates their carrying value.

	2010		2009	
	Carrying amount $'000	Fair value $'000	Carrying amount $'000	Fair value $'000
Financial assets				
Cash	1,084	1,084	194	194
Account receivables	104	104	53	53
Financial liabilities				
Account payables	585	585	457	457

20 Contingent liabilities

There are no contingent assets or liabilities for the period ended 30 June 2010 (2009: nil).

21 After balance date events

There were no after balance date events (2009: nil).

End of the audited financial statements

Appendices

Contents

The following appendices provide additional information on our activities and compliance reporting, complaint profiles, action taken on formal complaints, updates on legislative reviews and other resource information.

Appendix A

Profile of notifiable police complaints

Figure 62: Action taken on finalised notifiable complaints about police officers in 2009–2010

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
Arrest				
Improper failure to arrest	1	0	1	2
Unlawful arrest	34	26	10	70
Unnecessary use of arrest	25	25	12	62
Total	60	51	23	134
Complaint-handling				
Deficient complaint investigation	5	9	0	14
Fail to report misconduct	3	69	11	83
Fail to take a complaint	4	8	3	15
Inadequacies in informal resolution	0	1	0	1
Provide false information in complaint investigation	2	87	9	98
Total	14	174	23	211
Corruption/misuse of office				
Explicit threats involving use of authority	4	9	2	15
Improper association	28	72	14	114
Misuse authority for personal benefit or benefit of an associate	40	64	20	124
Offer or receipt of bribe/corrupt payment	10	14	0	24
Protection of person(s) involved in criminal activity (other)	1	0	0	1
Total	83	159	36	278
Custody/detention				
Death/serious injury in custody	1	0	1	2
Detained in excess of authorised time	1	5	2	8
Escape from custody	0	10	1	11
Fail to allow communication	4	2	4	10
Fail to caution/give information	2	2	3	7
Fail to meet requirements for vulnerable persons	5	7	6	18
Improper refusal to grant bail	0	0	0	0
Improper treatment	16	35	17	68
Inadequate monitoring of persons in custody	0	0	3	3
Unauthorised detention	9	11	6	26
Total	38	72	43	153
Driving-related offences/misconduct				
Breach pursuit guidelines	1	15	2	18
Dangerous driving causing grievous bodily harm/death	1	0	0	1
Drink driving offence	6	26	3	35
Fail to conduct breath test/analysis	1	0	0	1
Negligent/dangerous driving	6	19	7	32
Unnecessary speeding	4	13	3	20
Total	19	73	15	107
Drug-related offences/misconduct				
Cultivate/manufacture prohibited drug	1	2	0	3
Drinking/under the influence on duty	0	8	2	10
Protection of person(s) involved in drug activity	31	18	7	56
Supply prohibited drug	15	32	5	52
Use/possess restricted substance	1	4	1	6
Use/possession of prohibited drug	10	35	6	51
Total	58	99	21	178

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
Excessive use of force				
Assault	238	303	142	683
Firearm discharged	2	2	1	5
Firearm drawn	3	10	3	16
Improper use of handcuffs	6	6	7	19
Total	249	321	153	723
Information				
Fail to create/maintain records	10	61	19	90
Falsify official records	14	65	6	85
Misuse email/internet	2	25	10	37
Provide incorrect or misleading information	24	58	12	94
Unauthorised access/disclosure/alteration of information/data	1	9	2	12
Unreasonable refusal to provide information	1	2	0	3
Unauthorised access to information/data	12	136	16	164
Unauthorised alteration to information/data	0	3	0	3
Unauthorised disclosure of information/data	47	102	41	190
Total	111	461	106	678
Inadequate/improper investigation				
Delay in investigation	13	18	12	43
Fail to advise outcome of investigation	5	0	2	7
Fail to advise progress of investigation	8	3	4	15
Fail to investigate (customer service)	153	84	57	294
Improper/unauthorised forensic procedure	0	0	1	1
Improperly fail to investigate offence committed by another officer	3	1	0	4
Improperly interfere in investigation by another police officer	5	26	5	36
Inadequate investigation	117	98	62	277
Total	304	230	143	677
Misconduct				
Allow unauthorised use of weapon	1	1	0	2
Conflict of interest	9	43	11	63
Detrimental action against a whistleblower	1	1	1	3
Dishonesty in recruitment/promotion	2	5	0	7
Disobey reasonable direction	0	83	8	91
Fail performance/conduct plan	0	1	0	1
Failure to comply with code of conduct (other)	58	282	88	428
Failure to comply with statutory obligation/procedure (other)	22	223	48	293
False claiming for duties/allowances	2	19	2	23
Inadequate management/maladministration	14	79	18	111
Inadequate security of weapon/appointments	2	34	6	42
Inappropriate intervention in civil dispute	0	4	0	4
Minor workplace-related misconduct	3	40	7	50
Other improper use of discretion	7	7	4	18
Unauthorised secondary employment	2	41	4	47
Unauthorised use of vehicle/facilities/equipment	7	48	12	67
Workplace harassment/victimisation/discrimination	54	97	13	164
Total	184	1,008	222	1,414
Other criminal conduct				
Conspiracy to commit offence	2	1	0	3
Fraud	4	7	1	12
Murder/manslaughter	1	1	0	2
Officer in breach of domestic violence order	2	1	0	3
Officer perpetrator of domestic violence	5	13	2	20
Officer subject of application for domestic violence order	4	26	3	33
Other indictable offence	54	68	3	125
Other summary offence	16	132	10	158
Sexual assault/indecent assault	14	26	2	42
Total	102	275	21	398

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
Property/exhibits/theft				
Damage to	5	9	11	25
Failure or delay in returning to owner	20	6	9	35
Loss of	4	21	16	41
Theft	16	29	7	52
Unauthorised removal/destruction/use of	5	28	14	47
Total	50	93	57	200
Prosecution-related inadequacies/misconduct				
Adverse comment by Court/costs awarded	3	12	7	22
Fail to attend Court	2	17	14	33
Fail to check brief/inadequate preparation of brief	1	16	20	37
Fail to notify witness	5	7	12	24
Fail to serve brief of evidence	2	16	10	28
Failure to charge/prosecute	14	2	13	29
Failure to use Young Offenders Act	0	1	0	1
Improper prosecution	35	12	9	56
Mislead the Court	9	6	3	18
PIN/TIN inappropriately/wrongly issued	16	0	1	17
Total	87	89	89	265
Public justice offences				
Fabrication of evidence (other than perjury)	17	13	1	31
Involuntary confession by accused	1	2	0	3
Make false statement	21	19	6	46
Other pervert the course of justice	20	30	6	56
Perjury	7	2	4	13
Withholding or suppression of evidence	8	7	3	18
Total	74	73	20	167
Search/entry				
Failure to conduct search	0	3	4	7
Property missing after search	1	1	1	3
Unlawful entry	9	7	0	16
Unlawful search	23	31	32	86
Unreasonable/inappropriate conditions/damage	11	11	10	32
Wrongful seizure of property during search	2	1	2	5
Total	46	54	49	149
Service delivery				
Breach domestic violence SOPs	9	14	0	23
Fail to provide victim support	16	14	16	46
Fail/delay attendance to incident/'000'	13	5	8	26
Harassment/intimidation	138	42	84	264
Improper failure to WIPE	11	12	15	38
Improper use of move on powers	2	2	1	5
Neglect of duty (not specified elsewhere)	16	40	21	77
Other (customer service)	192	67	73	332
Rudeness/verbal abuse	86	71	78	235
Threats	35	38	29	102
Total	518	305	325	1,148
Total summary of allegations	1,997	3,537	1,346	6,880

The number of allegations is larger than the number of complaints received because a complaint may contain more than one allegation about a single incident or involve a series of incidents.

Appendix B

Status of legislative reviews – as at 30 June 2010

Review report	Date provided to responsible Minister	Date tabled	Time taken to table
Review of the *Police Powers (Vehicles) Amendment Act 2001*	September 2003	November 2005	26 months
Review of the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*	January 2005	November 2006	22 months
Police Powers (Drug Premises) Act 2001	January 2005	September 2005	8 months
On the Spot Justice? The Trial of Criminal Infringement Notices by NSW Police	April 2005	November 2005	7 months
Review of the Child Protection Register	May 2005	November 2005	6 months
Review of the *Police Powers (Internally Concealed Drugs) Act 2001*	July 2005	May 2007	22 months
Review of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*	November 2005	October 2006	11 months
Review of the *Crimes (Administration of Sentences) Amendment Act 2002*	December 2005	February 2006	2 months
Firearm and Explosive Detection Dogs – a review of the *Firearms Amendment (Public Safety) Act 2002*	April 2006	October 2006	6 months
Police Powers (Drug Detection Dogs) Act 2001	June 2006	September 2006	3 months
DNA sampling and other forensic procedures conducted on suspects and volunteers under the *Crimes (Forensic Procedures) Act 2000*	October 2006	January 2007	3 months
Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*	December 2006	December 2008	24 months
Review of emergency powers to prevent or control public disorder	September 2007	November 2007	2 months
Police Powers (Drug Detection Trial) Act 2003	June 2008	August 2008	2 months
Review of Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*	September 2008	October 2008	1 month
Review of certain functions conferred under the *Law Enforcement (Powers and Responsibilities) Act 2002*	February 2009	May 2009	3 months
Review of the impact of Criminal Infringement Notices on Aboriginal Communities	August 2009	July 2010	11 months

Current legislative reviews

Legislation	Brief description
Terrorism (Police Powers) Act 2002 – Part 2A	Allows police to hold people suspected of involvement in terrorist-related activities in preventive detention.
Law Enforcement Legislation Amendment (Public Safety) Act 2005	Additional powers for police to prevent or control large-scale public disorder. We have an ongoing role to review any use of this legislation. The police are required to report to us every six months about the use of the powers.
Crimes (Criminal Organisations Control) Act 2009	Allows the Commissioner of Police to seek a declaration from a Supreme Court judge that a criminal gang or organisation is a declared criminal organisation, and then apply for control orders against members of the declared organisation.

Appendix C

Child and family services

Figure 63: Complaints issues for child and family services received in 2009–2010

Figure 63 shows the issues that were complained about in 2009–2010 in relation to child and family services. Please note that each complaint we received may have more than one issue.

Program area	Child protection		Out-of-home care		Children's services		Family support		Adoption		
Issue	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Total
Casework	97	79	110	144	0	1	0	4	0	0	435
Meeting individual needs	29	26	134	142	4	3	2	2	0	0	342
Object to decision	35	43	25	104	1	1	0	2	0	1	212
Case management	19	17	66	70	5	5	2	2	0	0	186
Customer service	13	21	37	36	2	6	0	3	1	0	119
Complaints	21	28	31	36	6	3	0	1	0	0	126
Information	22	20	29	41	4	4	2	0	0	0	122
Assault/abuse in care	15	22	27	26	1	3	0	1	0	0	95
Investigation	11	16	3	2	1	2	0	1	0	0	36
Professional conduct	19	31	17	17	5	5	3	5	0	0	102
Allowances/fees	7	6	26	27	5	6	2	1	0	0	80
Clients rights/choice/ participation	4	1	4	7	1	2	0	0	0	0	19
Policy/procedure/law	2	6	6	5	5	4	0	1	0	0	29
Legal problems	9	15	2	5	0	0	0	1	0	0	32
Service management	2	1	2	2	2	2	0	0	0	0	11
Access to service	4	5	1	0	5	4	1	3	0	0	23
File/record management	0	4	4	2	1	0	1	0	0	0	12
Safety	2	0	1	5	1	3	0	0	0	0	12
Client finances and property	1	0	1	2	1	0	0	0	0	0	5
Service funding/licensing/ monitoring	0	0	0	1	2	5	2	0	0	0	10
Outside our jurisdiction	10	30	3	11	3	7	0	0	0	0	64
Not applicable	1	10	1	18	0	9	0	1	0	0	40
Total	323	381	530	703	55	75	15	28	1	1	2,112

Figure 64: Formal complaints finalised for child and family services in 2009–2010

Figure 64 shows the outcomes of formal complaints finalised about child and family services this year.

Program area	A	B	C	D	E	F	G	Total
Child protection services	56	72	53	8	0	1	14	204
Out-of-home care	68	82	123	3	1	2	4	283
Children's services	6	14	10	0	0	0	4	34
Family support services	1	3	4	0	0	0	1	9
Adoption	0	0	0	0	0	0	0	0
Total	131	171	190	11	1	3	23	530

Description

A	Complaint declined at outset
B	Complaint declined after inquiries
C	Complaint resolved after inquiries, including local resolution by the agency concerned
D	Service improvement comments or suggestions to agency
E	Referred to agency concerned or other body for investigation
F	Direct investigation
G	Complaint outside jurisdiction

Appendix D

Disability services

Figure 65: Complaints issues for disability services received in 2009–2010

Figure 65 shows the issues that were complained about in 2009–2010 in relation to disability services. Please note that each complaint we received may have more than one issue.

Program area	Disability accommodation		Disability support		
Issue	Formal	Informal	Formal	Informal	Total
Meeting individual needs	79	37	22	13	151
Case management	42	15	15	0	72
Assault/abuse in care	31	18	3	6	58
Service management	12	4	1	3	20
Customer service	4	6	4	13	27
Professional conduct	21	7	6	4	38
Access to service	4	3	7	14	28
Complaints	17	6	6	7	36
Client rights/choice/participation	5	5	3	3	16
Object to decision	7	6	1	8	22
Safety	8	2	0	0	10
Casework	6	1	5	5	17
Information	8	7	4	4	23
Investigation	1	0	1	1	3
Service funding/licensing/monitoring	5	3	2	2	12
Client finances and property	4	0	1	1	6
Policy/procedure/law	5	1	2	3	11
File/record management	2	1	2	1	6
Allowances/fees	0	2	2	2	6
Legal problems	0	1	0	0	1
Outside our jurisdiction	3	5	1	8	17
Not applicable	0	7	0	5	12
Total	264	137	88	103	592

Figure 66: Formal complaints finalised for disability services in 2009–2010

Figure 66 shows the outcomes of formal complaints we received about disability services this year.

Program area	A	B	C	D	E	F	G	Total
Disability accommodation services	8	31	46	3	4	0	2	94
Disability support services	2	19	26	1	0	0	1	49
Total	10	50	72	4	4	0	3	143

Description

A	Complaint declined at outset
B	Complaint declined after inquiries
C	Complaint resolved after inquiries, including local resolution by the agency concerned
D	Service improvement comments or suggestions to agency
E	Referred to agency concerned or other body for investigation
F	Direct investigation
G	Complaint outside jurisdiction

Appendix E

Other community services

Figure 67: Number of formal and informal matters about other community services received in 2009–2010

Some complaints about supported accommodation and general community services may involve complaints about child and family and disability services.

Agency category	Formal	Informal	Total
› Community Services			
Supported accommodation and assistance program services	4	1	5
General community services	0	1	1
Aged services	0	0	0
Disaster welfare services	0	0	0
Other	5	19	24
Sub-total	9	21	30
› ADHC			
Supported accommodation and assistance program services	0	0	0
General community services	0	1	1
Aged services	8	22	30
Disaster welfare services	0	0	0
Other	2	6	8
Sub-total	10	29	39
› Other government agencies			
Supported accommodation and assistance program services	1	0	1
General community services	0	0	0
Aged services	0	2	2
Other	0	2	2
Disaster welfare services	0	0	0
Sub-total	1	4	5
› Non-government funded or licensed services			
Supported accommodation and assistance program services	16	14	30
General community services	2	3	5
Aged services	4	10	14
Other	1	4	5
Disaster welfare services	0	0	0
Sub-total	23	31	54
Other (general inquiries)	0	7	7
Agency unknown	0	22	22
Outside our jurisdiction	12	12	24
Sub-total	12	41	53
Total	55	126	181

Some complaints about supported accommodation and general community services may involve complaints about child and family and disability services.

Figure 68: Complaints issues for other community services received in 2009–2010

Figure 68 shows the issues that were complained about in 2009–2010 in relation to general community services. Please note that each complaint we received may have more than one issue.

Program area	Other community services		
Issue	Formal	Informal	Total
Access to service	11	12	23
Customer service	7	10	17
Professional conduct	2	8	10
Complaints	3	5	8
Meeting individual needs	12	10	22
Object to decision	3	7	10
Allowances/fees	5	4	9
Information	2	1	3
Clients rights/choice/participation	1	1	2
Case management	2	0	2
Service funding/licensing/monitoring	0	4	4
Files/record management	1	1	2
Assault/abuse in care	1	1	2
Casework	5	3	8
Service management	6	6	12
Policy/procedure/law	4	1	5
Investigation	1	1	2
Safety	1	0	1
Legal problems	1	1	2
Client finances and property	1	1	2
Outside our jurisdiction	7	17	24
Not applicable	0	12	12
Total	76	106	182

Figure 69: Formal complaints finalised for other community services in 2009–2010

Figure 69 shows the outcomes of formal complaints finalised about general community services this year.

Program area	A	B	C	D	E	F	G	Total
Supported accommodation and assistance program services	6	7	2	2	0	0	0	17
General community services	0	0	1	0	0	0	0	1
Aged services	3	3	7	0	0	0	1	14
Other	5	1	1	0	0	0	8	15
Total	14	11	11	2	0	0	9	47

Description

A	Complaint declined at outset
B	Complaint declined after inquiries
C	Complaint resolved after inquiries, including local resolution by the agency concerned
D	Service improvement comments or suggestions to agency
E	Referred to agency concerned or other body for investigation
F	Direct investigation
G	Complaint outside jurisdiction

Appendix F

Public sector agencies

Figure 70: Action taken on formal complaints about public sector agencies finalised in 2009–2010

Figure 70 shows the action we took on each of the written complaints that we finalised this year about public sector agencies (except the NSW Police Force, CS and ADHC and those relating to child protection notifications), broken down into agency groups. See Appendices G, H, I and J for a further breakdown into specific agencies in those groups.

Complaint about	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Bodies outside jurisdiction	276	0	0	0	0	0	0	0	0	0	0	0	0	276
Departments and authorities	763	16	318	20	218	35	34	2	3	0	3	1	1	1,414
Freedom of information	33	1	13	0	73	4	6	0	0	3	2	0	1	136
Local government	570	3	183	3	71	26	15	1	0	1	1	0	1	875
Corrections and Justice Health	148	10	284	10	199	43	19	8	0	0	0	0	1	722
Total	1,790	30	798	33	561	108	74	11	3	4	6	1	4	3,423

Description

A **Decline after assessment only, including:**

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Recognising 35 years *of* accountability

Appendix G

Departments and authorities

Figure 71: Action taken on formal complaints about departments and authorities finalised in 2009–2010

Agency	Assessment only	Preliminary or informal investigation									Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Aboriginal Housing Office	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Administrative Decisions Tribunal	4	0	0	0	0	0	0	0	0	0	0	0	0	4
Amaroo Local Aboriginal Land Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ambulance Service of NSW	6	0	6	0	0	0	0	0	0	0	0	0	0	12
Anti-Discrimination Board	3	0	2	0	0	0	0	0	0	0	0	0	0	5
Arts, Sport and Recreation	5	0	1	0	1	0	0	0	0	0	0	0	0	7
Board of Studies NSW	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Board of Surveying and Spatial Information	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Bureau of Crime Statistics and Research	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Casino, Liquor and Gaming Control Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Charles Sturt University	0	0	1	1	0	0	0	0	0	0	0	0	0	2
Consumer, Trader & Tenancy Tribunal	22	0	0	0	0	0	0	0	0	0	0	0	0	22
Country Energy	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Court officer/jury/judge	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Crown Solicitor's Office	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Dental Board of New South Wales	1	0	1	0	0	0	1	0	0	0	0	0	0	3
Department of Education and Training	59	2	30	2	12	1	4	1	0	0	0	0	0	111
Department of Environment, Climate Change and Water	10	1	10	1	3	2	3	1	0	0	0	0	0	31
Department of Health	14	0	2	1	0	0	0	0	0	0	0	0	0	17
Department of Justice and Attorney-General	4	0	0	0	4	0	1	0	0	0	0	0	0	9
Department of Planning	7	0	2	0	1	0	0	0	0	0	0	0	0	10
Department of Premier and Cabinet	0	1	2	0	0	0	0	0	0	0	0	0	0	3
Department of Services, Technology and Administration	18	1	13	1	4	2	1	0	0	0	0	0	0	40
District Court of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Electoral Commission NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Energy Australia	8	0	0	0	0	0	0	0	0	0	0	0	0	8
First State Superannuation Trustee Corporation	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Game Council of NSW	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Greater Southern Area Health Service	5	0	0	0	0	0	0	0	0	0	0	0	0	5
Greater Western Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Guardianship Tribunal	7	0	0	0	0	0	0	0	0	0	0	0	0	7
Heritage Branch	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Housing Appeals Committee	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Housing NSW	94	1	36	3	72	11	4	0	2	0	0	0	0	223
Hunter and New England Area Health Service	3	0	1	0	2	0	0	0	0	0	0	0	0	6
Hunter Water Corporation	1	0	0	0	2	0	0	0	0	0	0	0	0	3
Independent Pricing and Regulatory Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Integral Energy	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Land and Property Management Authority	17	2	6	0	4	0	0	0	0	0	0	0	0	29
Landcom	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Lands Board	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Legal Aid Commission of NSW	19	0	1	0	0	0	0	0	0	0	0	0	0	20

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Livestock Health and Pest Authorities	1	0	4	0	1	0	0	0	0	0	0	0	0	6
Local Government Boundaries Commission	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Local Government Division	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Long Service Payments Corporation	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Macquarie University	6	0	1	5	0	0	1	0	0	0	0	0	0	13
Marine Parks Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Mental Health Review Tribunal (and Psychosurgery Review Board)	1	0	0	0	0	0	0	0	0	0	0	0	0	1
MidCoast Water	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Mine Subsidence Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Motor Accidents Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	1
North Coast Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Northern Region Joint Regional Planning Panel	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Northern Sydney Central Coast Area Health Service	3	1	1	0	0	0	0	0	0	0	0	0	0	5
NSW Board of Vocational Education and Training	1	0	2	0	0	0	0	0	0	0	0	0	0	3
NSW Fire Brigades	2	0	1	0	0	0	0	0	0	0	0	0	0	3
NSW Maritime	9	1	5	0	1	0	0	0	0	0	0	0	0	16
NSW Medical Board	1	0	1	0	1	0	0	0	0	0	0	0	0	3
NSW Office of Liquor, Gaming and Racing	3	0	3	0	0	0	0	0	0	0	0	0	0	6
NSW Trustee and Guardian	24	1	17	1	20	2	5	0	0	0	0	0	0	70
NSW Veterinary Practitioners Board	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Office of Energy	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Office of State Revenue	101	1	48	0	28	3	1	0	0	0	0	0	0	182
Office of the Director of Public Prosecutions	5	0	0	0	0	0	0	0	0	0	0	0	0	5
Office of the Health Care Complaints Commission	10	0	1	0	0	0	0	0	0	0	0	0	0	11
Office of the Legal Services Commissioner	4	0	0	0	1	0	0	0	0	0	0	0	0	5
Office of Water	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Parliament of New South Wales – Legislative Assembly	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Pharmacy Board of NSW	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Pillar Administration	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Primary Industries	8	0	8	0	1	1	0	0	0	0	0	0	0	18
Rail Corporation New South Wales	41	0	5	1	2	1	0	0	0	0	1	0	0	51
Registry of Births, Deaths and Marriages	7	1	3	0	6	1	1	0	0	0	0	0	0	19
Rental Bond Board	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Roads and Traffic Authority	93	0	42	1	28	6	7	0	0	0	0	0	0	177
Rural Assistance Authority	2	0	1	1	1	0	0	0	0	0	0	0	0	5
Rural Fire Service NSW	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Sheriff's Office	1	0	1	0	0	0	0	0	0	0	0	0	0	2
South Eastern Sydney and Illawarra Area Health Service	5	0	0	1	0	1	0	0	0	0	1	0	0	8
Southern Cross University	1	0	1	0	0	0	0	0	0	0	0	0	0	2
State and Regional Development and Tourism	1	0	1	0	0	0	0	0	0	0	0	0	0	2
State Authorities Superannuation Trustee Corporation	2	0	0	0	0	0	0	0	0	0	0	0	0	2
State Emergency Service	0	0	1	0	0	0	0	0	0	0	0	0	0	1
State Transit Authority of New South Wales	6	0	0	0	3	1	0	0	0	0	0	0	0	10
State Water	2	0	0	0	0	0	0	0	0	0	0	0	0	2

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Sydney Metro	0	0	2	0	0	0	0	0	0	0	1	0	0	3
Sydney Olympic Park Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney South West Area Health Service	10	0	0	0	0	0	1	0	0	0	0	0	0	11
Sydney Water Corporation	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Sydney West Area Health Service	4	1	0	0	1	0	1	0	0	0	0	0	0	7
Teacher Housing Authority	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Transport NSW	14	0	3	0	1	2	0	0	0	0	0	0	0	20
University of New England	3	0	2	0	0	0	1	0	0	0	0	0	0	6
University of New South Wales	5	1	4	0	0	0	0	0	0	0	0	0	0	10
University of Newcastle	8	0	3	0	2	0	0	0	0	0	0	0	0	13
University of Sydney	2	0	6	0	0	0	0	0	0	0	0	0	0	8
University of Technology	1	0	2	0	0	0	0	0	0	0	0	0	0	3
University of Western Sydney	5	1	8	1	0	0	0	0	0	0	0	0	0	15
University of Wollongong	4	0	4	0	0	0	0	0	0	0	0	1	0	9
Unnamed agency	3	0	0	0	1	0	0	0	0	0	0	0	0	4
Valuer General	4	0	0	0	0	0	0	0	0	0	0	0	0	4
WorkCover Authority	10	0	10	0	4	0	2	0	0	0	0	0	1	27
Total	763	16	318	20	218	35	34	2	3	0	3	1	1	1,414

Description

A **Decline after assessment only, including:**

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Appendix H

Local government

Figure 72: Action taken on formal complaints about local government finalised in 2009–2010

Figure 72 shows the action we took on each of the written complaints finalised this year about individual councils.

Council	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Accredited certifier	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Albury City Council	3	0	2	0	0	0	0	0	0	0	0	0	0	5
Armidale Dumaresq Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Auburn Council	4	0	2	0	2	0	0	0	0	0	0	0	0	8
Ballina Shire Council	5	0	1	0	0	0	0	0	0	0	0	0	0	6
Bankstown City Council	6	0	1	0	0	1	0	0	0	0	0	0	0	8
Bathurst Regional Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Bega Valley Shire Council	6	0	3	0	1	0	0	0	0	0	0	0	0	10
Bellingen Shire Council	3	0	2	0	1	0	0	0	0	0	0	0	0	6
Berrigan Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	4	0	5	0	0	0	1	0	0	0	0	0	0	10
Blayney Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Blue Mountains City Council	6	0	4	0	0	0	0	0	0	0	0	0	0	10
Bogan Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Boorowa Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Botany Bay City Council	5	0	5	0	1	0	0	0	0	0	0	0	0	11
Byron Shire Council	10	0	1	0	2	0	0	0	0	0	0	0	0	13
Cabonne Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Campbelltown City Council	6	0	1	0	1	0	0	0	0	0	0	0	0	8
Canterbury City Council	9	0	2	0	2	0	0	0	0	0	0	0	1	14
Castlereagh-Macquarie County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Central Darling Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Cessnock City Council	1	0	2	0	1	2	0	0	0	0	0	0	0	6
City of Canada Bay Council	4	0	2	0	1	0	1	0	0	0	0	0	0	8
Clarence Valley Council	9	0	1	0	0	0	0	0	0	0	0	0	0	10
Cobar Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Coffs Harbour City Council	5	0	0	0	0	1	0	0	0	0	0	0	0	6
Cooma-Monaro Shire Council	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Coonamble Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Cootamundra Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Corowa Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Council not named	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Cowra Shire Council	2	0	2	0	2	0	0	0	0	0	0	0	0	6
Dubbo City Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Dungog Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Eurobodalla Shire Council	10	0	2	0	1	0	0	1	0	0	0	0	0	14
Fairfield City Council	9	0	2	0	1	0	0	0	0	0	0	0	0	12
Forbes Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Severn Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Gloucester Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Goldenfields Water County Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Gosford City Council	14	0	2	0	0	1	0	0	0	0	0	0	0	17
Goulburn Mulwaree Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Great Lakes Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Greater Hume Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Greater Taree City Council	12	0	4	1	2	1	0	0	0	0	0	0	0	20
Gunnedah Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2

Council	Assessment only	Preliminary or informal investigation									Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Gwydir Shire Council	2	0	1	0	0	1	0	0	0	0	0	0	0	4
Hawkesbury City Council	7	0	4	0	0	0	0	0	0	0	0	0	0	11
Hay Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Holroyd City Council	3	0	0	0	0	1	0	0	0	0	0	0	0	4
Hornsby Shire Council	9	0	6	0	0	0	0	0	0	0	0	0	0	15
Hunters Hill Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Hurstville City Council	4	0	0	0	2	0	1	0	0	0	0	0	0	7
Inverell Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Jerilderie Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Kempsey Shire Council	8	0	2	0	2	0	0	0	0	0	0	0	0	12
Kiama Municipal Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Kogarah Municipal Council	5	0	1	0	0	1	0	0	0	0	0	0	0	7
Ku-ring-gai Municipal Council	10	1	3	0	0	0	0	0	0	0	0	0	0	14
Ku-ring-gai Planning Panel	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Lake Macquarie City Council	5	0	0	0	0	0	1	0	0	0	0	0	0	6
Lane Cove Municipal Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Leichhardt Municipal Council	3	0	1	0	1	0	0	0	0	0	0	0	0	5
Lismore City Council	7	0	3	0	1	1	0	0	0	0	0	0	0	12
Lithgow City Council	3	0	1	0	1	0	0	0	0	0	0	0	0	5
Liverpool City Council	11	0	4	0	0	0	0	0	0	0	0	0	0	15
Lockhart Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Maitland City Council	5	0	0	0	0	0	0	0	0	0	0	0	0	5
Manly Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Marrickville Council	4	0	3	0	3	1	0	0	0	0	0	0	0	11
Mid-Western Regional Council	3	0	0	0	1	0	0	0	0	0	0	0	0	4
Mid Coast Water	4	0	0	1	1	0	0	0	0	0	0	0	0	6
Moree Plains Shire Council	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Mosman Municipal Council	7	1	0	0	1	0	1	0	0	0	0	0	0	10
Murray Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Muswellbrook Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Nambucca Shire Council	0	0	3	0	0	0	0	0	0	0	0	0	0	3
Narrabri Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Narrandera Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Narromine Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Newcastle City Council	13	0	3	0	2	2	0	0	0	0	0	0	0	20
North Sydney Council	3	0	1	0	0	1	0	0	0	0	0	0	0	5
Orange City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Palerang Council	4	0	2	0	0	0	0	0	0	0	0	0	0	6
Parkes Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Parramatta City Council	4	0	4	0	1	1	0	0	0	0	0	0	0	10
Penrith City Council	6	0	2	0	0	0	0	0	0	0	0	0	0	8
Pittwater Council	11	0	1	0	3	0	2	0	0	0	0	0	0	17
Port Macquarie-Hastings Council	7	0	3	0	1	0	0	0	0	0	0	0	0	11
Port Stephens Shire Council	14	0	3	0	1	0	0	0	0	0	0	0	0	18
Queanbeyan City Council	1	0	1	1	0	0	0	0	0	0	0	0	0	3
Randwick City Council	9	0	4	0	0	0	0	0	0	0	0	0	0	13
Richmond Valley Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Riverina Water County Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Rockdale City Council	2	1	5	0	2	0	0	0	0	0	0	0	0	10
Rous County Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Ryde City Council	6	0	1	0	0	0	1	0	0	0	0	0	0	8
Shellharbour City Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Shoalhaven City Council	8	0	6	0	0	1	0	0	0	0	0	0	0	15
Singleton Shire Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2

Council	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Snowy River Shire Council	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Strathfield Municipal Council	12	0	6	0	0	0	0	0	0	0	0	0	0	18
Sutherland Shire Council	10	0	3	0	2	0	4	0	0	0	0	0	0	19
Sydney City Council	27	0	4	0	3	2	0	0	0	0	0	0	0	36
Tamworth City Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Tenterfield Shire Council	6	0	2	0	1	0	0	0	0	0	0	0	0	9
The Hills Shire Council	6	0	0	0	1	2	0	0	0	0	0	0	0	9
Tumut Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Tweed Shire Council	14	0	3	0	0	0	0	0	0	0	0	0	0	17
Upper Hunter Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Upper Lachlan Shire Council	5	0	0	0	3	0	0	0	0	0	0	0	0	8
Uralla Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	6	0	1	0	0	1	0	0	0	0	0	0	0	8
Wagga Wagga Interim Joint Planning Panel	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wakool Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Walcha Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	4	0	2	0	0	0	0	0	0	0	0	0	0	6
Warringah Council	10	0	2	0	1	0	0	0	0	0	0	0	0	13
Warrumbungle Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Waverley Council	11	0	2	0	1	1	0	0	0	0	0	0	0	15
Wellington Council	2	0	1	0	1	1	0	0	0	0	1	0	0	6
Willoughby City Council	5	0	2	0	0	1	0	0	0	0	0	0	0	8
Wingecarribee Shire Council	6	0	4	0	1	1	0	0	0	1	0	0	0	13
Wollondilly Shire Council	4	0	1	0	1	0	0	0	0	0	0	0	0	6
Wollongong City Council	34	0	2	0	3	0	1	0	0	0	0	0	0	40
Woollahra Municipal Council	5	0	7	0	0	0	0	0	0	0	0	0	0	12
Wyong Shire Council	6	0	7	0	3	0	0	0	0	0	0	0	0	16
Yass Valley Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3
Young Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Total	570	3	183	3	71	26	15	1	0	1	1	0	1	875

Description

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Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Appendix I

Corrections

Figure 73: Action taken on formal complaints about people in custody finalised in 2009–2010

Figure 73 shows the action we took on each of the formal complaints finalised this year concerning people in custody.

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Corrective Services NSW	123	8	227	9	157	37	17	8	0	0	0	0	1	587
GEO Australia	13	2	39	1	23	2	2	0	0	0	0	0	0	82
Justice Health	10	0	18	0	19	4	0	0	0	0	0	0	0	51
Serious Offenders Review Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Total	148	10	284	10	199	43	19	8	0	0	0	0	1	722

Description

A **Decline after assessment only, including:**
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Preliminary or informal investigation:

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C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Figure 74: Number of formal and informal complaints about correctional centres, DCS and GEO received in 2009–2010

Institution	Formal	Informal	Total
Bathurst Correctional Centre	24	113	137
Berrima Correctional Centre	1	16	17
Broken Hill Correctional Centre	3	20	23
Cessnock Correctional Centre	5	33	38
Community Offender Services	15	42	57
Cooma Correctional Centre	3	21	24
Corrective Services NSW	116	255	371
Court Escort/Security Unit	13	17	30
Dawn De Loas Special Purpose Centre	13	66	79
Dillwynia Correctional Centre	6	58	64
Emu Plains Correctional Centre	6	55	61
GEO Australia	3	0	3
Glen Innes Correctional Centre	2	6	8
Goulburn Correctional Centre	44	207	251
Grafton Correctional Centre	1	36	37
High Risk Management Correctional Centre	24	36	60
John Morony Correctional Centre	6	42	48
Junee Correctional Centre	63	293	356
Kariong Juvenile Correctional Centre	25	97	122
Kirkconnell Correctional Centre	11	42	53
Lithgow Correctional Centre	18	69	87
Long Bay Hospital	10	107	117
Mannus Correctional Centre	2	5	7
Metropolitan Remand Reception Centre	45	205	250
Metropolitan Special Programs Centre	57	268	325
Mid North Coast Correctional Centre	13	157	170
Oberon Correctional Centre	0	3	3

Institution	Formal	Informal	Total
Outer Metropolitan Multi Purpose Centre	6	43	49
Parklea Correctional Centre	35	190	225
Parramatta Correctional Centre	6	58	64
Periodic Detention Centres	6	8	14
Silverwater Correctional Centre	12	89	101
Silverwater Women's Correctional Centre	18	93	111
Special Purpose Prison Long Bay	6	27	33
St Heliers Correctional Centre	4	25	29
Tamworth Correctional Centre	4	20	24
Wellington Correctional Centre	45	273	318
Women's Transitional Centres	0	1	1
Total	671	3,096	3,767

*Some complaints may involve more than one centre.

Appendix J

Freedom of information

Figure 75: Action taken on formal complaints about FOI finalised in 2009–2010

Figure 75 shows the action we took on each of the written complaints finalised this year about individual public sector agencies relating to freedom of information.

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Ageing, Disability and Home Care	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Ambulance Service of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Arts, Sport and Recreation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Board of Studies NSW	0	0	0	0	2	0	0	0	0	0	0	0	1	3
Cessnock City Council	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Coffs Harbour City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Communities NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Corowa Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Corrective Services NSW	1	0	2	0	7	0	0	0	0	0	0	0	0	10
Department of Education and Training	3	0	1	0	2	0	0	0	0	0	0	0	0	6
Department of Environment, Climate Change and Water	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Department of Health	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Department of Justice and Attorney-General	1	0	0	0	2	0	0	0	0	0	0	0	0	3
Department of Planning	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Department of Premier and Cabinet	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Services, Technology and Administration	1	0	0	0	2	0	0	0	0	0	0	0	0	3
District Court of NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gosford City Council	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Government and Related Employees Appeals Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Greater Taree City Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Greater Western Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Greyhound and Harness Racing Regulatory Authority	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Griffith City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Hunter and New England Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Hunter Water Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Junee Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Justice Health	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Legal Aid Commission of NSW	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Lismore City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Muswellbrook Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Narrandera Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
North Coast Area Health Service	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Northern Sydney Central Coast Area Health Service	1	0	1	0	0	0	0	0	0	0	0	0	0	2
NSW Maritime	0	0	0	0	2	1	0	0	0	0	0	0	0	3
NSW Medical Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Police Force	9	1	3	0	10	1	4	0	0	1	0	0	0	29
NSW Treasury	0	0	0	0	1	0	0	0	0	0	0	0	0	1
NSW Trustee and Guardian	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Office of Water	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				
	A	B	C	D	E	F	G	H	I	J	K	L	M	Total
Penrith City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Port Macquarie-Hastings Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Rockdale City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Shellharbour City Council	2	0	0	0	2	0	0	0	0	0	0	0	0	4
South Eastern Sydney and Illawarra Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Southern Cross University	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State and Regional Development and Tourism	0	0	0	0	1	0	0	0	0	0	0	0	0	1
State Property Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Transit Authority of New South Wales	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Sydney City Council	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Sydney South West Area Health Service	1	0	0	0	3	0	0	0	0	0	0	0	0	4
Sydney Water	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney West Area Health Service	1	0	1	0	0	0	0	0	0	0	0	0	0	2
The Hills Shire Council	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Transport NSW	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Unnamed agency	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Upper Lachlan Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Uralla Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Willoughby City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
WorkCover Authority	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Total	33	1	13	0	73	4	6	0	0	3	2	0	1	136

Description

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G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Appendix K

Report on police use of emergency powers to prevent or control public disorder

This report is provided in accordance with section 87O(5) of *the Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). Under LEPRA, the Ombudsman must report annually about the work we do to keep under scrutiny the exercise of powers conferred on police officers to prevent or control public disorder. This report includes information about the:

- NSWPF's use of the emergency powers in 2009–2010.
- Implementation of recommendations from our 2007 Report.
- Implementation of recommendations from the New South Wales Police Force's (NSWPF's) own review of their use of the emergency powers in July 2008.

The NSWPF was given emergency powers to deal with actual or threatened large-scale public disorder. This was against the background of unprecedented public disorder in the southern and eastern suburbs of Sydney in December 2005. The powers were only temporary, and the Ombudsman was required to keep under scrutiny the use of these powers and report to Parliament as soon as practicable after 18 months. The emergency powers were used on only four occasions during the period of review, with some provisions not being used at all.

In December 2007 the NSW Parliament decided to continue the powers, known as Part 6A LEPRA, and also extend the Ombudsman's role in keeping their use under scrutiny. Part 6A provides police with extraordinary powers to establish a cordon or roadblock on a road or around a target area, stop and search vehicles and pedestrians, require identification details of people in a target area, seize and detain items – including mobile phones and vehicles – and direct groups to disperse. The NSWPF can also impose emergency alcohol free zones and prohibitions on the sale or supply of liquor.

Part 6A requires the Commissioner of Police to provide the Ombudsman with a report about any uses of the powers within three months. The Ombudsman may also require the Commissioner or any public authority to provide information about the exercise of those powers. Under a memorandum of understanding, the NSWPF has agreed to provide this office with biannual reports that cover all uses of the Part 6A powers, details of any instances where powers were seriously considered but not used, and advice about training undertaken and amendments to policies and procedures .

Police use of the powers in 2009–2010

The NSWPF did not use the emergency powers at all during the 2009–2010 reporting period.

They seriously considered using them on one occasion, but decided not to. Protests were held over several evenings in June 2009 by members of Sydney's Indian community. The NSWPF received information indicating that there could be clashes between the different groups during the protests, and were prepared to issue an authorisation to use the emergency powers if necessary.

However, as events unfolded, no issues arose that the NSWPF considered would warrant using the emergency powers. They used other strategies to address the situation and ultimately did not seek authorisation to use the emergency powers.

In relation to this considered use of the powers, Assistant Commissioner Dennis Clifford said that Part 6A was:

> *…a very important policing tool for the holistic strategic management of the situation, had it escalated. It would have enabled police to quickly and adequately address any influx of people in the area, prevent build up of groups and escalation of the situation that would allow them to engage in a public order incident. The ability to have these powers available for the management of Public Order incidents is extremely important in regards to a strategic policing perspective.*

Implementing recommendations from our 2007 report

Our report on the initial Part 6A emergency powers was completed in September 2007. We made 14 recommendations in that report, eight relating to the NSWPF and six recommending legislative amendments.

Of the eight recommendations relating to NSWPF procedures, six were implemented. Most related to the guidance needed to ensure the powers are used appropriately, including factors to consider when determining whether to invoke the emergency powers, the directions given to licensees when emergency liquor restrictions are imposed, and the need for a clear statement of reasons to support any authorisation to use the powers and to regularly review whether and when the authorisation should be revoked. Police also supported our recommendations for more consistent recording of the powers used, and a number of training measures.

The remaining two NSWPF recommendations were partly implemented. These related to the emergency prohibition on sale or supply of liquor and the procedures relating to seizure of things including vehicles and mobile phones.

Closing licensed premises

In our 2007 report we considered the emergency power to authorise the closure of any licensed premises and prohibit the sale or supply of liquor on any licensed premises. This power, set out at section 87B of LEPRA, was not used by police during the review period, and it has not been used since. However during the review period a number of licensed premises voluntarily closed for short periods at the request of police. Authorisations to close licensed premises were drafted on a number of occasions, but were not formally issued.

An authorisation or successive authorisations to close licensed premises or prohibit the sale or supply of liquor must not exceed 48 hours. The legislation does not indicate what happens if there is a need to extend a s.87B authorisation beyond that period.

We recommended that directions prohibiting the sale and supply of liquor should be complemented by giving licensees an avenue to have directions reviewed after a certain period. NSWPF indicated that the requirement for the authorising officer to regularly review the authorisations rendered this unnecessary.

However police have now included guidance in their procedures about what should happen if a closure order or some other restriction needs to be extended beyond 48 hours. In those circumstances, police will apply to the Local Court for an extension under the *Liquor Act 2007*.

Seizing vehicles and other items

In our 2007 report, we noted that our analysis of NSWPF records relating to vehicles and other items seized during the operations to prevent public disorder showed significant variations in the use of the seizure powers. We also raised some concerns about the impact of the seizure of vehicles or other items essential for people's work or other responsibilities. Seizure and detention of items such as cars, laptops, mobiles and tools of trade could lead to unjustifiable hardship in relation to work, study or family commitments. The legislation provides that seized items may be held by the NSWPF for seven days and police may apply to the local court for unlimited further 14 day extensions. There is no provision in the legislation for a person to apply to the NSWPF to have their vehicle, phone or other essential items returned before the seven-day period ends.

We recommended that the NSWPF amend Part 6A procedures to:

- provide officers with factors to consider when deciding whether to seize and detain a vehicle
- require officers to record in the Computerised Operational Policing System (COPS) the reasons for the seizure and detention of any items
- provide for an avenue for review of any decision by police to seize and detain items
- facilitate the prompt return of items seized if the large scale public disorder is no longer occurring or threatened.

These recommendations – apart from the third one about an avenue for review – were supported in the NSW Government response to our 2007 report. However, not all of the remaining parts have been implemented by the NSWPF. They have included provisions in their procedures requiring reasons for decisions to seize items to be recorded in COPS, but the other recommendations have not been adopted. The NSWPF consider that sufficient guidance is already provided to officers to inform their decision to seize and detain items. They have set a time-frame of seven days for the return of seized items and believe this period provided by the legislation is short enough to make a review unnecessary. We still believe that providing police officers with clear guidance on the kinds of factors that might support a decision to seize a vehicle or other item is warranted, and may ensure that there is a strong link between the decision to seize and the likely threat of public disorder. In the absence of an internal review process, members of the community will have to depend on the complaints system to deal with any grievances about unreasonable seizure or unreasonable delay in returning their possessions.

Recommendations for amending legislation

Three of our recommendations for legislative amendments were not accepted or deemed unnecessary. These recommendations related to:

- Including legislative safeguards in Part 6A to provide an assurance of the right to peaceful assembly.
- Amendments to ensure that police officers cannot refuse residents or those who work in a target area permission to enter, unless it is reasonably necessary to do so to avoid risk to public safety or the person's own safety.
- Requiring police to apply an appropriate 'reasonable suspicion' test in relation to searches of people under the Part 6A powers.

Although safeguards relating to the right to peaceful assembly have not been included in the legislation, the NSWPF have included some information in their procedures about the right to protest and outlined the legislative provisions relating to public assemblies and unlawful assemblies.

As to when police might refuse residents or workers permission to enter a target area, the government decided it was sufficient to amend the procedural guidelines for officers making these decisions. In relation to whether a reasonable suspicion test should apply, the government reasoned that changes intended to strengthen the decision-making processes about when emergency powers could be authorised should be enough to safeguard the interests of individuals caught up in such emergencies.

Implementing recommendations from the NSWPF's own review of their use of emergency powers in July 2008

Last year we reported about the NSWPF's use of the Part 6A powers to prevent an anticipated threat of large-scale public disorder that they believed would occur at an environmental protest in Newcastle. After the incident, the NSWPF reviewed the exercise of the powers and recommended that:

- police officers should be given maps of the authorised target areas
- incidents relating to the use of Part 6A powers and general operational information should be recorded on COPS as soon as possible
- records should be more stringently checked.

We supported these recommendations.

Police guidelines for using the Part 6A powers now recommend the target area should be marked on a map or plan that can be annexed to any authorisation for use of the powers and distributed to police. The guidelines also remind police that details relating to the use of Part 6A powers need to be recorded and verified in COPS where possible. However, police have advised us there may be occasions where it would be 'impossible to record details of every member of a large crowd of persons who are being moved out of an area or refused entry into an area, as this would delay the specific intention of moving the persons from the area'.

Our 2007 report recognised that it may well be impractical, inappropriate or unnecessary for police to obtain the details of all persons subject to the emergency powers. For that reason, we recommended that less formal records (eg notes on running sheets or police notebook entries) be considered in certain situations, particularly when members of the public comply with police directions. This office will continue to monitor the way police record information about the exercise of the emergency powers in order to ensure it is reasonable and appropriately documented in the circumstances.

Appendix L

Committees

Significant committees

Our staff members are members of the following inter-organisational committees:

Staff member	Committee name
Ombudsman › Bruce Barbour	Director on the Board of the International Ombudsman Institute (part year), Regional Vice President for the Australasian and Pacific Ombudsman Regional Group (part year), Board Member of Pacific Ombudsman Alliance, Institute of Criminology Advisory Committee, Reviewable Disability Deaths Advisory Committee, and Reviewable Child Deaths Advisory Committee
Deputy Ombudsman (Public Administration and Strategic Projects Branch) › Chris Wheeler	Protected Disclosures Act Implementation Steering Committee
Deputy Ombudsman and Community and Disability Services Commissioner (Human Services Branch) › Steve Kinmond	Police Aboriginal Strategic Advisory Committee (PASAC), Reviewable Disability Deaths Advisory Committee, Reviewable Child Deaths Advisory Committee
Deputy Ombudsman (Police and Compliance Branch) › Greg Andrews	International Network for the Independent Oversight of Police, Early Intervention System Steering Committee
Principal Investigation Officer › Sue Phelan	Child Protection and Sex Crimes Squad Advisory Council
Director, Strategic Projects Division › Julianna Demetrius	PASAC, NSW Police Force Domestic Violence Steering Committee
Manager, Aboriginal Unit › Laurel Russ	PASAC
Division Manager (Public Administration Division) › Anne Radford	Complaint Handler's Information Sharing and Liaison Group
Inquiries and Resolution Team Manager › Vince Blatch	Complaint Handler's Information Sharing and Liaison Group
Senior Investigation Officer › Maxwell Britton	Corruption Prevention Network
Division Manager (Strategic Projects Division) › Brendan Delahunty	Network of Government Agencies: Gay, Lesbian, Bisexual and Transgender Issues, PASAC

Reviewable Disability Deaths Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Ms Margaret Bail	Human Services Consultant
Dr Helen Beange	Clinical Professor, Faculty of Medicine, University of Sydney
Ms Linda Goddard Course	Coordinator, Bachelor of Nursing, Charles Sturt University
Associate Professor Alvin Ing	Senior Staff Specialist, Respiratory Medicine, Bankstown-Lidcombe Hospital and Senior Visiting Respiratory Physician, Concord Hospital
Dr Cheryl McIntyre	General practitioner (Inverell)
Dr Ted O'Loughlin	Paediatric Gastroenterologist, The Children's Hospital, Westmead
Associate Professor Ernest Somerville	Prince of Wales Clinical School, Neurology
Ms Anne Slater	Physiotherapist, Allowah Children's Hospital
Associate Professor Julian Troller	Chair, Intellectual Disability Mental Health, School of Psychiatry, University of New South Wales
Dr Rosemary Sheehy	Geriatrician/Endocrinologist, Central Sydney Area Health Service

Reviewable Child Deaths Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Dr Judy Cashmore	Associate Professor, Faculty of Law, University of Sydney; Honorary Research Associate, Social Policy Research Centre, University of New South Wales; Adjunct Professor, Arts, Southern Cross University
Dr Ian Cameron	CEO, NSW Rural Doctors Network
Dr Michael Fairley	Consultant Psychiatrist, Department of Child and Adolescent Mental Health at Prince of Wales Hospital and Sydney Children's Hospital
Dr Jonathan Gillis	State Medical Director, NSW Organ and Tissue Donation Service, former Senior Staff Specialist in Intensive Care, Children's Hospital at Westmead
Dr Bronwyn Gould	Child protection consultant and medical practitioner
Ms Pam Greer	Community worker, trainer and consultant
Dr Ferry Grunseit	Consultant paediatrician, former Chair of the NSW Child Protection Council and NSW Child Advocate Resigned September 2009
Associate Professor Jude Irwin	Associate Professor, Faculty of Education and Social Work, University of Sydney
Ms Toni Single	Clinical Psychologist, former Senior Clinical Psychologist, Child Protection Team, John Hunter Hospital, Newcastle
Ms Tracy Sheedy	Manager, Children's Court of NSW

Appendix M

Compliance annual reporting requirements

Under the *Annual Reports (Departments) Act 1985*, the Annual Reports (Departments) Regulation 2010 and various Treasury circulars, our office is required to include in this report information on the following topics:

Topic	Comment/location
Access	Back cover
Aims and objectives	Pages 14–15
Charter	Inside front cover and Appendix M
Consultants	We used no consultants this year
Consumer response	Pages 8–9
Controlled entities	We have no controlled entities
Copy of any amendments made to the code of conduct	Code of conduct was reviewed and there were no substantial changes made and is available on our website at www.ombo.nsw.gov.au
Credit card certification	The Ombudsman certifies that credit card use in the office has met best practice guidelines in accordance with Premier's memoranda and Treasury directions.
Departures from Subordinate Legislation Act 1989	This year we did not depart from the requirements of the Subordinate Legislation Act.
Disability plans	Appendix Q
Economic or other factors	Pages 10–11 and 114–116
Electronic service delivery	We have an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically. We provide an online complaints form, an online publications order form and a range of information brochures on our website.
Energy management	Page 11 and Appendix P
Equal Employment Opportunity	Pages 19–21
Ethnic affairs priorities statement and any agreement with the CRC	Appendix Q
Evaluation of programs worth at least 10% of expenses and the results	We reviewed our work processes and how we capture and report on data across all our programs.
Executive positions	Page 18
Financial statements and identification	Pages 116–136
Funds granted to non-government community organisations	We did not grant any funds of this sort
Guarantee of service	Inside front cover
Human resources	Pages 17–18
Is the report available in non-printed formats?	Yes
Is the report available on the internet?	Yes, at www.ombo.nsw.gov.au
Legal change	This appendix
Letter of submission	Inside front cover
Major works in progress	There were no such works
Management and activities	This report details our activities during the reporting period. Specific comments can be found on pages 4–13 and 24–44.
Management and structure: names of principal officers, appropriate qualifications; organisational chart indicating functional responsibilities	Pages 4–5
Must distinguish between complaints made directly to our office and those referred to us	There were six complaints referred to us from other agencies.
NSW Government Action Plan for Women	Appendix Q
Occupational health and safety	Page 21

Topic	Comment/location
Particulars of any matter arising since 1 July 2009 that could have a significant effect on our operations or a section of the community we serve	Not applicable
Particulars of extensions of time	No extension applied for
Payment of accounts	Page 115
Privacy management plan	We have a privacy management plan as required by s.33(3) of the *Privacy and Personal Information Protection Act 1988*. This also covers our obligations under the *Health Records and Information Privacy Act 2002*. We had one request for an internal review under part 5 of the Act this year, which was received in June 2010, and at the time of writing was not yet finalised.
Promotion – overseas visits	Pages 31–32
Research and development	Pages 83–84, 114 and Appendix B
Risk management and insurance activities	Pages 12–13 and 21
Statistical and other information about our compliance with the Freedom of Information Act	Appendix O
Summary review of operations	Inside front cover and page 6
Time for payment of accounts	Page 116
Total external costs incurred in the production of the report	$28,289 (including $14,595 to print 800 copies)
Unaudited financial information to be distinguished by note	Not applicable
Waste	Appendix P

Appendix N

Legislation and legal matters

Legislation relating to Ombudsman functions

- *Ombudsman Act 1974*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993*
- *Police Act 1990*
- *Freedom of Information Act 1989*
- *Government (Information Commissioner) Act 2009*
- *Government Information (Public Access) Act 2009*
- *Protected Disclosures Act 1994*
- *Witness Protection Act 1995*
- *Child Protection (Offenders Registration) Act 2000*
- *Children and Young Persons (Care and Protection) Act 1998* enabling legislation for NSW universities as amended by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*
- *Law Enforcement (Controlled Operations) Act 1997*
- *Telecommunications (Interception and Access) (New South Wales) Act 1987*
- *Surveillance Devices Act 2007*
- *Law Enforcement (Powers and Responsibilities) Act 2002*
- *Terrorism (Police Powers) Act 2002*
- *Criminal Procedure Act 1986*
- *Crimes (Criminal Organisations Control) Act 2009*

Legal Changes

- ***Public Sector Restructure (Miscellaneous Acts Amendments) Act 2009***

  This Act amends the *Ombudsman Act 1974* as a consequence of departmental amalgamations under the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009*. In particular, the amendments enable the Ombudsman to determine, where more than one Minister is responsible for a Department, which Minister is the responsible Minister for the purposes of consultation under the provisions of the Ombudsman Act. The amendments also enable parts of a Department, rather than the entire Department, to be prescribed as a *designated government agency* for the purposes of complying with child protection requirements under Part 3A of the Ombudsman Act. The amendments will commence on proclamation.

- ***Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009***

  This Act amended the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to provide the NSW Ombudsman with the function of auditing the implementation of the *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*. The Act inserted a new Part 6A into the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and gives the Ombudsman statutory authority to review the implementation of the Interagency Plan by all responsible NSW public authorities, to identify areas in which those public authorities need to take further action and make related recommendations for the more efficient and effective implementation of the Interagency Plan. The Act provides that the NSW Ombudsman must report on the audit by 31 December 2012 to the Minister for Aboriginal Affairs, at which time the NSW Ombudsman's audit function will cease.

- ***Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009***

  This amending Act gives effect to the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). The amendment to the NSW Ombudsman's periodic reporting requirement under Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* commenced on 1 July 2009; the amendment introducing Chapter 16A to the *Children and Young Persons (Care and Protection) Act 1998*, which provides for the exchange of information and coordination of services between *prescribed bodies*, which includes the NSW Ombudsman in the exercise of certain functions, commenced on 30 October 2009; the amendment introducing s.8A to the Community Services (Complaints, Reviews and Monitoring) Act, which authorises an official community visitor to provide certain information to the Children's Guardian, commenced on 24 January 2010; the amendments providing for the NSW Ombudsman to convene the Child Death Review Team established under the *Commission for Children and Young People Act 1998* and take responsibility for the team's secretariat and research functions, have not to date commenced.

Litigation

This reporting year the Ombudsman has been a party to the following legal action:

- *Rae v NSW Ombudsman* – Administrative Decisions Tribunal (Equal Opportunity Division) – successful application by NSW Ombudsman for summary dismissal of complaint under s.102 of the *Anti-Discrimination Act 1977* as misconceived, without substance and bound to fail.

External legal advice sought

Mr A Robertson SC with Ms K Stern – advice regarding the scope of the obligation on the Commissioner of Police under s.151 of the *Police Act 1990*.

Appendix O

Freedom of Information report

The following information is provided in accordance with the *Freedom of Information Act 1989* (FOI Act), the Freedom of Information Regulation 2005 and the NSW Ombudsman's FOI Manual. Due to the small number of FOI applications received no tables are provided this year.

We received and processed two FOI applications during 2009–2010.

Both applications requested only information related to the complaint-handling functions of this office. They were both refused on the basis that this office is exempt from the operation of the FOI by virtue of Schedule 2 and section 9 of the FOI Act in relation to applications seeking access to documents that relate to our complaint-handling, investigative and reporting functions.

We received $30 as an application fee, which was refunded. The other application did not include an application fee because the applicant believed the request was exempt from the fee by virtue of section 43(2) of the *Commission for Children and Young People Act 1998*.

Both applications were determined within the statutory timeframe of 21 days. Both applications were processed within 10 hours.

Appendix P

Environmental program

For an overview of our environmental program, see page 11.

Energy management

Our energy management strategies focus on improving our motor vehicle fleet performance and reducing our electricity consumption.

Fleet management

Although we only have a small fleet of three cars, there are a number of strategies we use to improve our environmental performance. These include:

- reducing our petrol consumption (see performance indicator below)
- purchasing fuel efficient vehicles
- exceeding the government fleet performance score – calculated by a tool from the Department of Environment and Climate Change.

Electricity consumption

Although we have implemented various strategies to reduce our energy use, we had a significant increase in consumption during 2009–2010 (see performance indicator below). This increase in consumption was attributed to a supplementary air conditioning unit which was used more frequently due to increased training courses held in our in-house training room. We are investigating ways to reduce this consumption with various energy saving initiatives.

Performance indicators

Petrol consumption	05/06	06/07	07/08	08/09	09/10
Petrol (l)	5,159	4,787	4,145	3,250	2,835
Total (GJ)	176	162	142	111	96.96
Distance travelled (km)	51,602	35,086	32,963	38,064	33,818

Electricity consumption	05/06	06/07	07/08	08/09	09/10
Electricity (kWh)	355,301	311,713	348,358	302,172	367,273
Kilowatts converted to gigajoules	1,279	1,222	1,254	1,088	1,322
Occupancy (people)	187	191	187	193	197
Area (m^2)	3,133	3,133	3,133	3,133	3,133

Waste reduction and purchasing program

Our office has a range of strategies to reduce waste, increase recycling, and use more recycled content products.

Reducing the generation of waste

We are continually looking at ways to improve our waste management practices. We promote email as the preferred internal communication tool and encourage staff to print double-sided. We have an electronic record management system that allows staff to access information such as policies, procedures and internal forms – reducing the need for paper copies. Our publications are available to download from our website, so we print smaller quantities than in the past.

Resource recovery

We have individual paper recycling bins at workstations and larger 240 litre bins throughout the office for secure paper destruction. All office wastepaper, cardboard, glass, plastic and aluminium is collected for recycling. We are also a member of Planet Ark Close the Loop resource recovery program.

Using recycled material

We use Australian 80% recycled paper containing waste fibre diverted from Australian landfills and 20% new fibre from sustainably managed forests. Our stationery and publications are printed on either recycled, acid free or chlorine free paper with vegetable inks. We only use printers that have a certified environmental management plan (ISO 14001). Where possible and cost effective, we use Forest Stewardship Council (FSC) certified stock. The FSC is one of the few independent bodies capable of accurately determining fibre origin by tracking it from forest to printer (see inside back cover for more information).

Appendix Q

Access and equity programs

Disability action plan (DAP)

Outcomes	Strategies	Progress report
Identify and remove barriers to services for people with disabilities	Identify barriers to services for people with disabilities including physical, infrastructural, procedural and social barriers.	Our DAP advisory committee participated in a focus group to identify barriers. We engaged a certified building inspector to assess our tenancy for compliance to accessibility standards. We considered barriers that may exist in our general information and in accessing our website. Strategies to rectify/eliminate any barrier have been incorporated into our DAP.
	Incorporate disability access issues in the planning process to reflect the needs of people with disabilities.	We established a disability action plan advisory committee made up of representatives from all business areas. We ensured that strategies to address issues relating to people with disabilities are linked to our corporate plan and relevant business plans. We provided senior management with quarterly report on the implementation of our DAP.
	Review our complaint-handling practices to remove barriers for people with disabilities.	We have started a review of our complaint-handling practices to identify any gaps in service provision for people with disabilities. We will promote the use of oral complaints where appropriate.
	Improve data and data collection in relation to disability issues.	The needs of people with disabilities have been raised with our office stakeholder engagement working party, and they are currently developing an action plan for stakeholder engagement.
	Improve disability awareness among all staff.	Disability awareness training forms part of compulsory training for all staff. We continued to support the Don't Dis My Ability campaign and used the opportunity to raise awareness of disability issues and celebrate the achievements by people with disabilities. We are developing an intranet page on issues relating to people with disabilities where staff can find a range of resources.

Outcomes	Strategies	Progress report
Provide information in a range of formats that are accessible to people with disabilities	Improve the accessibility of key information about our services.	We have started a review of our accessible information (currently in large print, Braille, audio and accessible CD formats). We consulted with Vision Australia on effective ways to provide key information to people with disabilities.
	Improve the overall usability and accessibility of our website.	We ensure that our website meets the minimum accessibility standards set out in the Web Content Accessibility Guidelines. We have developed an action plan to re-develop our website to improve its overall usability and accessibility.
Make government buildings and facilities physically accessible to people with disabilities	Identify physical and infrastructural barriers to access for people with disabilities.	We had an office access audit conducted by professionals against the Building Code of Australia and Australian Standard. We upgraded the disabled toilet and reception area public access door to improve accessibility by people with disabilities.
	Develop and implement an improvement plan to reduce the barriers identified.	We are currently reviewing the office access audit report and developing an improvement plan with a priority list.
Assist people with disabilities to participate in public consultations and to apply for and participate in government advisory boards and committees	Incorporate consultation with people with disabilities into the office wide stakeholder engagement strategies.	We regularly consult peak disability organisations through our work in the community services area.
	Encourage people with disabilities to take part in our consultative process.	In partnership with the Disability Council of NSW, we held a forum attended by close to 300 people including people with disabilities, families, advocates and workers to discuss the provision of options and services for people with disabilities leaving institutional care. We started consultations with families of children with disabilities who live at home about the adequacy and support they receive. So far, we have consulted with more than 300 people.
	Ensure that our venues for public consultations are accessible to people with disabilities.	We developed an outreach venue checklist and an accessible venue register to assist staff in booking venues for outreach activities.
Increase employment participation of people with disabilities in the NSW public sector	Ensure our recruitment practices for all positions are accessible and non-discriminatory.	We have started a review of our recruitment process to ensure that our advertisements reach the widest number of applicants as possible. We have updated our job pack which includes information for applicants with disabilities.
	Promote employment opportunities to people with disabilities.	We have joined the Australian Employers Network on Disabilities and received training on issues relating to the recruitment of people with disabilities.
	Take all reasonable steps to increase employment participation for people with disabilities.	We are committed to making reasonable adjustments on request. We have commenced a review of our Reasonable Adjustment Policy and are developing guidelines on the issue.

Multicultural action plan (MAP)

Key Priority Area	Planned outcome	Strategies	Progress report
Planning and evaluation	Integrate multicultural policy goals into our corporate and business planning and review mechanisms.	Develop a Multicultural action plan (MAP) which includes performance measures, strategies to assess progress and indicators for improved performance.	We developed an initial MAP with performance measures and assigned responsibilities, which was endorsed by the Ombudsman. We are currently finalising this plan to include a monitoring and reporting mechanism.
		Ensure that strategies to address issues relating to culturally and linguistically diverse (CALD) people are reflected in or linked to our corporate plan and relevant business plans.	Through the MAP advisory committee and senior officers meetings we ensure that our MAP strategies are reflected in our office planning process.
		Gather and analyse information about issues affecting CALD people and inform business planning processes.	We are developing a stakeholder engagement strategy that will provide the framework that guides the way we consult and interact with the community, including CALD people.
	Policy development and service delivery is informed by our expertise, client feedback and complaints, and participation on advisory boards, significant committees and consultations.	Establish a cross-office MAP advisory committee to ensure that all business areas participate in the multicultural planning process.	We have set up an advisory committee with representatives from all business areas which will provide advice and guidance for developing and implementing our MAP.
		Ensure that the needs of CALD people are reflected in our stakeholder engagement strategy.	The needs of CALD people have been raised with our office stakeholder engagement working party, and they are currently developing an action plan for stakeholder engagement.
		Consult regularly with key multicultural groups to identify gaps in our awareness strategies and service delivery and ensure that issues identified are reflected in our planning process.	We regularly contacted key multicultural groups, including migrant resource centres and migrant workers networks.
		Take all reasonable steps to encourage CALD people to participate in relevant committees, roundtable discussions and public forums.	We continued to consult with key CALD organisations such as the Multicultural Disability Advocacy Association on a range of issues relevant to CALD people. We held an inaugural Domestic Violence Community Stakeholders Forum to provide stakeholders, including CALD representatives, with an opportunity to speak directly to us about their views on the handling of domestic violence complaints by the NSW Police Force and other lead government agencies.
Capacity building and resourcing	Senior management actively promote and are accountable for the implementation of the Principles of Multiculturalism within the office and wider community	Multicultural action plan (MAP) endorsed and promoted to staff by Ombudsman.	Our MAP was approved as office policy by the Ombudsman and made available to all staff.
		Ensure that our MAP assigns clear responsibilities to key staff and division management for its implementation and review their performance agreements to ensure accountabilities against the principles of multiculturalism clearly assigned.	We appointed a lead officer for MAP development and implementation. Our MAP assigns clear responsibilities to all relevant staff. When next reviewed, performance agreements of key staff and where relevant, position descriptions will be amended by June 2011.

Key Priority Area	Planned outcome	Strategies	Progress report
Capacity building and resourcing cont'd	Our capacity is enhanced by the employment and training of people with linguistic and cultural expertise.	Review the linguistic and intercultural work skills needed by frontline staff and implement recommendations to ensure that business requirements are serviced by appropriate human resources.	We will conduct a needs analysis to identify any gaps in the skills needed by frontline staff by December 2010, and develop and present an improvement plan to management. We aim to ensure that our frontline staff have an appropriate level of linguistic and intercultural skills to provide good service to CALD clients.
		Use the Community Language Allowance Scheme (CLAS), monitor its implementation, and develop a register of staff who have bilingual skills and cultural and community knowledge to assist in our communications with clients.	We have actively promoted the CLAS within the office. We currently have three staff members receiving CLAS and they cover four community languages.
		Develop and deliver cross cultural competence training sessions as part of our compulsory internal skill based training program.	In consultation with the Hills Holroyd Parramatta Migrant Resource Centre, we are developing a series of cultural awareness sessions for our staff. The first session on the small and emerging refugee communities was very well received by those attending.
Program and services	Identify barriers to access to our services for CALD communities, and develop programs and services to address issues identified.	Ensure that the needs of CALD people are identified and addressed in our office stakeholder engagement strategies.	The needs of CALD people have been raised with our office stakeholder engagement working party which is currently developing an action plan for ongoing stakeholder engagement.
		Review our guidelines on the use of interpreters and translators and provide training to all staff.	All our frontline staff are trained in the use of interpreters and translators.
		Ensure that our budget for interpreter services and interpreter use is monitored and reviewed.	We have allocated funds for providing interpreting and translation services, and have a register of services to inform our decision-making in developing community language information.
	Use a range of communication formats and channels to inform the CALD community about our programs, services and activities.	Review our information in community languages and develop accessible and appropriate information material in a range of formats (written, audio, online etc) to meet the specific needs of CALD communities following consultation with key community organisations.	We have started a review of our current community language information. We are consulting with key migrant services on the development of accessible and appropriate information material for CALD communities.
		Explore and recommend where appropriate the use of a range of technology in targeted community languages to facilitate communication with CALD people and improve access to our services.	The information needs of CALD communities have been raised as part of our website review, which will be completed by December 2010. We are planning to conduct research on the appropriate use of technologies in communicating with CALD communities by June 2011.
		Develop initiatives to raise awareness of, and celebrate the contribution of, CALD people.	We participated in various multicultural events such as the Bankstown Lunar New Year Festival, Holroyd City Carnival, 2010 Youth Harmony Festival, City of Ryde Community Information Expo and the Werrington Festival. We also distributed information about our office in community languages (Vietnamese, Chinese, Indonesian, Nepali and Arabic) at the National Migrant Women Workers Forum. We participated in a community legal education video project that targeted African communities in the Fairfield local government area.

Action plan for women

Objective	Outcomes for 2009–2010
Reduce violence against women	We provided feedback to the NSW Police Force (NSWPF) on a draft version of their Domestic and Family Violence Code of Practice. We also accepted an invitation from the NSWPF to sit on a committee convened to consider a proposal to introduce 'on-the-spot' AVOs. We hosted an inaugural Domestic Violence Stakeholders Forum in December 2009 attended by 60 community workers. We also met with the Domestic Violence Coalition, Women's Health NSW and the Women's Domestic Violence Court Advocacy Scheme to discuss a range of issues. We partnered with the Women's Legal Service (WLS) to provide domestic violence advocacy training to workers in the community, health and legal sectors as part of *Reaching out for Rights* project.
Promote safe and equitable workplaces that are responsive to all aspects of women's lives	We promote flexible working conditions such as flexible working hours, part-time, job share, working at home arrangements and leave for family responsibilities to help women to pursue their career while caring for their families. We reviewed and updated our 'Good Working Relationships' policy that sets out procedures for dealing with workplace harassment and grievances.
Maximise the interests of women	We distributed information about the role of the office and the complaint system to women at various events. In partnership with the Energy & Water Ombudsman, we held a stall at the International Women's Day celebration at Martin Place and provided face to face advice to many women attending the function. We also included information about our office in community languages (Vietnamese, Chinese, Indonesian, Nepali and Arabic) in the information pack that was distributed at the National Migrant Women Workers Forum.
Improve the access of women to educational and training opportunities	We implement government policies on EEO and select and promote staff on merit. We provide our staff with equal educational and training opportunities to further their careers.
Promote the position of women	As at 30 June 2010, we had 22 staff at the Grade 11/12 level or above including our SES officers. Of the 22, 12 or 54.5% were women. In addition to the Ombudsman we have three SES officers. None of our SES officers are women.

Appendix R

Publications list

We produce a range of publications including general information for the public, guidelines for agencies and organisations we oversight, discussion papers seeking information from the public, final reports at the conclusion of legislative reviews, annual reports outlining the work we have done during the financial year and special reports to Parliament about public interest issues.

The following publications were issued during 2009–2010 and are available online (Acrobat PDF format) at www.ombo.nsw.gov.au.

Special reports to Parliament

- The need to better support children and young people in statutory care who have been victims of crime
- Removing nine words – Legal professional privilege and the NSW Ombudsman
- The death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system
- The death of Ebony: The need for an effective interagency response to children at risk
- The implementation of the *Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing*

Annual reports

- NSW Ombudsman Annual Report 2008–2009
- *Law Enforcement (Controlled Operations) Act 1987* Annual Report 2008–2009
- Official Community Visitors Annual Report 2008–2009

Reports and submissions

- Review of the impact of Criminal Infringement Notices on Aboriginal communities
- Review by the Ombudsman of the planning and support provided by Community Services to a group of young people leaving statutory care
- Submission to the Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system
- Report under Section 49(1) of the *Surveillance Devices Act 2007* for the six months ending December 2009
- Report under Section 49(1) of the *Surveillance Devices Act 2007* for the six months ending June 2009

Fact sheets and guidelines

- Child protection fact sheet – Practice Update 1/2010: Making a finding
- Thinking of blowing the whistle? (Agencies) (updated)
- Thinking of blowing the whistle? (Council) (updated)
- Protected disclosures fact sheet: Am I dealing with a protected disclosure? (updated)
- *The Rights Stuff* – Tips for making complaints and solving problems (audio version)

Brochures

- Training choices
- Complaint-handling kit for community services (CS-CRAMA)
- Have you got a problem with a NSW government agency? (poster)

Newsletters

- *OmboInfo* Volume 3 Issue 1 (electronic only)
- *OmboInfo* Volume 2 Issue 2 (electronic only)

Glossary

Acronym	Explanation
AAT	Administrative Appeals Tribunal
AbSec	Aboriginal Child, Family and Community Care State Secretariat
ACS	*Aboriginal Consultation Strategy*
ACSAT	Aboriginal Child Sexual Assault Taskforce
ACWP	Aboriginal Community Working Party
ADHC	Ageing, Disability and Home Care
ADT	Administrative Decisions Tribunal
AFP	Australian Federal Police
AHO	Aboriginal Housing Office
AIS	Association of Independent Schools
APF	*Aboriginal Policy Framework*
ASD	*Aboriginal Strategic Direction*
ADVO	Apprehended domestic violence order
CALD	Culturally and linguistically diverse
CCER	Catholic Commission for Employment Relations
CCTV	Closed-circuit television
CCYP	Commission for Children and Young People
CHD	Community Housing Division
CINs	Criminal infringement notices
CRC	Community Relations Commission
CS-CRAMA	*Community Services (Complaints, Reviews and Monitoring) Act 1993*
CTTT	Consumer, Trader and Tenancy Tribunal
CWU	Child wellbeing units
DAP	Disability Action Plan
DPC	Department of Premier and Cabinet
DSA	*Disability Services Act 1993*
DVLO	Domestic violence liaison officer
DET	Department of Education and Training
EEO	Equal employment opportunity
ETU	Education and Training Units
EWON	Energy & Water Ombudsman (NSW)
FOI	Freedom of information
GIPA Act	*Government Information (Public Access) Act 2009*
HACC	Home and community care
ICAC	Independent Commission Against Corruption
ICV	In-car video

Acronym	Explanation
JCC	Joint Consultative Committee
JGOS	Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing
JIRT	Joint Investigation Response Team
LEPRA	*Law Enforcement (Powers and Responsibilities) Act 2002*
LG Act	*Local Government Act 1993*
LWB	Life Without Barriers
MAP	Multicultural action plan
MSPC	Metropolitan Special Programs Centre
NSWALC	NSW Aboriginal Land Council
NSWPF	NSW Police Force
NSWTG	NSW Trustee and Guardian
OCVs	Official community visitors
OFT	Office of Fair Trading
OH&S	Occupational health and safety
OOHC	Out-of-home care
OPC	Office of the Protective Commissioner
OSR	Office of State Revenue
PADP	Program of appliances for disabled people
PASAC	Police Aboriginal Strategic Advisory Committee
PD Act	*Protected Disclosures Act 1994*
PIC	Police Integrity Commission
PJC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
POA	Pacific Ombudsman Alliance
PPIP Act	*Privacy and Personal Information Protection Act 1998*
PSA	Public Service Association
PSC	Professional Standards Command
RTA	Roads and Traffic Authority
SAAP	Supported accommodation assistance program
SDRO	State Debt Recovery Office
SORC	Serious Offenders Review Council
YACS Act	*Youth and Community Services Act 1973*
YLO	Youth liaison officer
WWCC	Working With Children Check

Index

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, a friend, advocate, lawyer, your local Member of Parliament – to complain for you.

How do I make a complaint?

Start by complaining to the organisation involved. Contact us if you need advice about this. If you are unhappy with the way an organisation has handled your complaint, you can complain to us, preferably in writing. Your complaint can be in any language. If you have difficulty writing a letter, we can help. We can also arrange for translations, interpreters and other services. Our online complaints form also makes it easier for people to lodge a complaint with our office.

What should I include with my complaint?

Briefly explain your concerns in your own words. Include enough information for us to assess your complaint and decide what we will do. 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 you would like to see happen. Include copies of all relevant correspondence between the organisation concerne

What happens to my complaint?

A senior investigator will assess your complaint. We may phone the organisation concerned to make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the organisation'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 we cannot take up your complaint we will tell you why.

If your complaint is about a police officer, we will refer your complaint to the NSW Police Force for resolution or investigation. They will contact you about any action they have taken as a result of your complaint. We will oversee how they deal with your complaint.

What happens in an investigation?

First we ask the organisation to comment on your complaint and explain their actions. Generally, we will tell you what the organisation has said and what we think about their response. 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

If we find your complaint is justified, the findings are reported to the organisation concerned and the relevant minister. You will be told about our findings. The Ombudsman may make recommendations in the investigation report. We cannot force an organisation to comply with our recommendation; however, most usually do. If the organisation does not comply, 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 your complaint to be reviewed. However, a decision will only be reviewed once. A senior staff member who did not originally work on your complaint will conduct the review. To request a review, telephone or write to us.

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.

Acknowledgements

Our annual report is a public record of our work and through it we are accountable to the people of NSW. Our report is prepared against criteria set out by NSW Treasury and the Annual Report Awards. It is available from our office or our website at www.ombo.nsw.gov.au.

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