NSW Ombudsman

Annual Report 2004–05

CELEBRATING
30 YEARS OF
SERVICE
1975~2005

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SERVICE
1975~2005

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October 2005

The Hon Meredith Burgmann MLC
President Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

The Hon John Aquilina MP
Speaker Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Madam President and Mr Speaker

I am pleased to present our 30th annual report to the NSW Parliament.

This report contains an account of our work for the twelve months ending 30 June 2005 and is made pursuant to ss. 30 and 31 of the *Ombudsman Act 1974*.

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

The report includes updated material on developments and issues current at the time of writing (July-September 2005).

Yours sincerely

Bruce Barbour
Ombudsman

OMBUDSMAN'S MESSAGE

This year marks the 30th anniversary of our office.

While the core work of our office will always be receiving and working to resolve or investigate individual complaints, the way we do business and the breadth of our role and functions has changed significantly over the past 30 years.

In 1975 a staff of 14 received around 2,000 complaints and the jurisdiction of the office was limited to reviewing state public authorities. Today, our responsibilities include handling many complaints relating to local and county councils through to oversight of how NSW Police manages complaints about its officers. We have specific functions relating to the protection of children in NSW and ensuring quality community services are delivered by government and non-government providers. We review the causes and patterns of deaths of certain children and people with a disability and also decisions relating to freedom of information applications. We review the implementation of wide ranging new legislation and also monitor the use of powers to conduct controlled operations by a range of law enforcement agencies. Our work now extends across both public and private sectors. Our staff has grown to more than 180 people dealing with over 36,000 complaints and notifications this year together with a range of other activities, all of which are detailed in this report.

We have learned a great deal from undertaking these new challenges. Complaint-handling will always be an important part of what we do but we are now more aware of its limitations. It is essentially a reactive and, to some degree, ad hoc approach (given that it relies on people bringing grievances to our attention) to delivering outcomes for the public. We now know that in order to gain maximum benefits in the delivery of services, we also need to employ a range of proactive methods that achieve systems improvements, such as auditing and working with agencies to help them implement and understand the importance of effective complaint-handling mechanisms.

The achievements of our office are in large part due to the hard work and commitment of the staff, both past and present. One constant in our 30-year history has been the quality of our staff. They bring to their work a breadth of talent and experience, empathy, good humour, and an understanding of competing issues and an ability to work through them to achieve practical change and the best outcomes possible.

In this our 30th annual report, it seems fitting that we celebrate our staff as well as documenting our achievements. Scattered throughout the report we have included the profiles of a number of staff illustrating the depth of work and life experience that they bring to their roles.

We continue to be a strong, independent and impartial watchdog for the benefit of the public of NSW. We will continue to keep government and some non-government agencies accountable for the way they do business and the services they provide. Our challenge is to remain responsive and to continue to be strategic and proactive in the way we undertake our functions and utilise our resources. The growth of our office over the past 30 years has not only brought significant change but also opportunity. We have worked hard to ensure that we remain an organisation that can be confident of the integrity and quality of our work into the future.

Bruce Barbour
Ombudsman

PERFORMANCE STATEMENT

Corporate Plan

Our Vision

Fair, accountable and responsive administration in NSW agencies.

Our Mission

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

Our Goals

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

Our Guarantee of Service

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

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

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

Our Values

In everything we do we will:

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

Strategies

Goal 1	• Assess service delivery and the conduct of agencies and assist agencies to address deficiencies. • Focus our resources on complaints that relate to systemic issues or serious abuse of power. • Assist agencies to improve customer service through such things as agency liaison, review of agencies' policies and provision of training. • Develop and review guidelines to assist agencies in relation to service delivery and good conduct issues.
Goal 2	• Ongoing review of structures and operational practices of the office to maximise flexibility, cohesion and efficiency. • Ensure that staff are supported as main resource of office. • Improve sharing of knowledge and information across the office.
Goal 3	• Identify needs and implement effective access and awareness and information programs. • Maintain a strong identity to ensure continuing relevance and better recognition. • Consider the views of people we deal with.
Goal 4	• Ensure appropriate internal standards and policies relating to administrative conduct are in place. • Continue to improve the quality of our service. • Provide effective and meaningful reporting and performance measurement strategies. • Regularly review complaint-handling, investigative and other practices to ensure best practice.

Outcomes in 2004–05

- Helped numerous agencies remedy deficiencies through our work in overseeing the quality of over 6,000 investigations, auditing over 7,000 records of NSW Police, finalising 67 direct investigations, resolving over 2,000 complaints by a number of means including making findings and recommendations for improvements to agencies, providing advice or the agency taking action to address our concerns (eg apologised, changed their decision, admitted and corrected errors).
- The majority of our recommendations for systemic improvement have been accepted. Improvements have been made to systems for the care and protection of children, systems for supporting people with a disability, systems providing public housing and services for homeless people, systems within correctional centres and policing systems.
- Contributed to a number of 'whole of government initiatives' in areas including integrity in government, corruption prevention, whistleblowing, and Aboriginal/police relations.

Future

We plan to:

- provide guidance, information and support to all Catholic agencies to adapt to the new administrative arrangements relating to child protection notifications
- revisit police local area commands to monitor their response to recommendations we made to better implement NSW Police's *Aboriginal Strategic Direction (2003–2006)*
- continue monitoring the progress of DoCS and DADHC in implementing our recommendations for improving the systems for the care and protection of children and the provision of services to people with a disability and homeless people
- continue working with NSW Police on strategies to divert youth from crime.

- Finalised more formal complaints than we received, despite numbers exceeding 10,000 for the first time.
- Developed a new corporate plan to support our statement of corporate purpose, including business plans for each of our teams.
- Conducted reviews of each of our teams to identify areas for improvement.
- Conducted a workplace climate survey of staff to identify where we might improve the way we perform our functions and the support we provide staff in their work and careers.
- Gave staff a variety of training and educational opportunities, including running an investigations training course in-house, and supported staff undertaking further study.

We plan to:

- use information from this year's staff climate survey to inform policy development, training and staff development activities
- use information from our program reviews to improve our systems
- finalise a corporate governance framework
- continue to conduct activities which provide opportunities for staff to network with members of other teams.

- Visited 59 different regional towns in NSW to observe correctional and juvenile justice centres, audit agency systems, provide training, attend community events, and to examine the quality of public, policing and community services being provided to Aboriginal people and communities.
- Coordinated over 2,700 visits by official community visitors to over 1,200 residential services in NSW.
- Made over 70 speeches and presentations on topics about which we have some expert knowledge.
- Increased the number of visits to correctional centres from 31 to 39.
- Finalised our access and equity plan for 2004-07 and developed our ethnic affairs priority statement plan for 2004-06.
- Widely distributed information about our work in 16 community languages and in large print.
- Reviewed our website to enhance accessibility and improve navigation.
- Ran a consumer education program, The Rights Stuff, 16 times to almost 300 people across NSW.

We plan to:

- launch our new website
- continue to make presentations on the work of our office at community and industry forums
- continue to conduct workshops for consumers of community services and for agencies providing services to children, community services and public services
- continue to respond to agency inquiries about a range of issues relating to good administration and complaint-handling.

- Developed new databases to track notification and monitoring data relating to controlled operations and telecommunications interceptions.
- Visits to agencies and regional areas were made by senior staff and less experienced staff to allow for mentoring.
- Systems for managing police complaints were streamlined to handle a 30% increase in complaint numbers.
- Reviewed systems for handling child protection matters to address any factors contributing to delay.
- Provided investigations training in-house.

We plan to:

- continue to review the way we do our work and seek feedback at all levels internally and externally about strategies for improvement
- continue to analyse how we report on our work and identify the significant areas of work that require measurement, and consider how best to do this.

Celebrating 30 Years of Service 1975 – 2005

We are the State's Parliamentary Ombudsman and our office was established by the *Ombudsman Act 1974*. We are accountable to Parliament itself, not the government of the day. This year we are celebrating our 30th birthday. Since our establishment there have been five Ombudsman. The current Ombudsman, Bruce Barbour, has been the Ombudsman since June 2000.

Over the past 30 years, our office has changed markedly. Our responsibilities have expanded and we now oversee a wide range of government and non-government organisations. During our lifetime we have achieved some significant reforms for the NSW public.

Important developments in our office

1975: This office was established. For the first time NSW citizens had a single independent body to make complaints to about government services.

1976: Councils come within our jurisdiction.

1984: Our office was given statutory independence when declared to be an 'administrative office' rather than part of the Premier's Department.

1985: We were given the power to conduct direct investigations of complaints against police officers.

Ombudsman 1975 Ken Smithers — 1981 George Masterman QC

Complaints and inquiries received 2,300 — 5,400

Significant reforms achieved as a result of our work

1980: Public sector agencies accept general principle that reasons should be given where they deny liability.

1985: Government regulators able to prosecute other government agencies for breaches of the law.

1988: The law changed to require councils to notify neighbours of proposed developments and take into account their views.

1990: A parliamentary joint committee was established to oversee our operations.

1993: Councils required to adopt a statewide code of conduct addressing issues like conflict of interests.

1995: Our functions under the *Witness Protection Act 1995* began.

1995: We published the first comprehensive guidelines on good conduct and administration in the public sector.

1997: We were given the function of monitoring compliance by law enforcement agencies with accountability mechanisms relating to the conduct of undercover operations.

1997: Police were required by law to tell anyone who was arrested that they could call a friend and lawyer, and let them do so.

1998: Our child protection function begins. Government and some non-government agencies come under an obligation to notify us of allegations of child abuse made against their employees.

For the first time, our office was given the function of reviewing the implementation of legislative changes to police powers. By 2005, we had been given this function in relation to 17 changes to legislation.

2002: Community Services Commission merged into our office. As a consequence, both government and non-government organisations providing community services are within our jurisdiction.

2002: NSW passed legislation providing that apologies can be provided to consumers without constituting an admission of legal liability. Every State and Territory has since followed suit.

1988 David Landa

1995 Irene Moss AO

2000 Bruce Barbour

1995

2000

2005

20,550

37,200

ABOUT US

Who we are and what we do

The NSW Ombudsman is an independent and impartial watchdog. Our central goal is to keep the following types of agencies accountable to the NSW public by promoting good administrative conduct, fair decision-making and high standards of service delivery:

- agencies delivering public services (including police, hospitals and state-owned corporations)
- agencies employing people who work with children (including schools and child care centres)
- agencies delivering community services (including services for people with a disability, people who are homeless and elderly people)
- agencies conducting covert operations (including the Crime Commission and the ICAC.

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

Our approach is to be impartial and informal, and we try to find an outcome that is in the public interest. We investigate some of the more serious complaints, but in many cases we encourage the agency being complained about to handle the matter themselves. We might monitor their progress or provide advice and support if necessary.

Our proactive work involves helping agencies prevent complaints arising in the first place by scrutinising the systems they have to provide services. We also provide training and advice on how to effectively resolve and manage those complaints that do arise.

Other specific functions that we have relate to:

- the delivery of community services
- the causes and patterns of deaths of certain children and people with a disability
- decisions made by public sector agencies about freedom of information applications
- the administration of the witness protection program
- the implementation of new pieces of legislation conferring additional powers on police and correctional officers.

Please see Appendix H for a full list of the legislation that we administer.

Our organisation

Our office is divided into five teams — the general, police and child protection teams, each headed by an Assistant Ombudsman, the community services division headed by a Deputy Ombudsman, and the corporate team, led by the Manager Corporate.

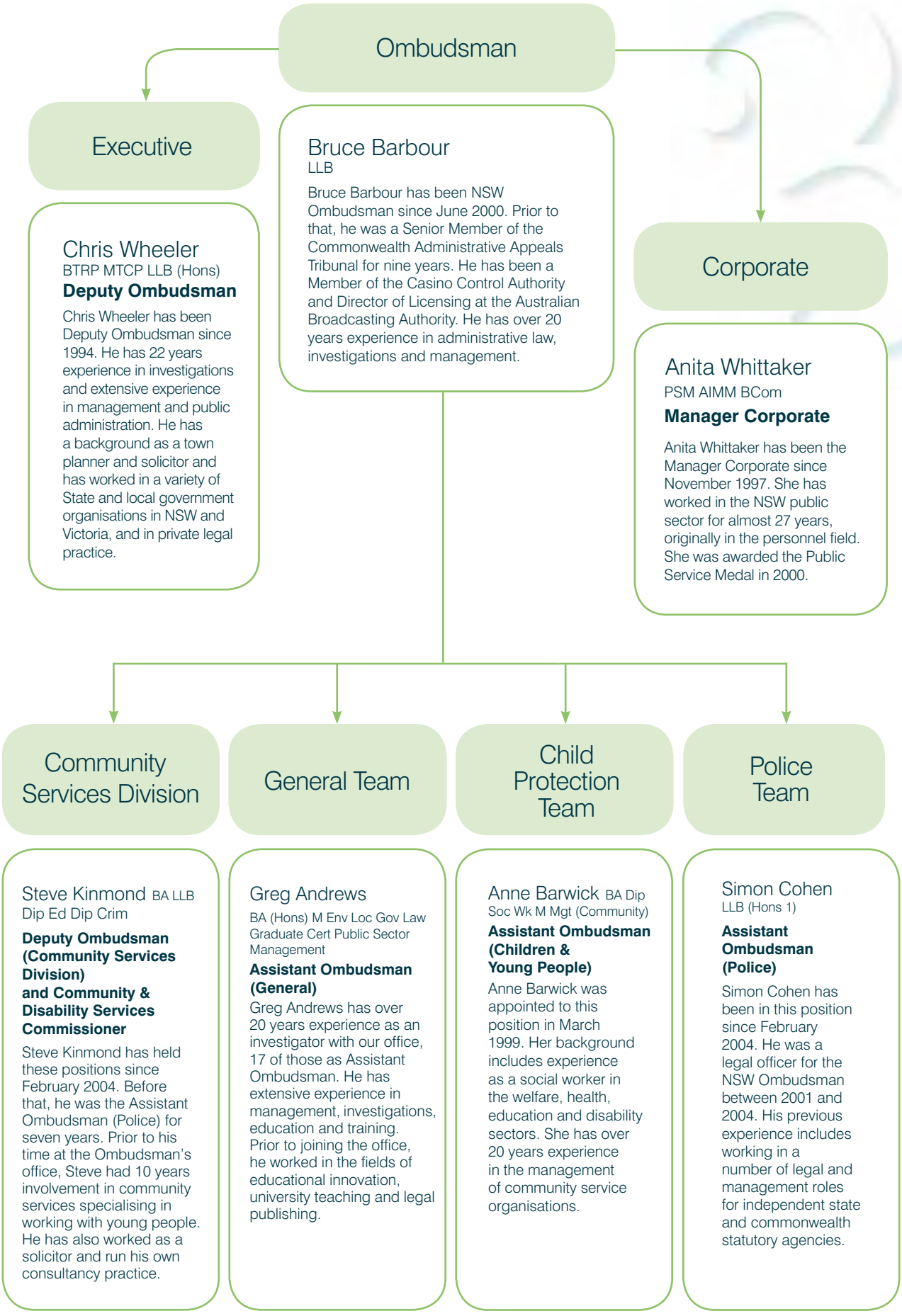
The police team has responsibility for work relating to NSW Police, and for reviewing certain legislation giving powers to police officers. The community services division is responsible for work relating to the delivery of services by the Department of Community Services and the Department of Ageing, Disability and Home Care and non-government agencies providing community services. The child protection team handles notifications from agencies providing services to children of allegations of conduct by employees that could be abusive to children. The general team and the executive are responsible for performing our other legislative functions.

Our corporate team includes personnel, financial services, public relations and publications, information and records management, library services and information technology (IT). The team is responsible for providing efficient and effective support to the core activities of the office, increasing our productivity and accessibility, supporting our staff, ensuring a healthy, safe, creative and satisfying work environment, and increasing awareness of our role and functions.

We have 182 committed people working for our office on either a full or part-time basis. These people are an energetic and diverse mix of experience and skill, coming from a range of backgrounds, including investigative, law enforcement, community and social work, legal, planning, child protection and teaching. Our collective experience gives us insight into the agencies we keep accountable and helps us to be a persuasive advocate for change.

Photo Top

Back Row: Simon Cohen, Chris Wheeler, Greg Andrews
Front Row: Steve Kinmond, Bruce Barbour, Anne Barwick


Ombudsman
Executive
Bruce Barbour
LLB
Bruce Barbour has been NSW Ombudsman since June 2000. Prior to that, he was a Senior Member of the Commonwealth Administrative Appeals Tribunal for nine years. He has been a Member of the Casino Control Authority and Director of Licensing at the Australian Broadcasting Authority. He has over 20 years experience in administrative law, investigations and management.
Corporate
Chris Wheeler
BTRP MTCP LLB (Hons)
Deputy Ombudsman
Chris Wheeler has been Deputy Ombudsman since 1994. He has 22 years experience in investigations and extensive experience in management and public administration. He has a background as a town planner and solicitor and has worked in a variety of State and local government organisations in NSW and Victoria, and in private legal practice.
Anita Whittaker
PSM AIMM BCom
Manager Corporate
Anita Whittaker has been the Manager Corporate since November 1997. She has worked in the NSW public sector for almost 27 years, originally in the personnel field. She was awarded the Public Service Medal in 2000.
Community Services Division
General Team
Child Protection Team
Police Team
Steve Kinmond BA LLB Dip Ed Dip Crim
Deputy Ombudsman (Community Services Division) and Community & Disability Services Commissioner
Steve Kinmond has held these positions since February 2004. Before that, he was the Assistant Ombudsman (Police) for seven years. Prior to his time at the Ombudsman's office, Steve had 10 years involvement in community services specialising in working with young people. He has also worked as a solicitor and run his own consultancy practice.
Greg Andrews
BA (Hons) M Env Loc Gov Law Graduate Cert Public Sector Management
Assistant Ombudsman (General)
Greg Andrews has over 20 years experience as an investigator with our office, 17 of those as Assistant Ombudsman. He has extensive experience in management, investigations, education and training. Prior to joining the office, he worked in the fields of educational innovation, university teaching and legal publishing.
Anne Barwick BA Dip Soc Wk M Mgt (Community)
Assistant Ombudsman (Children & Young People)
Anne Barwick was appointed to this position in March 1999. Her background includes experience as a social worker in the welfare, health, education and disability sectors. She has over 20 years experience in the management of community service organisations.
Simon Cohen
LLB (Hons 1)
Assistant Ombudsman (Police)
Simon Cohen has been in this position since February 2004. He was a legal officer for the NSW Ombudsman between 2001 and 2004. His previous experience includes working in a number of legal and management roles for independent state and commonwealth statutory agencies.

OUR WORK: KEEPING AGENCIES ACCOUNTABLE

1. Agencies delivering public services

Who we scrutinise

- several hundred NSW public sector agencies including departments, statutory authorities, boards, government schools, correctional centres, universities and area health services
- the police
- 166 local and county councils
- certain private sector organisations and individuals providing privatised public services, such as the operators of Junee correctional centre, private certifiers who perform certain local council functions and accreditation bodies for those private certifiers.

How we keep them accountable

We investigate and resolve complaints:

- about the work of public sector agencies
- about the merits of agency decisions about freedom of information requests.

We investigate and resolve protected disclosures made directly to us from people who work in the public sector and complaints about the way agencies have handled disclosures made directly to them first.

We make sure that NSW Police handles and investigates complaints about police officers properly (this includes overseeing individual complaints and checking their complaint-handling systems).

We scrutinise the implementation of certain legislative schemes giving new powers to police and correctional officers.

We hear appeals against certain decisions and orders made by the Commissioner of Police about participation in or exclusion from the witness protection program.

We visit juvenile justice centres and correctional centres to observe their operations and resolve concerns of inmates.

We test agencies' customer service performance through our 'mystery shopper' audits.

We provide training and publish guidelines and fact sheets on investigations, complaint management and other aspects of good administrative conduct.

2. Agencies conducting covert operations

Who we scrutinise

- law enforcement agencies such as NSW Police, the Crime Commission, Independent Commission Against Corruption and Police Integrity Commission

How we keep them accountable

We review agency compliance with accountability requirements for undercover operations and the use of telephone intercepts.

3. Agencies employing people who work with children

Who we scrutinise

- over 7,000 agencies providing services to children, including government and non-government schools, child care centres, family day care, juvenile justice centres and agencies providing substitute residential care and health programs
- our jurisdiction covers paid employees, contractors and thousands of volunteers.

How we keep them accountable

After we are notified of allegations of conduct by an employee that could be abusive to children, or of the conviction of an employee of an offence involving such conduct, we make sure that the agency concerned investigates the matter properly (this includes overseeing individual complaints and checking their systems for handling such matters).

We can investigate the way an agency has handled these matters if they have not done so properly.

We also deal with complaints from parents and other interested parties about how agencies have investigated allegations.

We keep under scrutiny the systems agencies have to prevent employees from behaving in ways that could be abusive to children.

We keep track of how well agencies fulfil their statutory obligation to notify us of these.

We provide training and guidance to agencies in how to handle these kinds of allegations and convictions.

4. Agencies delivering community services

Who we scrutinise

- licensed boarding houses and fee-for-service agencies
- child protection and family support services
- out of home care family services for children and young people such as residential services, intensive family support, case management support, leaving care and after care services and respite care
- home and community care services including food services such as meals on wheels, community options programs, home help, personal care, respite care, community transport and services provided by the Home Care Service of NSW
- services for people with a disability including residential and respite care, licensed boarding houses, community access, community support and employment training services, day programs and attendant care
- supported accommodation and assistance program services including refuges for families and young people, women and men, proclaimed places, outreach and referral services.

Note: Many of these services are provided by the Department of Community Services and the Department of Ageing, Disability and Home Care. Non-government agencies providing these services only fall within our jurisdiction if they are funded, licensed or authorised by the Minister for Community Services or the Minister for Ageing and Disability Services.

How we keep them accountable

We investigate and resolve complaints about the provision, failure to provide, withdrawal, variation or administration of a community service.

We review:

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

We inspect certain services where children, young people and people with a disability live.

We coordinate the official community visitors scheme.

We provide information and training to consumers of community services and to agencies about complaint-handling and consumer rights and needs.

We promote improvements to community service systems and access to advocacy support for people receiving, or eligible to receive, community services to make sure that they are able to participate in making decisions about those services.

SNAPSHOT OF OUR YEAR

Responding to complaints

Numbers of matters received

A variety of people contact us — members of the general public, families of people who are receiving community services, members of Parliament, people who work in the public sector. They bring to our attention a variety of concerns, for example decisions that adversely affect them or mismanagement of their grievance.

This year a total of 35,076 matters were brought to our attention. Of these, 10,714 were formal complaints and notifications, and 24,362 were informal complaints and enquiries. As we have jurisdiction over a range of agencies, and specific functions under a number of pieces of legislation, we categorise the matters with which we deal to make sure that we provide the most appropriate response. Figure 1 shows a breakdown of the matters we received this year into these subject categories.

This year — for the first time — the number of formal matters we received exceeded 10,000. See figure 2. As with previous years, we were still able to finalise around the same number of matters as we received.

Figure 2 - Formal matters received and finalised by our office – five year comparison

Year	00/01	01/02	02/03	03/04	04/05
Received	9,820	8,292	8,739	9,167	10,714
Finalised	9,734	9,164	9,052	9,159	10,866

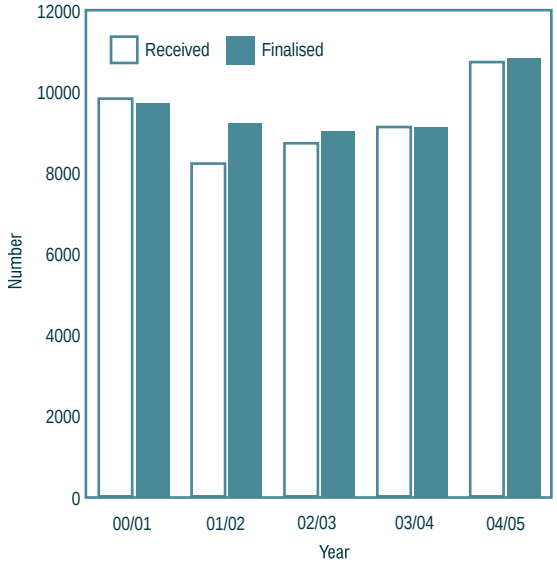


Figure 1 - Matters we received in 2004 - 2005 — by subject area

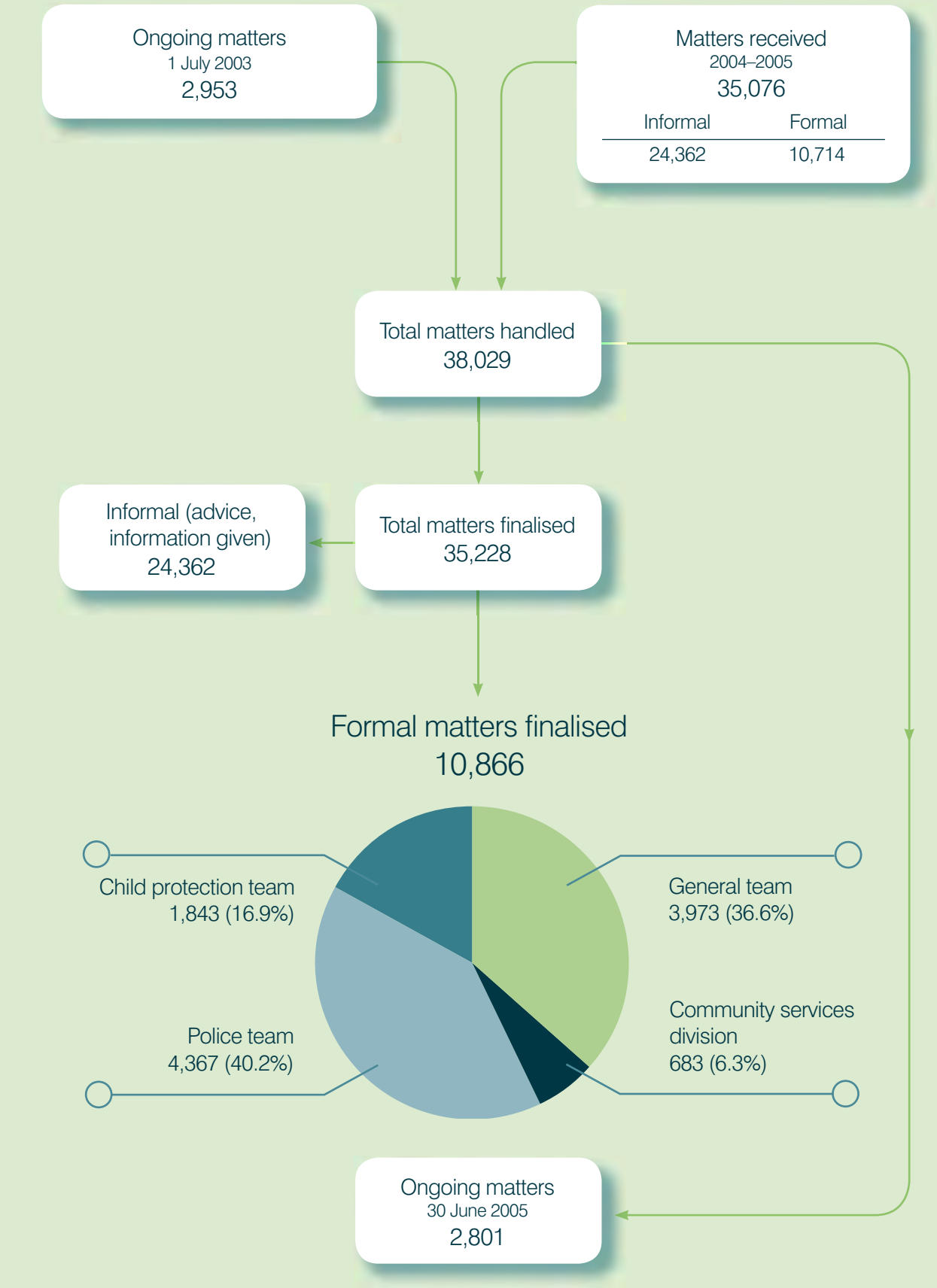
Subject area	Total	Formal	Informal
General complaints about the public sector*	5,740	1,355	4,385
Local government	2,952	814	2,138
Corrections	3,972	621	3,351
FOI	534	189	345
Community services**	1,851	667	1,184
Workplace child protection	2,491	1,892	599
Police	7,255	4,179	3,076
Witness protection appeals and complaints, and controlled operations authorities audited***	425	422	3
Outside our jurisdiction*	7,194	575	6,619
Requests for information	2,662	-	2,662
Total	**35,076**	**10,714**	**24,362**

* We sometimes receive written complaints about public sector agencies that are within our jurisdiction but the complaint, on assessment, is found to be outside our jurisdiction because of the issues raised. We initially classify these as 'formal' complaints received about public sector agencies. Written complaints received about agencies outside our jurisdiction and oral complaints about both agencies and issues outside our jurisdiction, are dealt with informally by referring the complainant elsewhere, and are classified as 'outside our jurisdiction' from the outset.

** This includes complaints about DoCS, DADHC and non-government agencies that are funded by one of those departments.

*** These matters are counted for the first time this year.

Figure 3 - Matters we received and finalised in 2004-2005



Note: In this figure, 'matters' does not include deaths that we review, the people in care whom we review, visits to residential services, correctional and juvenile justice centres, audits, training and systemic project work.

How we handle different types of matters

One of the major distinctions that we make is between 'formal' and 'informal' matters. This determines the process by which we handle each matter. While there are subtle differences in the way each of our teams makes this distinction, in most cases written complaints and notifications are considered to be formal, whereas complaints that are made over the telephone or in person are treated as informal. The main exception is that a number of verbal complaints about community services or from inmates of correctional centres will be treated as formal if, for example, the complainant is particularly vulnerable and it would not be reasonable to ask them to submit a complaint in writing.

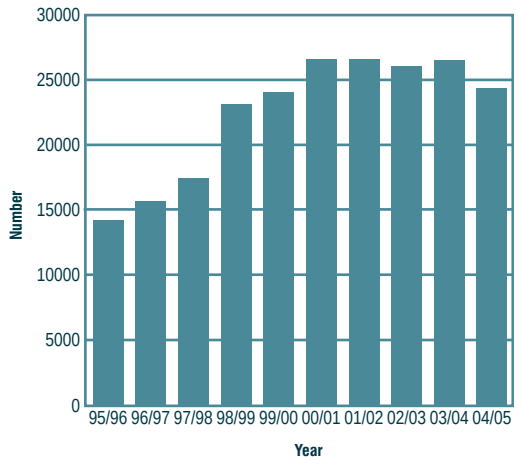
Informal matters

We categorise as informal matters most telephone calls, visits to our office and inquiries made to our staff when they are working out in the field. In these situations we are usually able to help the person by giving them information or explaining something to them, referring them to another agency or back to the agency with which they are dissatisfied, or advising them to make a formal complaint to us.

Figure 4 shows that the number of informal matters we have dealt with have stayed consistently around 25,000 over the last five years.

Figure 4 - No. of informal matters received — 10 year comparison

Year	No.	Year	No.
95/96	14,222	00/01	26,564
96/97	15,698	01/02	26,533
97/98	17,425	02/03	26,067
98/99	23,082	03/04	26,521
99/00	24,025	04/05	24,362



Formal matters

This year we finalised 10,866 matters classified as 'formal'. Some of these matters can be quickly resolved and finalised within a few days. For example, we may be able to obtain information from an agency over the phone that allows us to give the complainant an explanation that satisfies them. On the other hand, a full-scale investigation can take some time to complete. This is why some of the matters we received during 2003–04 are still being dealt with and some matters we finalised during the year were brought to our attention before the reporting period.

Although we are an office of last resort, and encourage complainants to try to resolve grievances and dissatisfaction with the agency concerned, we do have statutory functions of handling and investigating complaints. The main pieces of legislation that govern this aspect of our work are the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. Although we do have coercive powers to require agencies to provide us with documents or answer our questions, we generally try to resolve complaints without using them. Most agencies that we contact are cooperative and understand that resolving a person's dissatisfaction with their organisation is usually beneficial to them. If we do use our coercive powers, we categorise the complaint as having been 'formally investigated'.

The actions that we take to finalise complaints include:

- resolving a complaint by persuading the agency concerned to take some action — for example, this year in over 1,900 formal complaints we handled from the public, the agency concerned took action including changing their decision, making an apology, admitting and correcting an error, and reviewing individual cases or internal processes.
- resolving a complaint by undertaking a formal investigation and making findings of wrong conduct and recommendations
- providing information, an explanation or advice to the complainant
- making preliminary inquiries and finding no wrong conduct
- referring a complainant to another agency or advising them to complain directly to the agency concerned.

In relation to complaints about police and child protection notifications from agencies, our primary role is to oversee the way complaints are handled by the agencies concerned. We do have the power to investigate matters ourselves, but we do not do this very often. We finalise most of these matters by reviewing final investigation reports to assess the quality of the investigation.

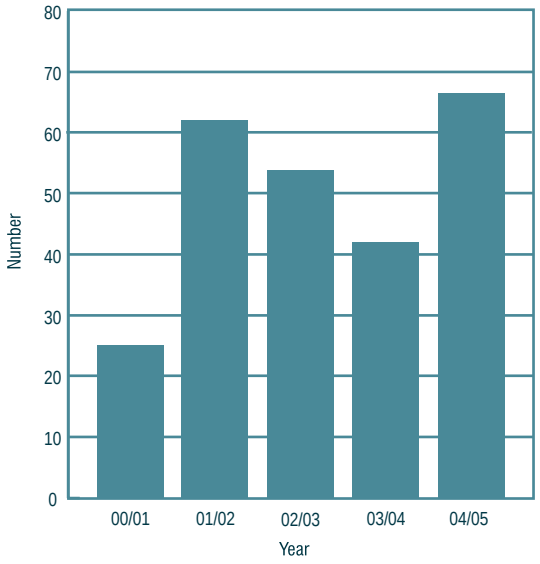
Figure 5 - Formal matters finalised — breakdown by subject group and two year comparison

Subject	03/04	04/05
General complaints about the public sector	1,390	1,386
Local government	865	833
Corrections	469	613
FOI	129	182
Community services	536	683
Workplace child protection	1,908	1,843
Police	3,316	4,367
Witness protection appeals and complaints, and controlled operations authorities audited*	-	422
Outside our jurisdiction	546	537
Total	**9,159**	**10,866**

* These matters are counted for the first time in 2004-05.

Figure 6 - Number of investigations finalised — five year comparison

Year	00/01	01/02	02/03	03/04	04/05
Total	25	62	54	42	67



This year we finalised more formal complaints and notifications about most subject categories, in total around 1,700 more than last year. See figure 5. During the year we finalised 67 formal investigations. See figure 6 for a comparison of investigations we have finalised over the past five years.

Matters outside our jurisdiction

We try to help people as much as we can, given the number of matters that we need to handle each year and our limited resources. In many cases we do not have any formal powers to look into the concerns people have raised but we will still try to help. With these matters, which we call 'outside our jurisdiction', we often refer people to an organisation that can help them, or give them information that may enable them to find a solution themselves. This year we received 7,194 of these types of matters as well as 2,662 requests for information. See figure 1.

Taking the initiative: proactive work

Over the years an important part of our work has been to closely scrutinise the agencies within our jurisdiction, identify areas for improvement and persuade them to improve the quality of their services by implementing our recommended changes. In conjunction with our work in responding to individual complaints, this work provides us with detailed information about the quality of services being provided to the public, including some of the most vulnerable members of our society.

We have specific functions of reviewing the circumstances of people in care, and reviewing the deaths of particular groups of people. We tabled our first reviewable deaths annual report in December 2004. This year we reviewed the circumstances of 138 people living in care and the circumstances in which 212 children and people with a disability died during 2004. In a significant number of cases we find that the quality of the services being provided to people in care and those that were provided to the people who died, can be improved. Please see chapter 7: Community services for further details.

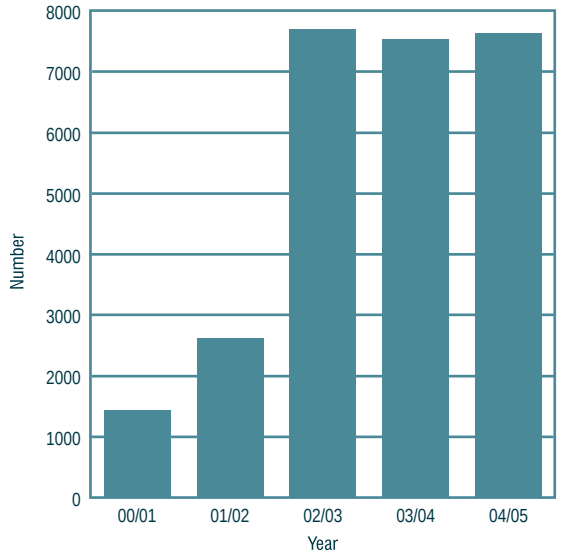
We also have a program to comprehensively examine the systems that agencies delivering services to children have in place to handle allegations against employees and to provide a safe environment for children. This program is discussed in detail in chapter 12: Workplace child protection.

A number of complaints about police officers are not notified to our office, mainly consisting of less serious matters that should be able to be properly managed by local area commands. We provide scrutiny over these complaints by using an 'audit' tool. We also audit police records as part of our legislative reviews. Figure 7 shows that since 2002-03 we have physically examined over 7,500 police records each year. For more details about our work with police complaints, see chapter 3: Police.

Every year our staff visit the premises of a range of agencies within our jurisdiction, from police stations and correctional centres to boarding houses and child

Figure 7 - Number of police records checked through an audit process – five year comparison

Year	00/01	01/02	02/03	03/04	04/05
No.	1,443	2,623	7,701	7,529	7,627



care centres. This year we visited 59 different regional towns throughout NSW. These personal visits give us an opportunity to observe how and why agencies undertake their work in particular ways. They allow us to better understand the circumstances in which people live and work, so that we can make realistic and practical judgments of the conduct and systems of agencies, and develop realistic and practical recommendations for improvements.

This year we made 39 visits to 26 correctional centres and two visits to each of the nine juvenile justice centres in NSW and one to the Broken Hill centre. See chapter 9: Corrections for more details. We also completed a comprehensive statewide audit of NSW Police's implementation of their *Aboriginal Strategic Direction (2003–2006)*, visiting over 30 regional townships, consulting over 200 members of the public and representatives from 165 government agencies. This work was reported in a special report to Parliament in April 2005. See chapter 3: Police for more details.

We also have a specific function of administering the official community visitors scheme. This year we coordinated over 2,700 visits by official community visitors to over 1,200 residential services. See chapter 7: Community services for more details.

Part of being proactive involves educating and training agencies in their responsibilities and in how they can improve the way they handle complaints about their service and operations. This year our staff delivered around 150 training sessions to 1,800 people working in public and community services, on topics relating to customer service and complaint-handling. We also published seven more fact sheets in our A-Z series on issues relating to good conduct and administration for public sector agencies.

Special reports to Parliament

We find that in most cases we are able to persuade agencies to adopt our recommendations without needing to make our findings public. However, occasionally it is in the public interest to report publicly our concerns about a particular issue or a particular agency. We have the power to make a special report to Parliament for this purpose. During 2004-05 we tabled two such reports:

- Improving outcomes for children at risk of harm – a case study: A report arising from an investigation into the Department of Community Services and NSW Police following the death of a child (December 2004)
- Working with local Aboriginal communities: Audit of the implementation of the NSW Police *Aboriginal Strategic Direction (2003–2006)* (April 2005)

These reports are discussed in further detail in chapter 3: Police and chapter 7: Community services.

Legislative reviews

Since 1998, the NSW Parliament has given our office specific functions to keep under scrutiny the implementation of 19 pieces of legislation conferring additional powers on police and correctional officers. These include laws that give police the power to use sniffer dogs to find drugs on members of the public, to establish a register of child sex abuse offenders and to issue 'on-the-spot' fines for some minor criminal offences, such as shoplifting.

This year we gave the relevant Minister our final reports on our review of the following five Acts:

- *Police Powers (Drug Detection in Border Areas Trial) Act 2003*
- *Police Powers (Drug Premises) Act 2001*
- *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*
- *Child Protection (Offenders Registration) Act 2000*
- *Police Powers (Internally Concealed Drugs) Act 2001.*

The Attorney General tabled our report on *Police Powers (Drug Premises) Act 2001* in September 2005. At the time of writing the other reports had not been tabled.

Members of our Aboriginal complaints unit (L-R), Vincent Scott, Kylie Parsons, Lynda Coe and Terry Chenery, tabling our special report with the President Legislative Council, The Hon Meredith Burgmann MLC

Projects with other agencies

During 2004-05 our office was involved in jointly organising the 5th Investigations Symposium with the ICAC, held in November 2004. We also worked on the South West Pacific Ombudsman Institutional Strengthening Project with the Commonwealth Ombudsman. We are a partner in a national research project called *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations* and are a leading participant in a NSW government working group involved in developing a comprehensive customer service framework for the NSW public sector.

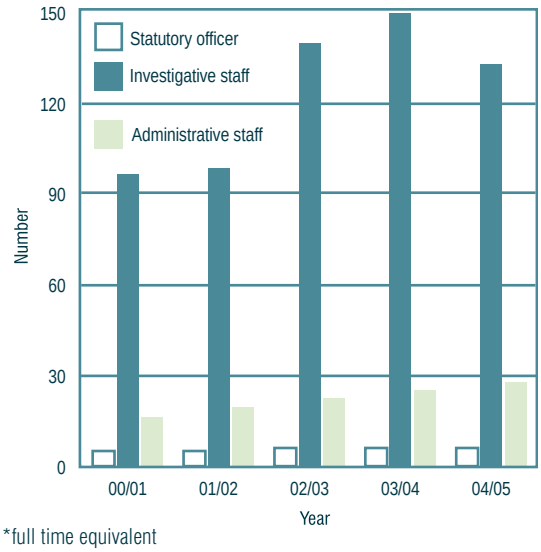
Our people

We have a committed team of 182 people working for our office on either a full or part-time basis. This equates to just over 166 full-time equivalent. See figure 8. Our collective experience gives us insight into the agencies we keep accountable and helps us to be a persuasive advocate for change.

Most of our staff are employed on a permanent full-time basis. We also have 42 part-time and 43 temporary staff.

Figure 8 – Staff levels – five year comparison*

	00/01	01/02	02/03	03/04	04/05
Statutory officer	5	5	6	6	6
Investigative staff	96.2	98.2	139.5	149.45	132.75
Administrative staff	16	19.3	22.5	25	27.8
Total	**117.2**	**122.5**	**168**	**180.45**	**166.55**



*full time equivalent

Awards

In September 2004, our Deputy Ombudsman Chris Wheeler was awarded the Excellence in Government Legal Service Award - 2004 by the NSW Law Society, in recognition of his contribution in assisting public officials to perform their duties within a legal framework.

Our 2003-04 annual report won a Silver Award in the Australasian Annual Report Awards. This year we achieved a 3 ½ star Australian Building Greenhouse rating for our offices by standards set by the Department of Energy, Utilities and Sustainability.

Vincent Scott
Assistant Investigation Officer, Police team

My name is Vincent Scott. I joined the office in early February 2005 as an assistant investigation officer in the office's Aboriginal complaints unit.

Before working here I was a home and community care development officer on the Mid North Coast for an Aboriginal organisation called Booroongan Djugun. I was employed there for 2 years. In that role I was required to provide training, resources, advice and support, while also facilitating monthly HACC forums to Aboriginal services licensed by the Department of Ageing Disability and Home Care.

Part of my current job is to analyse reports from police about complaints from the Aboriginal community against police officers. I enjoy working across the office with the various teams, visiting different agencies and community education.

My favourite part of this job is being able to be in a position that enables me to give advice to people when there is nowhere else to go.

1. Corporate governance

Statement of responsibility

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

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

Bruce Barbour
Ombudsman

The Ombudsman's performance statement

To retain the independence of the Ombudsman, the position is not responsible to an individual Minister. Although there is no formal one-on-one review of performance, the Ombudsman appears before the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission to answer questions about the performance of our office.

Statement of corporate purpose (effective 1 July 2005)

We aim to:

- Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery.
- Deal effectively and fairly with complaints and work with organisations to improve their complaint handling systems.
- Be a leading watchdog agency.
- Be an effective organisation.

Corporate planning

During the year we finalised our Statement of Corporate Purpose, which broadly outlines the strategic direction for our work. The statement categorises our work into four purposes – the first and second relate to our core work, the third is about benchmarking with similar agencies to improve our services and the fourth deals with our office as an effective organisation.

We developed detailed business and work plans outlining goals, strategies and activities to support each purpose. A small team was formed to draft and edit these plans, which included numerous contributions from across the office.

The Statement of Corporate Purpose and supporting business plans have been approved by the Ombudsman and became operational on 1 July 2005.

Program reviews

Our business plan supporting purpose four includes initially conducting a comprehensive review of how we currently perform our functions. This year we undertook reviews of each of our program areas — police, general, community services, child protection and corporate. Each Assistant and Deputy Ombudsman reviewed a program for which he or she was not directly responsible. The reviews looked at the functions and activities being performed in each team. They focussed on the time and resources devoted to each function and activity, the workloads of staff, backlogs of work, measurement of performance and outcomes, and management structures.

The reports are being considered by senior management and the Joint Consultative Committee. We anticipate being able to make improvements to the way our programs are run and implement changes in 2005-06.

Staff climate survey

This year we conducted a workplace climate survey asking all staff to give confidential feedback on their perceptions of the office and to identify areas where they believe change should be made. The survey addressed issues such as leadership, communication, equity, career opportunities and participation in decision-making. We expect to use the information gathered to inform policy development, training and staff development activities.

The survey was module-based, with the first module dealing with perceptions of the office and management as a whole. The remaining modules dealt with staff perceptions of their specific teams. We used the same climate survey used by other public sector agencies so that we could benchmark our results with them. We did however add some modules to the standard survey so that we could get feedback on the different levels of supervision and management within the office. We achieved an 81% response rate.

Across all areas of workplace climate, satisfaction among our staff was above the NSW public sector benchmarks. Out of 46 attributes that were benchmarked, the results for the office were above the benchmarks on 43 (93%).

Although the overall results were good, there are differences in satisfaction levels between teams, and some issues requiring training or policy development have been raised. At the time of writing we were still analysing the results and developing action plans.

Corporate governance

This year we started a project to develop a governance framework that brings together the policies, systems and processes we have to promote accountability, transparency, ethical practices, and identifies how the office is managed, directed and controlled. One benefit of having a robust system of corporate governance is that it assists the Parliament and the public to better understand how our resources are being used effectively and how we achieve our outcomes. We aim to have our new framework in place later in 2005.

Accountability

As an officer of the NSW Parliament, the Ombudsman is answerable to the Parliament (rather than the government of the day) through the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (commonly known as the PJC), which is made up of parliamentarians from different political parties.

People who are dissatisfied with our office will sometimes bring their concerns to the attention of the PJC. This year the PJC asked us for comments on a number of issues that the public and interest groups raised with them. We also appeared before the PJC at our 12th general annual meeting in November 2004 to answer a range of questions about our work.

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

Corporate service costs

Although we are independent of the NSW government, as a publicly-funded organisation we aim to meet the standards that are expected of all public sector agencies. We are assessed annually by the Corporate Service Reform Unit (within the Department of Commerce). This year it was found that our corporate service costs were significantly better in most areas when compared on a dollar or staff ratio basis than other agencies of our size (agencies up to about 300 staff).

Monitoring performance and risk management

Security accreditation

We manage a variety of risks including those associated with the physical security of our staff and our office, the security of the confidential information we hold and the integrity of our information technology systems. We have in place corruption prevention and fraud control measures, disaster recovery plans and programs for the preventative maintenance of equipment. There are vigorous checks and balances in areas of high risk, such as where money, staff entitlements or our computer network could be compromised.

Since our accreditation under the Australian information security standard AS7799 in December 2002, we have continued to maintain and upgrade our information security system to comply with changes in the standard. In 2004-05 we continued to be audited every six months. The auditors found that we comply with the standard.

This year we also developed a policy called the Risk Assessment Policy — Information Security to ensure that staff conduct risk assessments for any alterations to information systems and related security protocols. We were accredited to the new standard (AS7799.2) in August 2005.

Performance indicators

We measure our timeliness and set standards for the percentage of final investigation reports in which we make systemic recommendations for improvement. We also track whether those recommendations have been implemented. Because of differences in the nature of the work we do in each program area, we have separate performance measures for each team. In 2005-06 we intend to comprehensively review our performance indicators as part of implementing our new statement of corporate purpose.

Timeliness

When we receive complaints and notifications, we need to do an initial assessment to decide what action we will take. For complaints we deal with directly we have a number of options, including declining a complaint, referring it back to the agency concerned for local resolution, making preliminary inquiries or investigating. With police complaints and child protection notifications, we need to decide whether the matter requires us to investigate, closely monitor the agency's response, or whether we can wait to assess their final report.

All our teams have in place a variety of timeliness performance measures to ensure that files are assessed quickly and complaints are acknowledged promptly. These measures are a combination of team-wide indicators and goals that are set for individual members of staff. For example, our general team aims to assess 90% of complaints that are made about public sector agencies (including councils, corrections and FOI) within two working days of receiving them, and our child protection team aims to assess child protection notifications within an average of five working days of receiving them. This year we met these targets.

The teams also have in place performance measures to ensure that files are closed in a timely fashion. For example, community services division investigation officers must close a certain number of files every month, depending on their position. This year they were able to meet their targets. Another example from our general team is that they aim to finalise their handling of individual complaints within an average time of seven weeks. Within that time, the complaint may be investigated or otherwise resolved. This year the average time for finalising general team complaints was 6.2 weeks, more than meeting our target.

The time it takes to close files relating to police complaints and child protection notifications is very different from complaints we handle directly. Where our role is to oversee another agency's handling of a matter, the turnaround time is largely dependent on how long it takes the agency to investigate or otherwise resolve the matter. We have, however, put in place performance measures to make sure that once we receive an agency's final investigation report, we assess whether the matter has been satisfactorily handled in a timely fashion. One example is that our child protection team aims to assess final investigation reports from agencies within 30 working days of receiving them. This year it took an average of 35 days, which could be due to the large number of final reports that we received this year relating to matters notified last year.

Recommendations for systemic improvement

Although a lot of our work involves resolving individual complaints and dissatisfaction, we most often decide to investigate matters where they raise concerns of a systemic nature. At the end of this process, we aim to make practical recommendations for systemic improvements that will be accepted by the agency concerned.

Across all teams, we aim to include in an average of 90% of final investigation reports recommendations for changes to law, policy or procedure. This year all our teams met this target, except in relation to

FOI complaints, where in a number of the reports we prepared we focused on recommending a change to the agency's substantive decision, and no recommendations about systemic issues were appropriate.

This year we were encouraged by the acceptance of the vast majority of our recommendations (86.2% of recommendations made in the general team area, 95% of recommendations made to NSW Police and 100% of those made to DoCS, DADHC and in our child protection area).

Internal structures and systems

Office structures

During 2004-05 we made structural changes in the way we:

- manage our work in reviewing deaths of people and in providing training and education about community services
- process complaints and inquiries about community services
- consult official community visitors in the administration of the scheme
- manage our work involving reviewing legislation and completing projects in the police area, and in our personnel area.

We also appointed a Youth Liaison Officer.

Training and development

This year our staff were trained in a variety of skills, including managing difficult people, investigations, Microsoft software applications and on-line legal research tools. They attended workshops and courses on topics such as the use of DNA in evidence, telecommunications interception inspections, cognitive interviewing and police search and arrest powers. We also give support to members of staff undertaking a variety of external courses, including postgraduate and undergraduate degrees and diplomas, TAFE courses and courses to obtain professional qualifications.

Balancing our books

Finances

We understand that NSW faces tight fiscal conditions, with the onus on agencies to improve efficiency and redirect funds to front-line services. We are supportive of this policy and have continually improved our efficiency over the past five years. We have redirected resources to front-line services. In an environment of static complaint numbers our efforts could have been enough to cover the public sector salary increases and even the 'forced' or 'global' savings requirements imposed in recent budget allocations.

We have been advised that our 2006-07 budget will be cut by 1% or $164,000. This is on top of a similar cut in 2005-06 and a 3% cut the year before. These forced savings requirements are significant when accumulated, particularly when we have had to absorb pay increases to staff that have not been funded by government. The loss to the office of funding due to the government imposed 'savings' since 2002-03 is:

- 2002-03 and every year thereafter: $34,000
- 2003-04 and every year thereafter: $58,000 – cumulative amount $92,000
- 2004-05 and every year thereafter: $500,000 (3%) – cumulative amount $592,000
- 2005-06 and every year thereafter: $164,000 (1%) – cumulative amount $756,000
- 2006-07 and every year thereafter: $164,000 (1%) – cumulative amount $920,000

Complaints about police increased over 23% in the 2004-05 financial year while complaints about community services increased by over 31%. Complaints about public sector agencies remained constant, despite our efforts to reduce them by giving agencies the tools and support they need to handle more complaints locally.

With continual and substantial increases in all areas of our work together with budget cuts and unfunded pay increases, we are concerned that our ability to thoroughly handle all aspects of our core work may be compromised.

Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. They also make provision for our superannuation and long service leave liabilities. There is a breakdown of revenue generated, including capital funding and acceptance of employee entitlements, in figure 9.

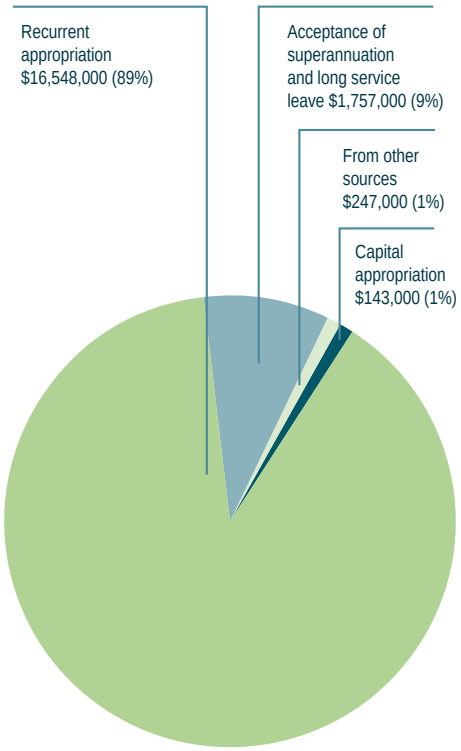
We started the year with a cut to our budget of $500,000 (see above). However, funding was provided for new functions including an enhancement to take on the additional complaint handling work formerly performed by the Inspector General of Corrective Services. We sought additional funding during the year to cover the costs of new legislative reviews and the Ombudsman's salary increases. We received an additional $124,000 to cover public servants pay increases.

We returned $113,000 to the consolidated fund, as there was a delay in the start of four of our legislative reviews. Funding was specifically provided for this purpose and we negotiated with Treasury for the return of those funds in future financial years.

We generated $180,000 of revenue through the sale of publications, bank interest and fees for service training courses for other public sector agencies. We also used $67,000 of a transfer payment from the Department of Juvenile Justice for our review of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*. See figure 10 and Appendix I.

Figure 9 - Total revenue 2004 - 2005*

Revenue	
Government	
Recurrent appropriation	$16,548,000
Capital appropriation	$143,000
Acceptance of superannuation and long service leave	$1,757,000
Total government	**$18,448,000**
From other sources	$247,000
Total	**$18,695,000**

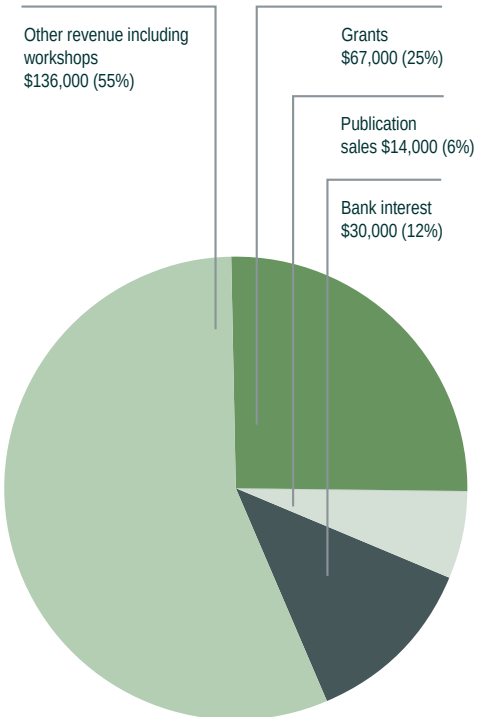


*Including capital funding and acceptance of employee entitlements

'… thank you for your presentation...The feedback that I received was that it was very well received and extremely relevant to their future role. I would also like to commend you on the manner of presentation as it generated excellent participation and engagement. Again thank you and many thanks for a great session.'

Figure 10 - Revenue from other sources

Revenue	
Grants	$67,000
Publication sales	$14,000
Bank interest	$30,000
Other revenue including workshops	$136,000
Total	**$247,000**



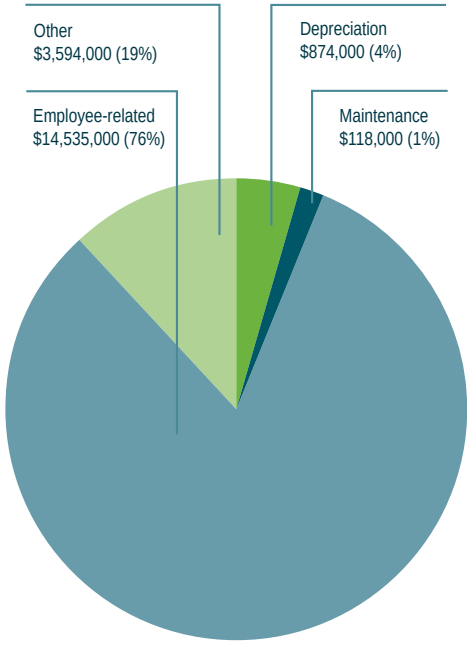
Expenses

Most of our revenue is spent on employee-related expenses. These include salaries, superannuation entitlements, long service leave and payroll tax. Last year we spent more than $14.5 million — 76% of our total expenditure — on employee-related expenses.

The day-to-day running of our office costs over $3.7 million. This includes rent, postage, telephone, stores, training, printing, travel and maintenance. Depreciation of equipment, furniture and fittings and other office equipment was $874,000. For more details please see figure 11 and Appendix I.

Figure 11 - Total expenses 2004 - 2005

Expenses	
Employee-related	$14,535,000
Depreciation	$874,000
Maintenance	$118,000
Other	$3,594,000
Total	**$19,121,000**



Patrick Broad
Principal Investigation Manager, Police team

My name is Patrick Broad. I joined the office in October 2003 as the principal investigation manager of the police team.

Prior to that I worked as a solicitor with the Office of the Director of Public Prosecutions. The skills I developed in that role, such as analytical skills and experience in dealing with police, have been a considerable help in my current position.

My role has changed since I first arrived. I am presently responsible for supervising investigation officers in relation to serious complaints. I also play a role in drafting investigation notices and reports that are forwarded to NSW Police and the Minister.

I also look at ways of improving some of our practices in relation to the oversight of NSW Police. I have also undertaken some cross-office investigation work with investigation officers in the general team, which I have enjoyed.

I am impressed with the way the office is run. I enjoy the work and notice that it is a happy place to work.

3. Police

Introduction

Although the Ombudsman has been dealing with complaints about public sector agencies since 1975, our jurisdiction to deal with police complaints did not start until 1979. Since then our role has expanded and changed, and today we are the primary oversight agency for complaints about NSW Police.

In this chapter we provide an overview of our work in the police complaints area in 2004-05, and outline some of the specific work we have done with NSW Police to improve:

- how they handle complaints about their officers
- their operational systems
- outcomes for specific groups, such as Aboriginal communities and young people.

We also report on our legislative reviews of new police powers.

This year an important issue for us was the need to refine our complaint-handling processes to deal with 500 more police complaints than we had in 2003-04. We have been able to manage this increased workload, finalising over 4,300 police complaints — this included overseeing 2,400 investigations by NSW Police.

We have not received additional resources to deal with the additional work. Although we have remained focused on our core business activities of oversight and review, there is a limit to the efficiencies that can be made if complaints remain at the present level or increase. If additional resources are not made available at some point, our capacity to oversee serious matters may be compromised.

The police complaints system

Categories of complaints

Through 'class or kind' agreements, the Ombudsman and the Police Integrity Commission (PIC) agree on which complaints must be notified and which complaints police commanders can deal with themselves at a local level. These agreements were simplified from 1 October 2004 to reduce the categories of complaints from nine to three.

Figure 21 provides a brief description of the way complaints are categorised and dealt with.

There are many good reasons why NSW Police, like all other government agencies, are required to deal with most of the complaints about their own officers. NSW Police have to take responsibility for the conduct of individual officers and the way their organisation is run. Learning from complaints is one part of managing operations effectively. Police commanders are usually best placed to deal immediately with low level management issues in the workplace and, for more serious complaints, police officers have the experience in criminal investigations needed to investigate complaints thoroughly.

Our expectations

In our oversight of police complaints, we expect that commanders will:

- fully investigate serious complaints and respond appropriately where allegations are substantiated, including taking criminal proceedings and management action

Figure 21 - The police complaints system

Category of complaint	Description	How a complaint is handled
Category 1 complaints - these must be notified to the PIC and the Ombudsman.	These are the most serious complaints. For example, complaints involving allegations of perjury, interfering with investigations, the manufacture or supply of illegal drugs, or an officer committing an offence punishable by a sentence of five or more years in prison.	The PIC can determine that they will investigate or oversee a category 1 complaint. However historically the PIC has done this in only a small number of cases. For the vast majority of category 1 complaints, the police investigate and we oversee their investigation. In 2003-2004 we oversaw over 95% of all category 1 complaints and over 99% of all notifiable complaints.
Category 2 complaints - these must be notified to the Ombudsman.	These are complaints about other serious matters. They include complaints of criminal conduct, improper arrest and detention, and police action or inaction resulting in death, injury or significant financial loss.	Investigated by police with rigorous review by the Ombudsman.
Local management issues (LMIs).	These are less serious complaints. They include complaints about poor customer service, and workplace issues such as punctuality.	Dealt with by local commanders independently. We examine the way these complaints are handled using tools such as audits.

- resolve less serious matters quickly through brief inquiries and alternative dispute resolution
- fix any flawed systems or processes that contribute to poor police conduct
- be fair to complainants and police officers who are the subject of a complaint.

We expect that honest mistakes will not be punished and police officers will be given appropriate support and training to learn from their mistakes.

Complaints we handled this year

This year, we received 3,076 inquiries from members of the public where we gave advice or information about police complaints. In some cases we contacted commanders on behalf of complainants. In others we put the complainant directly in contact with a police supervisor who could help resolve the situation.

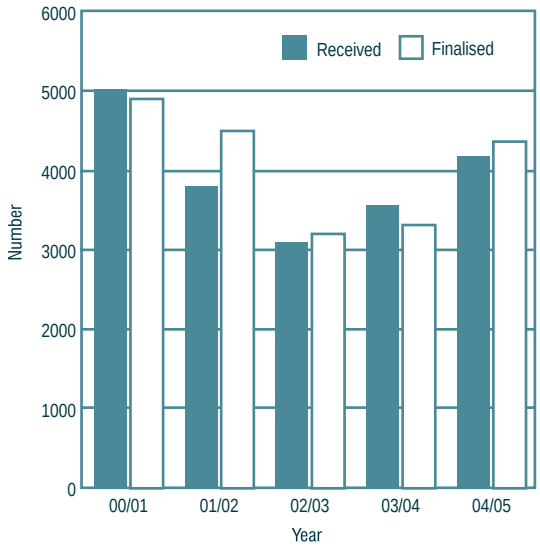
We received 4,179 written complaints, significantly more than last year. This includes complaints made directly to us by members of the public and by police officers, and complaints that were referred to us by NSW Police and the PIC. We finalised a total of 4,367 complaints in 2004-05 which is 30% more than last year. Figure 22 shows the numbers of complaints we have received and finalised over the past five years.

This year we anticipated that the actions of police might be complained about following the so-called Macquarie Fields riots, a highly publicised event. We have been following NSW Police's handling of the incident and related complaints closely. See case study 3.

'Thank you very much for the attention you have given this matter, which has led to its prompt resolution.'

Figure 22 - Formal complaints about police received and finalised - five year comparison

	00/01	01/02	02/03	03/04	04/05
Received	5,022	3,804	3,099	3,565	4,179
Finalised	4,904	4,501	3,204	3,316	4,367



CaseStudy3

Following a police pursuit in Macquarie Fields on 25 February 2005, a stolen car collided with a tree killing two teenagers. A third person, believed to be the driver, escaped. This incident sparked what are now known as the Macquarie Fields riots.

After the incident, we made contact with NSW Police to find out the procedures they had in place to identify and manage any new complaints arising from these events. We were kept informed of the development of these procedures and were satisfied that they were appropriate.

NSW Police then told us about several complaints they were investigating that were related to the Macquarie Fields riots. These included:

- a complaint into why there was a delay in responding to a '000' emergency call when an assault at Macquarie Fields was reported
- a complaint where a person needed hospital treatment after allegedly being struck with a police baton during the riots
- a series of complaints about police inappropriately releasing information.

We will review the quality of the police investigation into these complaints and remain in close contact with NSW Police to ensure that we are made aware of any other related complaints.

Who complained and what they complained about

Figure 23 shows the complaints we received from police and members of the public in the past five years. Complaints from police officers have doubled since 2001-02, from 621 to 1,215. In our view this trend would not have occurred unless officers had confidence in the complaints system. Complaints from members of the public have also increased.

Figure 24 and Appendix A show the kinds of allegations involved in the complaints we handled this year. The number of allegations is larger than the number of complaints received because a complaint may contain a number of allegations arising from a single incident or a number of separate incidents. For example, a person arrested may complain to us about unreasonable arrest and assault. For the 4,367 complaints we finalised this year, 9,058 allegations were made.

Figure 25 shows the action taken in response to the complaints we finalised this year. There were 2,440 complaints where the matter was investigated by police and we oversaw the investigation. We also oversaw the way police conciliated 291 matters. There were 768 complaints that we assessed as raising a local management issue that required direct action by the local command concerned.

We decided that 868 matters did not require any action. There are many reasons why a complaint might not require action — for example, there might be alternative redress available (such as court action) or the incident happened too long ago.

Figure 23 - Who complained about the police? Formal complaints received in 2004–2005 broken down into complaints from the public and those from other police officers

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

	00/01	01/02	02/03	03/04	04/05
Police total	879	621	783	952	1,215
Public total	4,119	3,183	2,316	2,613	2,964
Total	4,998	3,804	3,099	3,565	4,179

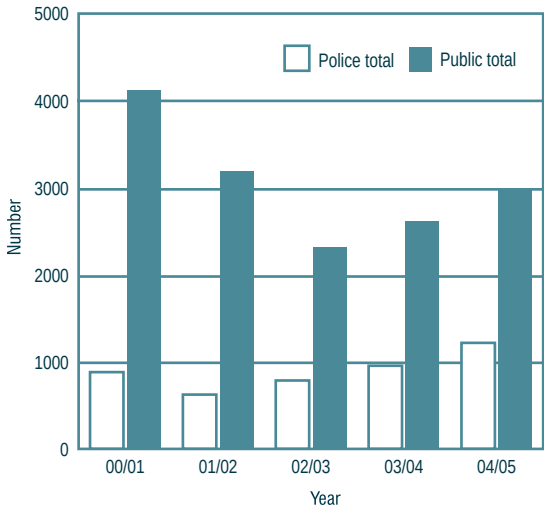


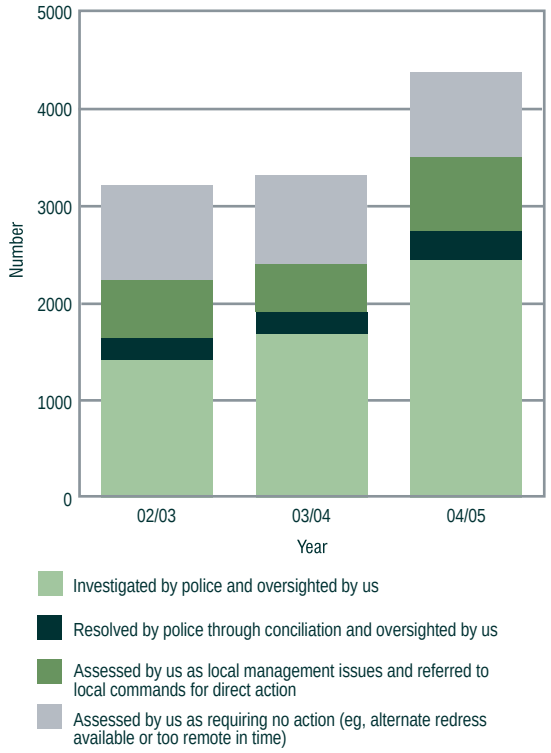
Figure 24 - What people complained about in 2004–2005 (police)

Each individual complaint that we handle may contain a number of allegations about a single incident. For example, a person arrested may complain to us about unreasonable arrest, assault and failure to return property. This figure lists these in categories. Please see Appendix A for more details about the action that NSW Police took in relation to each allegation.

Type of allegation	No of allegations
Criminal conduct	1,077
Assault	756
Investigator/prosecution misconduct	1,128
Stop/search/seize	409
Abuse/rudeness	518
Administrative wrong conduct	361
Breach of rights	616
Inadvertent wrong treatment	52
Information	782
Other misconduct	3,359
Total	**9,058**

Figure 25 - Action taken in response to formal complaints about police that have been finalised - three year comparison

	02/03	03/04	04/05
Investigated by police and oversighted by us	1,412	1,678	2,440
Resolved by police through conciliation and oversighted by us	225	228	291
Assessed by us as local management issues and referred to local commands for direct action	601	491	768
Assessed by us as requiring no action (eg, alternate redress available or too remote in time)	966	919	868
Total complaints finalised	**3,204**	**3,316**	**4,367**



Quality of police investigations of serious complaints

We generally oversee the way that police handle complaints of serious police misconduct by reviewing the NSW Police report on their completed investigation. Our review might take into consideration an officer or command profile we have developed based on previous complaints. For example, see case study 4.

We find that the police generally investigate serious matters well. However we do identify flaws or inadequacies in the handling and investigation of some complaints. Sometimes the way the police handled a complaint was deficient (for example, see case study 5), the investigation itself was poor, or the management action taken was inappropriate (for example, see case studies 4 and 6). Of the investigations that we found to be deficient this year, 165 (or 75%) had been poorly investigated and in 57 (the remaining 25%) the management action taken was inadequate. Of all the local area commands in NSW, 23 (or 28%) did not have any deficient investigations at all.

If we decide that an investigation is deficient, we can take a number of steps to make sure the deficiencies are remedied. We may also take action to ensure the same mistakes do not happen again. This year, NSW Police remedied 80% of the deficiencies we identified. Sometimes a deficiency might not be remedied because the matter has already been resolved or because it is too late to do anything about it.

CaseStudy4

In April 2003, an officer was convicted of a serious assault of his de facto partner. He was sentenced to a two-year good behaviour bond. NSW Police considered the possibility of dismissing him but instead issued him with a formal warning notice, put him on a one year conduct management plan, required that he attend anger management classes and see a psychiatrist. The officer was also put on restricted duties.

We received the report of the investigation in April 2004. When reviewing the investigation, we consulted a complaint profile of the officer we had developed which showed that he had previous complaints for domestic violence against a former partner.

We felt the way NSW Police had managed the officer was inadequate in light of his complaint profile. We were also concerned about how long it took to finalise the complaint.

NSW Police responded to the issues we raised, but we still held concerns about the way the officer was being managed. We asked them to provide us with medical reports about the officer that had been prepared as a result of the complaints made against him.

In December 2004, another complaint against the officer alleged he had assaulted his new de facto partner. He has been charged for this assault and at the time of writing the matter is still before the courts.

The officer is also being investigated for perverting the course of justice and NSW Police are considering whether criminal charges should be laid.

He is currently suspended from duty and we continue to review the progress of all complaints against him.

CaseStudy5

In June 2005 the PIC recommended that consideration should be given to the prosecution of Deputy Commissioner Madden and Assistant Commissioner Parsons for breaching the *Telecommunications (Interception) (New South Wales) Act 1987* (the Telecommunications Act), by passing on information to the CEO of a football club that the police had obtained through a phone tap.

The original complaint was made in April 2004 by a member of the public who observed, through media reports, that Deputy Commission Madden had possibly breached the laws that govern police use of phone taps.

In July 2004 we were notified of this complaint and of NSW Police's decision that it did not need to be investigated. We immediately requested the information on which this decision was based.

When we reviewed this information, we had two major concerns. Firstly, the police officer who recommended that the complaint did not need to be investigated reported directly to Deputy Commissioner Madden. Secondly, based on records available, we felt that there were sound reasons why an investigation might be required.

In October 2004, we directed NSW Police to investigate the complaint. We advised that it was not appropriate that a police officer who reported directly to Deputy Commissioner Madden should handle the complaint, given the clear conflict of interests. We also expressed concern at how long it was taking NSW Police to deal with this complaint.

After numerous contacts with police about the investigation, the Commissioner wrote to us in April 2005 and said that he was referring the complaint to the PIC because he had received legal advice that the officers involved may have committed criminal offences.

When the PIC investigated the matter, they found that Deputy Commissioner Madden and Assistant Commissioner Parsons had made significant errors of judgment. These warranted the consideration of serious disciplinary action and prosecution for possibly breaching the Telecommunications Act.

As a result of this complaint, we are currently working with NSW Police on their internal policies to make sure that complaints about senior police are not dealt with by officers who report directly to them.

CaseStudy6

A man was arrested for offensive language by several officers, including a senior constable. At the station, while the man was being restrained by two officers, the senior constable punched him repeatedly in the face. The senior constable was later found guilty of assault and received a six-month suspended sentence.

In sentencing the senior constable, the magistrate strongly condemned the assault but decided to impose a suspended sentence rather than a custodial one — because he expected NSW Police to take strong disciplinary action.

NSW Police considered whether the senior constable should be dismissed, as is required for all officers who have been charged. However they decided not to dismiss him and instead gave him a formal warning notice.

It was not clear to us whether NSW Police had considered the court's comments when deciding what action to take. We decided to investigate the police's investigation and found that they had not considered the court's comments. They were of the view that the suspended sentence was an appropriate penalty. In addition, their current policies prevented them from taking any further action because the senior constable had already been formally warned.

We told NSW Police that the court's comments were necessary to understand both the nature of the conduct and the reasons for the penalty imposed. Their failure to consider all the relevant material before deciding on action resulted in a manifestly inadequate response.

At our request NSW Police clarified their policies and procedures so that relevant material from court proceedings will now be considered when dismissal is contemplated. They also now require that the Commissioner himself automatically consider officers for dismissal if they have been charged with offences related to assault, domestic violence, drug use, high range prescribed concentration of alcohol, and offences carrying a sentence of imprisonment for five years.

We advised NSW Police that we will be closely monitoring matters where an officer's nomination for dismissal is still pending when the court case is concluded.

Direct investigations

If we have concerns, we may decide to investigate the way the police have handled a complaint. This year we conducted eight investigations of this kind. Please see case studies 6 and 7 for examples.

We also directly investigate aspects of NSW Police's complaint-handling systems. This year, we conducted 23 of these investigations.

Monitoring complaint investigations

Sometimes we decide it is in the public interest to 'monitor' a complaint investigation by keeping a close watch on events as they unfold. This can involve continuously reviewing and providing advice to police on the way they are conducting their investigation, and sitting in on interviews.

We monitored the investigation of 26 complaints this year. See case study 8 for an example.

CaseStudy7

In April 2002, NSW Police discovered that 12 members of a specialist police group may have been falsely claiming travel allowances. These officers were required to work in various locations all over NSW and were given a certain amount of time to complete their task. It appears some officers were finishing their work earlier than expected, but were recording that they returned home at the later expected date. We were told that some of these officers even met at a particular place on the day they were supposed to be finished and 'returned home' together to give the illusion that they had all finished at the same time.

We decided to directly investigate the way that this complaint was handled by NSW Police because we had several concerns. These included the fact that we were not told about this complaint until seven months after it was made, and that the complaint was not dealt with as an investigation of criminal behaviour. It also appears that no serious management action had been taken against the officers involved.

We are currently waiting for the police to respond to our questions about the way this complaint was handled.

CaseStudy8

In October 2004 there were media reports that the acting commander of traffic services had purchased shares in a company that made speed cameras, indicating a potential conflict of interests. We decided to monitor the police investigation because of the serious public interest issues at stake.

At our request, the police investigation considered the capacity of senior officers to identify conflicts of interests and the obligation to report them. We reviewed the investigation plan proposed by NSW Police and also attended a number of interviews with civilian witnesses.

The police investigation found that the acting commander sold his shares in the company after he learned of a potential conflict of interests. However he did not tell anyone in NSW Police about this. There was no actual conflict of interests as the company had no contracts with NSW Police and the acting commander could not influence contractual relationships between the company and the RTA (who buy the speed cameras). The officer is receiving education and mentoring about conflicts of interests.

As a result of this investigation, NSW Police is considering a requirement that senior police submit a statement of financial interests. This complaint also led us to begin a project reviewing the conflict of interests policies of a number of large government agencies that enter into a significant number of contracts, or contracts of a significant dollar amount, with the private sector.

After the complaint investigation

If a police officer is found to have engaged in misconduct, NSW Police can take management action against the officer. Figures 26 and 27 show the number of complaints for which police took management action and the type of action they took.

Sometimes a complaint can result in a police officer being charged with a criminal offence. If this happens, a panel of senior police make recommendations about the officer's ongoing management. Officers involved in the most serious complaints are considered for dismissal by the Commissioner personally. Case study 9 is an example of police taking appropriate action against two officers who committed a criminal offence.

In the past year, there were 78 complaints finalised that involved one or more police officers being charged with a criminal offence. In all, 81 officers were charged and a total of 155 charges were laid. There has been a rise in the number of complaints leading to charges this year. A significant number of these charges were the result of complaints by police officers. Figure 28 shows these figures for the past five years.

Figure 29 shows the ranks of the 81 officers who were charged — over 80% were of or below the rank of senior constable. Figure 30 shows that police were mostly charged with assault, drink driving or other driving offences such as negligent driving.

Figure 26 - Action taken by NSW Police following complaint investigation - five year comparison

	00/01	01/02	02/03	03/04	04/05
No management action taken	1,487	1,341	926	1,072	1,480
Management action taken	1,080	787	486	606	960
Total investigation completed	**2,567**	**2,128**	**1,412**	**1,678**	**2,440**

Figure 27 - Common NSW Police management outcomes to complaints about police - five year comparison

This figure shows the more common management outcomes for primary complaint issues (as a proportion of all management outcomes). Performance agreements have been included for the past two years, and represent a sophisticated approach by NSW Police to managing complaint issues.

Outcome	00/01	01/02	02/03	03/04	04/05
Management counselling	43%	40%	36%	44%	42%
Training – command	13%	12%	10%	6%	6%
Training – officer(s)	7%	7%	7%	8%	7%
Change in policy or procedure	9%	9%	10%	6%	4%
Supervision increased	5%	6%	9%	7%	7%
Performance agreement	-	-	-	9%	10%

Figure 28 - Police officers criminally charged - five year comparison

	00/01	01/02	02/03	03/04	04/05
No. of complaints leading to charges	76	71	61	54	78
No. of officers charged	80	73	62	52	81
Total charges laid	129	121	123	95	155
Officers charged following complaints by other officers (% of no. of officers charged)	52(65%)	40(55%)	43(69%)	40(77%)	63(78%)

'Thank you to both of you and anyone else who helped. If you hadn't have helped I don't know what would have happened.'

Figure 29 - Rank of officers charged

Rank	Number
Probationary constable	12
Constable	19
Senior constable or Detective senior constable	37
Sergeant or Senior sergeant	10
Inspector	3
Total	81

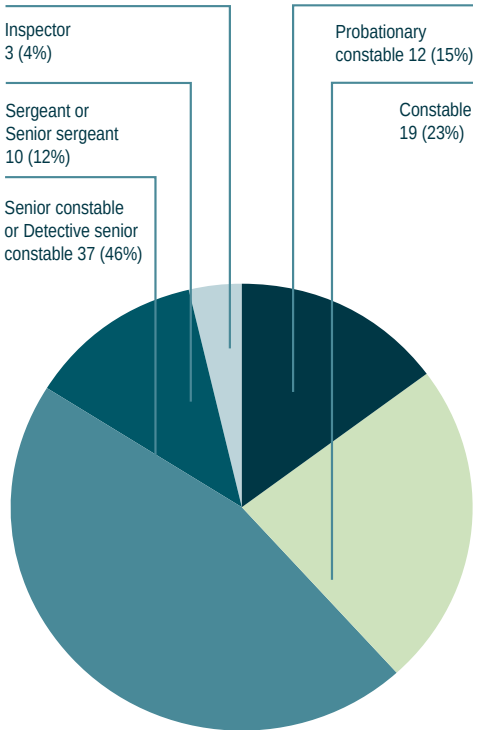


Figure 30 - Types of charges

Type of charge	Number of charges
Assault	43
PCA	22
Driving related	20
Sexual assault (all against one officer)	18
Fraud	7
AVO	4
Firearm related	4
Malicious damage	4
Carnal knowledge of a girl under 10 or between 10 and 16 (all against one officer)	4
COPS access	2
Fail to quit licensed premises	2
Give false evidence under oath	2
Offensive behaviour	2
Owner of an attacking dog	2
Other	19
Total	155

‘I am happy to confirm that this matter has now been satisfactorily resolved thanks to the intervention of your office. I appreciate very much the time and trouble your office has taken with my matter and I am very pleased with the outcome.’

CaseStudy9

In February 2004, a United States Customs investigation identified 717 Australian citizens who had used credit cards to access child pornography on the internet. This information was provided to the Australian Federal Police who then notified state police. NSW Police set up Operation Auxin to investigate and prosecute the individuals identified in the US investigation.

Two NSW police officers were identified through this operation and both were charged with possessing child pornography. It was alleged that both officers used their credit cards and email accounts to access a child pornography site and remained a member of the website for 30 days. One officer's house was searched and his computer seized.

One officer pleaded guilty and was dismissed from NSW Police. The other officer pleaded not guilty. His case is still before the courts and he is currently suspended from duty.

'Thankyou for your advice and assistance in these complex and frustrating matters.'

CaseStudy10

In July 2004 a man contacted us, distressed that a criminal record check conducted by a prospective employer indicated that he had been charged with rape. The complainant said that it was a case of mistaken identity. He claimed that another man had been using his name as an alias for many years.

The complainant claimed that he was arrested for offences committed by this other man in 1982 and 1989, but the charges were dropped after fingerprint comparisons revealed that they were different people.

The prospective employer told the complainant that they had been advised that he could not work with children because of his criminal record. As a result, he went to his local police station and requested another fingerprint comparison. Then he contacted us.

We were concerned that, according to the complainant, NSW Police had been on notice since at least 1982 that his name was being used by another man as an alias and their failure to act on this information had affected him adversely.

At our suggestion, the NSW Police criminal records unit created permanent warnings to alert police that the two men were not the same person. They also ensured that prospective employers knew that the complainant's criminal record did not include rape charges. NSW Police agreed to refund the cost of the fingerprint comparison and provide a written apology. The complainant is now working in the job he was originally offered.

Conciliations

Police conduct the majority of conciliations but we can choose to conciliate a complaint ourselves. We might decide to do this if we believe we can speed up the resolution of the complaint by talking to all parties or by bringing parties together.

See case study 10 for an example.

Improving police complaint-handling

In addition to reviewing individual complaints, we focus on the systems that NSW Police have in place to handle complaints. Throughout the year, we identified a number of improvements that could be made.

Delay

Addressing delay is a vital part of our work. Undue delay in resolving or investigating a complaint can cause a great deal of stress for the complainant and the police officers involved. It also means problems can be left unresolved and police officers unfairly disadvantaged.

NSW Police sometimes take an unnecessarily long time to notify us of a complaint or to complete an investigation. They may also fail to let us know how they have dealt with a complaint until some time after it has been finalised. In a small number of cases, police delay responding to our specific requests for more information. This can frustrate our ability to properly oversee a complaint because there is a risk that, if police have made the wrong decision, it will be too late for our office to effectively intervene by the time we receive the information.

In our experience some, but not all, delays are beyond the control of NSW Police. Over the years our work in this area has helped NSW Police to pinpoint where delay is occurring and why, and they continue to improve their performance in this area.

To make sure that NSW Police stay on track, we review timeliness trends every three months. We have

also taken some special measures in the past year to address police delays in complaint investigations.

Our requests for information

In November 2004, we notified NSW Police that there were 15 matters where they had taken more than three months to respond to our letters requesting further information or identifying deficiencies in investigations. By March 2005, we had received responses for most of these complaints. Since we initially raised the issue, NSW Police have made some changes to prevent this kind of delay from occurring. In particular, the Deputy Commissioner has agreed to follow up matters individually if a response is not received in a timely manner.

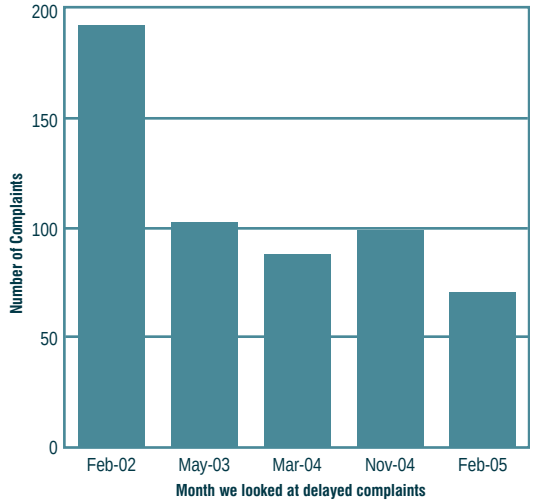
No action after six months

In the past three years, we have regularly looked at police investigations that have been going on for six or more months to see if there are any good reasons for the delay. Our first review in 2002 identified almost 200 of these complaints. Figure 31 shows that, since then, the number of complaints delayed for no good reason has more than halved.

In the past year, we have found that causes of delay have usually been legitimate — such as the investigators needing to wait for the outcome of a court case before proceeding. However, NSW Police were still failing to tell us when a delay was occurring and why.

Figure 31 - Number of complaints where NSW Police has not taken any action, or not advised us about why the delay is occuring for more than six months

Month	Number of complaints with no action
Feb-02	193
May-03	103
Mar-04	88
Nov-04	99
Feb-05	71



A series of measures have recently been introduced to improve this situation. For example, there is now a complaint management team at each command dedicated to looking at the progress of complaint investigations. We have contributed to the development of standard operating procedures for these teams. Commanders are also required to provide a progress report to us every 90 days.

We will continue our work in this area next year.

A targeted approach

In 2003-04 NSW Police finalised about 40% of complaints within 90 days. This was a significant drop from over 60% finalised within that timeframe in 2001-02.

To see if there were any systemic reasons for this drop, we wrote to those commands that had less than 30% of all complaints finalised within 90 days to examine their complaint-handling more closely. In March 2005 we produced a paper for NSW Police based on the responses received and, following discussions with the police, have made several recommendations.

These include that they:

- review the role of the executive officer — the administrative lynch pin of complaint-handling at each local command
- increase training and support for new and acting local area commanders on their role in complaint management
- develop new procedures to reduce the time commands spend on processing minor complaints.

Treating both complainants and police fairly

In overseeing police complaints we are concerned to ensure fairness for both the complainant and the police officer involved.

Police officers exercise powers in their job that might otherwise be unlawful, such as the use of force. Proper investigation of complaints and independent civilian oversight is essential to hold police officers accountable for their actions, and prevent them from abusing that power. Case study 11 is an example of complaint where we ensured that a complainant was treated fairly.

It is important to make sure that the complaints system is not abused, or misused against police officers, and appropriate action can be taken against a person who makes a false complaint. See, for example, case study 12.

It is part of our job to make sure that police officers are treated fairly. We have demonstrated this in a number of ways in the past year. For example, since 2003 we have raised serious concerns about officer welfare in the complaints process. This has led to NSW Police finalising a 'support package' for police officers who are the subject of a complaint. We have also recommended that they finalise a policy on integrity in promotion aimed at providing officers with clear information about what effect, if any, a complaint will have on their future.

Case study 13 is an example of a complaint where we intervened because we found NSW Police had treated a police officer too harshly. Case study 14 shows how we helped to make sure a police officer had her permanent complaint record corrected.

CaseStudy11

We handled a complaint where the complainant alleged that a senior constable had broken his arm while arresting him. He was charged with offensive language and resisting arrest. At the court proceedings, an independent witness testified that she did not see anything to warrant the degree of force used by the senior constable, and the magistrate found that this witness was credible. Both charges against the complainant were dismissed.

A police investigation into the complainant's concerns found that charging the senior constable with assault would probably not succeed. The officer was given advice and guidance about several issues arising from the complaint, including his verbal communication skills and the fact that he did not identify or arrange for statements from independent witnesses.

We did not agree with the police that there was no reasonable prospect of conviction at court. At our request, NSW Police asked the Director of Public Prosecutions (DPP) to advise whether to charge the senior constable, possibly with 'maliciously inflict grievous bodily harm'. We also raised our concerns about the adequacy of the managerial action taken.

We further recommended that NSW Police contact the man's orthopaedic surgeon to find out whether or not his arm is going to be permanently damaged. This information would be relevant to the DPP's assessment of the nature of any charges he might recommend be laid. At the time of writing the DPP was still assessing the matter.

CaseStudy12

The complainant and two other people were stopped by police for allegedly racing their cars. The cars were confiscated and the drivers were charged with offences related to illegal car racing and speeding.

The complainant complained that the police had stopped them for no purpose, were rude and aggressive, and nearly caused an accident in attempting to pull him over. He said that he had two witnesses to support his complaint. The police investigation did not find this complaint to be substantiated and we agreed with this finding.

About a month later, the complainant made another complaint. This time he claimed to have received a threatening phone call from a police officer telling him to drop his complaint and plead guilty to the charges. When presented with phone records, the complainant admitted he did not receive any such phone call. He was charged with knowingly providing false information. He pleaded guilty and was fined $500.

CaseStudy13

A police sergeant used a police vehicle without permission and allegedly made a fraudulent claim for $300 - $500 in travel allowances. NSW Police charged the sergeant, but all charges were dismissed at court and NSW Police were ordered to pay $40,000 in legal costs.

The magistrate who heard the case was critical of the police investigation and said the complaint should have been dealt with as a disciplinary matter, not as a criminal investigation.

Despite these views, NSW Police proposed to reduce the officer's rank from sergeant to senior constable. While they have the discretion to make such a decision, we felt that this particular decision was unduly harsh and disproportionate to the type of misconduct alleged. NSW Police reconsidered their decision after receiving our letter and a submission from the officer. They decided to take a more lenient approach which included deferring his next pay increment for a year.

CaseStudy14

A situation arose in 2002 where the parents of a woman believed their daughter was in a drunken state, and were trying to prevent her from driving her car. The police were called and several officers tried to resolve the dispute. The parents insisted their daughter be breathalysed before she was allowed to drive, but police stated that they had no legal right to force her to take such a test. They assessed the daughter's sobriety by other means and were of the opinion that she was not drunk. Later, unknown to the parents, the daughter did agree to be breathalysed and the results were negative. The parents complained about police refusing to breathalyse their daughter. The subsequent inquiry supported the police approach, considering the highly confrontational situation.

In 2004 one of the police officers involved in the incident reviewed her complaints history and was unpleasantly surprised to see that this aspect of the complaint had been found to be true and she had been 'counselled' by her managers.

Extremely concerned, she submitted a report stating that she had never been counselled and had been told that the inquiry at the time had found the complaint to be unfounded. She spoke to another officer involved and found that a similar record about the 2002 incident was also included in that officer's complaints history.

NSW Police investigated the officer's concerns and agreed that she had not been told about the original complaint findings nor had she been counselled. However the investigators agreed with the findings of the original investigation — that the officers should have agreed to the parents' request. They recommended that the two officers should now be counselled, as had been originally recommended.

The police officer insisted that she had not done anything wrong to begin with and did not need to be counselled at all. We reviewed the original complaint and the more recent investigation and came to the same view. The original complaint investigator had primarily found that the two officers dealt appropriately with an extremely difficult situation, and the evidence for finding against the officers was flimsy at best.

On our recommendation NSW Police revoked the original finding, corrected the officers' records and apologised to the two police officers involved.

Local management issues

There is a category of less serious complaints that NSW Police local area commanders deal with independently — they are called local management issues. We ensure the quality of their complaint-handling not by overseeing every complaint but by other tools such as audits.

This year we conducted a number of audits and found that generally these 'local' issues are well managed. For example, during one audit we were satisfied with the handling by commanders of 93 of the 96 local management issues we reviewed.

However some of our audits showed that improvements could be made. For example, in November 2004 we audited six local commands and found that a number of complaints that should have been notified to us had been wrongly handled as local management issues. These included a small number of criminal matters (allegations of police assault and unlawful computer access) and allegations of incompetence relating to failed criminal proceedings. We made a number of recommendations to fix this problem. These included providing police officers with more accurate information about what types of matters must be notified to our office, and conducting more training for complaint management teams and police investigators.

We did a follow-up audit in April 2005 and reviewed 350 local management issues. We found some evidence that commands were categorising complaints more accurately. One reason for this could be the much simpler class or kind agreement shown in figure 21. Another may be that police officers have since received better information and more training.

Complainant satisfaction

In the past, when we have requested information about whether complainants are satisfied with how local commanders are resolving less serious complaints, police have often provided incomplete or inaccurate data. This year we began a direct investigation which required all local commands to provide regular reports about complainant satisfaction. This has dramatically improved police compliance with their own complainant satisfaction recording procedures.

Information barriers

For some time, NSW Police have refused to provide us with particular types of information needed to properly fulfil our oversight role. In the following section we describe how different complaints raised broader issues about access to information in three areas.

Court transcripts

We reviewed the police investigation into a complaint that a police officer had deliberately made a false report that he had been assaulted. The officer had been charged with 'public mischief'. The magistrate dismissed the charge, but found that the charge itself was not unreasonable.

As is typical in a complaint involving a criminal charge, we requested a copy of the court transcript from NSW Police. The commander of the police officer who investigated the complaint said he could not provide it to us because the transcript was subject to copyright. Legal advisers within NSW Police also advised that the transcript could not be given to us without permission from the Attorney General's Department or the Crown.

However our view was that copyright law did not prevent NSW Police from providing us with the transcript. We were also concerned that their position might hinder our ability to obtain transcripts for other complaints where police officers were charged.

We decided to investigate the matter and, as part of the investigation, required the production of the transcript. NSW Police then gave us some of the transcript, but said they were unable to provide us with the rest of it because the Director of Public Prosecutions had said that this part of the transcript was not to be copied.

We pointed out that, under the Ombudsman Act, we could require any information despite 'any duty of secrecy or other restriction on disclosure applying to a public authority'. NSW Police then gave us the remaining part of the transcript.

We are confident that in the future NSW Police will provide us with court transcripts when they are relevant to complaint investigations.

Information from telephone intercepts (phone tapping)

For more than two years we have been attempting to obtain telephone intercept (TI) information from NSW Police, if it is relevant to a complaint investigation. For example, we reviewed a complaint where police heard on a TI that another police officer had 'let off' a motorist who was drink driving. The complaint consisted of a report police were required to file about what they heard through the TI.

In these types of cases, we have not always been given access to the TI information that caused the complaint to be made in the first place.

The legislation that governs how TI information can be used is complicated. However we have received legal advice from the NSW Solicitor General that states that, in this type of situation, NSW Police are permitted to give us the TI information.

We agree with the police that the legislation should be amended so that any uncertainty is removed. Submissions to this effect have been made to a current federal review of the TI legislation.

Until this happens, we expect NSW Police to rely on the Solicitor General's legal advice. In addition, the police minister has alerted the Commonwealth Attorney General of the intention to provide us with TI material for our oversight role.

Identification of internal police sources

The *Police Act 1990* requires that police officers do not disclose to anyone the identity of a complainant without their consent, except in limited circumstances. This is to protect the person making the complaint as well as police officers who make complaints against other police officers.

In 2001, two police officers reported that an inspector had told the occupants of a house that he had a search warrant. On this basis, he arrested people on the premises and seized drugs. However the 'warrant' was actually a blank piece of paper.

While reviewing the police investigation, we noticed that the police officers who reported the misconduct were not named. We wanted to know if they had been interviewed and if they had other information relevant to the complaint. Without their names, we had no way of knowing this.

This was one of several complaints from internal police sources where the identity of the source was not revealed. We were concerned that this would inhibit our ability to properly oversee these complaints.

We asked for the names of the two officers but NSW Police refused, saying they had been promised anonymity. NSW Police also claimed to have legal advice indicating they did not have to name the officers. However, we became aware that they also had legal advice in relation to a different complaint indicating they did have to give us the names.

For more than two years, NSW Police relied on the Police Act to refuse to give us the names of the officers who made the complaint. To resolve the matter, we began a direct investigation. NSW Police then supplied the names of the two officers.

We were then able to confirm that neither officer had been interviewed and the investigation by NSW Police had been seriously deficient as a consequence.

We have worked with the police to prevent this situation from happening again. They have clarified

the legal position so that this type of information will be provided at our request. They are also making sure that police officers who report misconduct about other police are given correct information about confidentiality.

We have also discussed this matter at the Internal Witness Advisory Council and have asked police to consider how to better support officers when their identity cannot be kept confidential.

C@tsi

C@tsi is the name of a police computer system in development since 2000. It was originally intended to offer a single complaint-handling system for NSW Police, the PIC and the Ombudsman.

As we have previously reported, once we began using the system we found that it was unreliable. C@tsi was also unable to deliver reports that we required about complaint trends. As a result, in December 2003, we reluctantly scaled back our use of the system.

In the past year, we have worked with police on a project to attempt to solve the many problems of c@tsi. While this project will deliver significant benefits for police, it has become increasingly clear that c@tsi will still not meet our needs.

We therefore advised NSW Police in July 2005 that we will be further reducing our use of c@tsi, and that we do not envisage we will ever rely upon it as our sole complaints computer system.

There were many reasons for this decision. Firstly, our experience has reinforced the view that using c@tsi as our sole complaint-handling system would unacceptably compromise our independence. C@tsi is a system that is maintained and owned by NSW Police, so we would be reliant on them to approve any changes to the system.

In addition, we need a computer system that has the flexibility to change as our requirements change. Given that c@tsi could not deliver on our basic information and reporting requirements despite many years of development, we had no confidence that our requests for necessary changes in the future would be met quickly and accurately.

We also believe our reduced use of c@tsi will mean a more effective system for police users. We will continue to use c@tsi when it is efficient and appropriate — including, for example, to audit police complaint-handling and for notifications about new complaints. We will also continue to develop our own computer and information systems to further improve our oversight of police complaints.

ICAC

In 1997 the ICAC's jurisdiction over police complaints was removed. Since then, section 128 of the *Police Integrity Act 1996* has required the ICAC to refer all complaints about police officers to the Ombudsman, unless they believe that the complaint involves serious police misconduct. In this case, they may refer the complaint to the PIC. This year we received a number of complaints from the ICAC under s. 128.

In February 2005, the ICAC informed us that they had failed to refer all complaints as required under s. 128 — more than 500 complaints that should have been brought to our attention had not been. Some of these complaints dated back to 1997.

Over the next year we will be reviewing all of these complaints to see if they require any action. As many of these matters are now several years old, we expect that some of them have probably already been brought to our attention or long since been resolved. Arrangements are now in place to ensure that the ICAC continues to refer all police complaints to us.

Other improvements

Some of the other work we have done to improve the way NSW Police handle complaints includes:

- providing information about the complaints process to students training to become police officers
- participating in formal training of police complaint investigators
- training complaint management teams
- improving the operation of executive complaint management teams that handle complaints against executive members of NSW Police
- helping police to develop critical incident investigation guidelines.

Improving police operational systems

Improving internal systems and policies can help NSW Police improve the way they carry out their activities and prevent complaints. In this section we discuss the police systems that we have reviewed this year.

Access to COPS information

The computerised operational policing system (COPS) is the main computer system used by NSW Police. Through COPS, police officers have access to an enormous amount of confidential information including private addresses and a person's history of contact with the police.

The general rule is that confidential information on COPS can only be accessed for legitimate policing purposes. Police officers can be criminally charged for improperly accessing or using information from COPS. It is important that the right balance is struck between allowing police officers to conduct themselves professionally, and ensuring that police do not criminally access or use information from COPS. Case study 15 illustrates how information can be illegally accessed and used.

Over several years, we have worked with NSW Police to improve their awareness of these issues. As a result, they now deal with serious breaches well and have brought criminal charges against officers where appropriate.

This year we continued to work with NSW Police to refine their approach in two areas.

Checking accesses

Each officer's access to COPS is supposed to be checked at least once a year by an audit. We reported last year on the significant improvements by local commanders in conducting these audits and dealing with officers at a high risk of breaching their obligations.

NSW Police has since established a computer audit committee that has created new procedures for checking access. These procedures are clearer and more comprehensive than the previous ones.

Policies

Checking officers' access to COPS is ineffective unless there are policies in place to help make decisions about when someone has broken the rules and what to do when they have. We continue to work with police to improve these policies.

In the past, our audits of local management issue complaints have highlighted the weaknesses in these policies. This year, we again found that NSW Police had not made any significant progress. There are two main areas that we have concerns about.

Firstly, we have concerns about information classified as being of state-wide significance. The purpose is to ensure that officers can maintain a level of professionalism in their work by keeping informed of current events. This usually includes incidents that have attracted media attention such as murders, large fires, drug seizures and sexual assaults.

Although we agree that certain information about current events should be accessible to all police officers, we are aware of a number of cases where officers have inappropriately shared the information or looked at the incidents in greater detail — for example finding out the name, address and history of police contact with a victim of a sexual assault — where there is apparently no legitimate reason for them to do so.

Another concern is that the definition of state-wide significance is so broad it could potentially include records of anything that a police officer has done. According to the policy, there are 23 categories of information that could be classified as significant, including 'actions which may reflect upon the police'.

Secondly, we are concerned about inappropriate access to station summaries. As the name suggests, station summaries include information relevant to policing a local area. We found that some police were accessing station summaries inappropriately — for example for areas where they lived but did not work, or which concerned family members.

NSW Police have not yet adequately addressed our concerns although we have raised them several times. The Ombudsman has raised the issue directly with the Police Commissioner to speed up their response.

CaseStudy15

A police officer told a colleague that he had accessed police computer records to check on a car he was proposing to buy. The colleague reported this internally and a subsequent check revealed the officer had made several other inappropriate computer accesses, including accessing information about a car parked outside his then girlfriend's house. As a result, he was given substantial training and mentoring about his behaviour and his pay rise was deferred for six months.

The officer's now former girlfriend then made a complaint alleging that the officer was stalking and harassing her. She said the officer had also told her that he lied to another colleague so that the colleague would check up on cars parked outside her house. These claims were found to be true, and the officer was charged and convicted for causing illegal access to restricted information. He was sentenced to 50 hours community service and given a one year good behaviour bond. He has been formally nominated for the Commissioner to consider him for dismissal.

Police vehicle pursuits

In 1994 the NSW Parliamentary committee on road safety, StaySafe, reported on their inquiry into police pursuits. One of the report's recommendations was that the *Police Service Act 1990* (which has since been renamed the *Police Act 1990*) be amended to provide for the Ombudsman to be notified of any instance of death, serious injury or significant property damage arising out of a police pursuit. In addition, StaySafe recommended that the Ombudsman audit other police pursuit records. These recommendations have never been implemented by the NSW Parliament.

In 2004 there were a number of media reports about police pursuits resulting in death or serious injury, including the deaths of people such as pedestrians not involved in the pursuits. Following these reports, StaySafe conducted public hearings in November 2004. The Ombudsman attended those hearings and advised the committee that legislation necessary to implement the 1994 recommendations had never been passed. We explained that the Ombudsman was restricted by law to dealing with complaint matters, including a review of the police investigation of those matters.

In early 2005 we completed our assessment of a police investigation of a pursuit where a car driven by a 13-year-old girl was pursued by police and collided with a truck. The girl sustained serious injuries. The police investigation identified that officers involved in the pursuit did not comply with the police's safe driving policy during the pursuit.

Our assessment identified deficiencies in the police investigation of the pursuit — including that the pursuit may not have been reviewed by the state pursuit management committee, as required by the safe driving policy. When we requested further information about this, the police response indicated that there may be other serious matters that the committee had not reviewed.

As a result, in May 2005, we used our 'own motion' powers to begin an investigation into how police are complying with the safe driving policy at the local, regional and state level. We are also examining whether the policy and the introduction of videos in police cars are helping to improve the conduct of pursuits. As we are aware that NSW Police have themselves reviewed the policy, we have asked them for information about those reviews.

While we are not directly investigating incidents where people have been killed during police pursuits, we are reviewing how NSW Police have responded to recommendations made by the Coroner following inquests into five deaths between 2001 and 2003.

Police and the community

We work with specific groups, such as Aboriginal communities and young people, to improve their relationships with the police.

Aboriginal communities

Since 2002, we have been visiting local police commands with substantial Aboriginal populations to examine police efforts to prepare for and implement their Aboriginal Strategic Direction — the NSW Police plan to improve outcomes for Aboriginal communities.

To date we have visited 17 local area commands which cover about 80 towns. We have met with more than 2,500 members of the public, close to 500 government agency representatives as well as local area commanders, specialist police and other police in these commands.

After each visit, we provide a report to the commander on specific issues facing the command. These reports recognise the positive initiatives in place and suggest ways to improve gaps in performance. For example, at our suggestion, senior police at Dubbo (Orana local area command) now regularly attend meetings of Aboriginal men's and women's groups so community members can provide feedback on their expectations of police and discuss ways in which police could be more proactive in the community.

In April 2005 we tabled a report to Parliament describing our work in detail. In this report we emphasised the need for police to develop partnerships with Aboriginal communities to reduce crime committed by and against Aboriginal people. We also stressed that police cannot bring about change on their own – there needs to be a commitment from Aboriginal community leaders and other government agencies to work together.

In addition to forming these partnerships, we recommended that NSW Police continue to focus on:

- the recruitment and retention of Aboriginal police
- improving the management and development of Aboriginal community liaison officers employed by police
- sharing and coordinating successful crime prevention initiatives across local area commands.

We are currently revisiting local area commands to check how police are responding to the issues we raised in our reports. So far we have observed some very positive changes.

Case studies 16 and 17 illustrate how our approach has helped local police to improve their work with local Aboriginal communities.

CaseStudy16

Our earlier review of police work in Dareton found many Aboriginal residents at odds with each other, with non-Aboriginal residents and with police. There were drug abuse issues, anger at police handling of a child murder investigation, unreported family violence, poor responses to allegations of sexual assault and other divisive problems. Police were hindered by discontent among officers and high staff turnover. A series of acting commanders had left many issues unresolved. Our report to the local commander emphasised the urgent need to stabilise local police management and drastically improve informal contact with local residents and other services.

The police have now acted on all of our concerns and are making considerable progress. Key factors appear to be the stabilising of police management and the willingness of police to actively engage with Aboriginal people. Police now support the work of their Aboriginal and domestic violence officers. Recruitment of officers suited to working in towns with large Aboriginal problems has led to a significant improvement in police-community relations, and police now have close links with Aboriginal leaders. For example, they now have ready access to former 'no go' areas at the former mission and are working with offenders, victims and young people to tackle the causes of crime and disorder.

An Aboriginal health worker visiting for the first time in a couple of years commented that she was stopping people in the street to ask if she was in the right place because the town had changed so much for the better.

'Thank you for your letter … this matter was satisfactorily settled… Your contribution helped us to achieve our goals. Many thanks.'

CaseStudy17

When we first visited Walgett, unfilled senior positions and related staffing issues were severely hampering police efforts to work with Aboriginal communities there and at other stations in the Castlereagh local area command. The central advice in our report was that police find ways to create full time domestic violence and youth liaison positions to help make better use of limited police resources.

Castlereagh has no funding for a crime coordinator or specialist domestic violence and youth liaison officers. It has now created these positions by cutting the number of general duties police. This has helped create an active and highly effective crime management unit. Where policing responses had tended to be mostly reactive, police now provide critical leadership in getting other services and Aboriginal residents to work together. Creative work with victims of domestic violence has led to improved police practices, the establishment of a women's refuge and a program to work with perpetrators of violence. Castlereagh's many youth initiatives include police trips and mentoring to reward good behaviour, giving both 'high performers' and 'young people at risk' incentives to do well at school. At nearby Coonamble improved policing, better feedback, officers volunteering to organise sport for young people and other positive initiatives have helped reduce community hostility towards police and enable police to do their work more effectively.

Young people

It is generally accepted that people who come into contact with the justice system at an early age are at a higher risk of recidivism. In recognition of this, the *Young Offenders Act 1997* is designed to provide an alternative to court proceedings for dealing with young people who commit non-violent offences.

Police play a vital role in this system because they decide whether the person will be charged or otherwise dealt with under the Young Offenders Act.

Although complaints are a good way for us to understand how police are interacting with young people — and whether they are making good use of the Young Offenders Act — young people rarely make formal complaints about police despite having a high rate of contact with them.

Our work with young people therefore focuses on closely examining their complaints about police conduct and the relationships between local police commands and young people. This year we appointed a youth liaison officer who has been active in meeting with local police, youth service providers

and members of the community to assess the adequacy of local police initiatives.

We also have several projects underway. For example, this year we developed a fact sheet targeted at youth workers that aims to encourage them to help young people voice their concerns about police. It provides information about the complaints process and directly addresses some of the main reasons young people seldom make formal complaints. The fact sheet also encourages youth workers who may want to make a complaint to share information with our office if, for example, they notice a pattern of behaviour by police in a particular area. We may then be able to use that information to better examine police practices in the area.

Young Offenders Act project

In 2003 we began a project to look at how NSW Police were using the Young Offenders Act in practice.

This arose from our examination of police work with Aboriginal communities, particularly police efforts to divert Aboriginal youth from the criminal justice system. We had some concerns about the adequacy of initiatives relating to youth crime diversion generally, and about the way police were using options available to them under the Youth Offenders Act.

This year, we provided our final report to NSW Police and they have accepted almost all of our 28 recommendations.

These recommendations covered:

- the number of police youth liaison officers (YLOs) and training and ongoing support provided to them
- the increased use of community members to issue cautions under the Young Offenders Act
- the arrangements with legal services to make use of 'cooling off' periods to enable young people to seek legal advice before deciding whether to make an admission that could qualify them for a caution under the Young Offenders Act
- improved coordination between police YLOs and the Police and Community Youth Centres (PCYCs)
- the adequacy of procedures in place to engage local service providers to quickly identify and address youth issues
- identifying good practice and strategies, and sharing this information across all local area commands.

As a result of this report we will continue working with NSW Police on a number of specific areas including:

- a police YLO training and induction package
- increasing the availability of police YLOs for young people in custody
- increasing the use of alternatives available under the Young Offenders Act
- encouraging police YLO contact with community organisations.

Police and Legal Aid

This year we met with representatives from police and Legal Aid to help conciliate an arrangement for dealing with young people in custody. Although the Young Offenders Act allows police to take action other than charging a young person, the young person must first admit that he or she committed the offence.

When legal aid hotline lawyers are called, they often advise young people not to admit any wrongdoing. Sometimes they give this advice because police officers are unwilling to provide them with enough information to decide what the best course of action is.

This undermines the aims of the Young Offenders Act, and both police and Legal Aid staff have expressed their frustration when this kind of situation arises. We met with representatives of both organisations and, with our assistance, they have agreed to work together to improve the situation.

NSW Police has committed to making a suitable police officer available to legal aid hotline staff whenever a young person is in custody. They have also published an article in the *Police Weekly* emphasising that, when dealing with young people, police officers should make further enquiries with a specialist youth officer. Legal Aid staff have agreed to provide specific information to police at a corporate level on a monthly basis about situations they are experiencing. This will allow NSW Police to incorporate this information into training and education for police officers.

'Well done for remorselessly pursuing the truth in tracking down the facts. You and your office do an excellent job.'

Reviewing legislation giving police more powers

Since 1998, the NSW Parliament has asked the Ombudsman to review 17 pieces of legislation giving police new powers. Increases in police powers are often controversial. Through our reviews, we are able to gauge whether the new police power is being implemented efficiently, effectively and fairly for both police and the community.

Our reviews have covered a variety of areas of policing including DNA collection, the sex offenders register, drug detection dogs, and the use of fines instead of charges for minor criminal offences. Each review runs for approximately two years and we are always required to provide a report on our findings and recommendations.

So far we have completed nine reviews, including five this year. To date, four of our reviews have been tabled in Parliament. We are unable to provide the public with details of our findings and recommendations for the other five reports because they have not yet been tabled by the relevant minister.

We are currently reviewing how police and other agencies are responding to recommendations from our completed reviews. We are also in the process of finalising four reviews, and anticipate beginning five new reviews in 2005-06 (Our reviews begin when the relevant Act comes into operation). Figure 32 shows the status of our legislative reviews.

Information for reviews

To ensure that we are able to conduct a thorough review, the Police Commissioner is required to provide us with relevant information for each review. We have requested various types of information such as data from COPS and other computer systems, information included in search warrant applications and information about costs.

While some information has been provided without question, getting other information has sometimes required lengthy negotiations. This has usually been because we regarded the information as relevant to our review, but NSW Police has either disagreed about relevance or submitted that the information was too sensitive for our examination. In some cases they have agreed to supply us with information, but have taken a long time to do so. This has sometimes hampered our ability to conduct our reviews, as timely information is essential to our research.

However, our working relationship with NSW Police has improved substantially since we first began reviewing legislation. We believe we are now generally working well together to ensure that our reviews accurately reflect the implementation of new police powers.

DNA samples from prisoners

On 28 October 2004, the Attorney General tabled our report on the review of Part 7 of the *Crimes (Forensic Procedures) Act 2000*. Part 7 permits NSW Police to take DNA samples from all inmates who are in a correctional centre for committing serious indictable offences. More than 10,000 samples were taken during our review period. The samples are analysed by an independent laboratory and kept on a database of DNA.

As part of our review we:

- considered 49 submissions from government departments, community organisations and other interested parties
- interviewed and conducted focus groups with police officers, correctional centre officers and welfare officers, and managers of juvenile justice centres
- interviewed 192 serious offenders
- examined 265 video recordings of the DNA sampling of serious offenders and 164 records held by NSW Police and the independent DNA laboratory
- examined procedures at the DNA laboratory and NSW Police exhibits systems
- interviewed police from other Australian jurisdictions, Canada and the United Kingdom.

Overall, we found that the DNA sampling of inmates had been carried out professionally and reasonably.

There were a few inmates who objected to having their sample taken and police officers had to use force to get their DNA. The police sometimes used a 'cooling off' period, and we found that this worked well. We recommended inmates should be given a mandatory cooling off period in the first instance and police should consider every alternative before using force. In addition we recommended that information given to inmates before DNA sampling be made simpler, to reduce the likelihood of any misunderstandings.

We found that poor record-keeping led to a number of discrepancies in the information held by NSW Police and the DNA laboratory that tested and kept the samples. Although a match between evidence at a crime scene and a sample in the database would require a new DNA sample to be taken to confirm the match — meaning that no one could be convicted only on the basis of a database match — we were concerned that poor records could affect criminal investigations. We recommended that the databases of both NSW Police and the DNA laboratory be audited regularly to make sure that the information they keep is consistent.

Figure 32 - Status of legislative reviews about police powers

Status	Legislation	Description
Review reports tabled in Parliament.	*Crimes Legislation Amendment (Police and Public Safety) Act 1998* - tabled June 2000.	Introduced police powers in relation to searches for knives and giving reasonable directions (move-ons).
	Police Powers (Vehicles) Act 1998 - tabled December 2000.	Authorised police, in certain circumstances, to ask drivers and/or owners of a vehicle about their identity and the identity of other occupants of the vehicle, stop and search vehicles, and establish road blocks.
	Crimes (Forensic Procedures) Act 2000 - Serious Indictable Offenders (Pt 7) - tabled October 2004.	Authorised police to take DNA samples from all indictable offenders in correctional centres.
	Police Powers (Drug Premises) Act 2001 - tabled September 2005.	Gives police powers to search suspected drug houses, and to move people on if police believe they are purchasing or supplying drugs.
Review reports provided to the responsible minister but not yet tabled.	*Police Powers (Vehicles) Amendment Act 2001* - provided to the Hon. J Watkins MP, then Minister for Police, in September 2003.	Allowed police to request identity information from passengers in vehicles in certain circumstances.
	Police Powers (Drug Detection in Border Areas Trial) Act 2003 - provided the Hon. J Watkins MP, then Minister for Police, and the Hon. Bob Debus, Attorney General, in January 2005.	Allowed police to trial check points in border areas for deployment of drug detection dogs ('sniffer dogs').
	Crimes Legislation Amendment (Penalty Notice Offences) Act 2002 – provided to the Hon. Carl Scully, Minister for Police, and the Hon. Bob Debus, Attorney General, in April 2005.	Allows police to trial the issue of 'on-the-spot' fines for specific criminal offences, such as shoplifting. Also allows police to take fingerprints in a public place.
	Child Protection (Offenders Registration) Act 2000 – provided to the Hon. Carl Scully, Minister for Police, in May 2005.	Allows police to keep a register of people living in the community who have committed offences against children.
	Police Powers (Internally Concealed Drugs) Act 2001 – provided to the Hon. Carl Scully, Minister for Police, and the Hon. Bob Debus, Attorney General, in July 2005.	Allows police to carry out internal searches using x-ray, CAT scans or magnetic resonance imaging on people who are suspected of swallowing or otherwise internally concealing a prohibited drug for the purposes of supply.
Current reviews	*Crimes (Forensic Procedures) Act 2000* - Volunteers and Suspects	Allows police to take DNA samples from volunteers and suspects.
	Firearms Amendment (Public Safety) Act 2002	Allows police to use a dog to detect firearms or explosives in a public place without a warrant.
	Justice Legislation Amendment (Non-association and Place Restriction) Act 2001	Allows police and courts to place restrictions on the places a person can be in and the people they can associate with when giving bail conditions, sentencing a person or paroling them.
	Police Powers (Drug Detection Dogs) Act 2001	Regulates how police use drug detection dogs (sniffer dogs) in the community.
Future reviews - Act has not yet come into operation.	*Crimes Legislation Amendment Act 2002* – Detention after arrest during execution of search warrant (Sch 10)	Regulates how police treat people who have been arrested during a search warrant.
	Law Enforcement (Powers and Responsibilities) Act 2002 – Crime Scenes (Pt 7)	Regulates police powers for setting up crime scenes.
	Law Enforcement (Powers and Responsibilities) Act 2002 – Notices to produce documents (Pt 5, Div 3)	Allows police to issue notices requiring financial institutions to produce information about their customers relevant to criminal investigations.
	Law Enforcement (Powers and Responsibilities) Act 2002 – Searches on arrest or in custody (Pt 4, Div 2 and 4)	Regulates the safeguards relating to searching people after they have been arrested or while they are in custody.
	Terrorism Legislation Amendment (Warrants) Act 2005	Allows police and the Crime Commission to execute search warrants without the knowledge of any person occupying the premises being searched.

4. Covert operations

The Ombudsman has some special responsibilities that aim to keep law enforcement agencies accountable when they conduct covert operations.

NSW Police, the Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission can conduct covert operations under three separate pieces of legislation that allow them, during an investigation, to commit acts that would otherwise be illegal.

The three Acts are the:

- *Telecommunications (Interception) (NSW) Act 1987*
- *Listening Devices Act 1984*
- *Law Enforcement (Controlled Operations) Act 1997*.

These Acts give authorised law enforcement agencies the power to do a range of things as part of a covert operation. They can intercept telephone conversations, plant listening devices to listen to and video conversations and track positions of objects, and carry out controlled or 'undercover' operations that may involve committing breaches of the law, such as being in possession of illicit drugs.

Because 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 Act.

The Acts were developed separately during different time periods and, as a result, have different accountability processes. There are two significant differences. The first is that to install a listening device or intercept telephone conversations the law enforcement agency must apply to a judicial officer or, in the case of telephone intercepts, a member of the Commonwealth Administrative Appeals Tribunal (AAT), for a warrant. To conduct a controlled operation, a law enforcement officer need only apply to the chief executive officer of their agency.

The second difference is that the Ombudsman monitors compliance with the accountability schemes set up for telephone intercepts and controlled operations, but not listening devices.

The secure monitoring unit, a specialist group within the general team of our office, inspects the records of these law enforcement agencies to make sure they are complying with the legislation. In relation to controlled operations, this monitoring role extends to three Commonwealth law enforcement agencies that are eligible to conduct operations under the NSW Act. These are the Australian Federal Police, the Australian Customs Service and the Australian Crime Commission. To date only the Australian Crime Commission has conducted controlled operations using their powers under the NSW Act.

There is currently no external monitoring of compliance with the Listening Devices Act by the Ombudsman or any other independent oversight body. A scheme was recommended by the NSW Law Reform Commission in its interim report on surveillance in 2001, and was the subject of a private member's Bill introduced into Parliament in 2002 which lapsed. In 2003, the Standing Committee of Attorney-Generals and Australian Police Ministers Council Joint Working Group on National Investigative Powers proposed model provisions for controlled operations and the use of surveillance devices in cross-border investigations. In both instances the

model provisions included an inspection role by an independent body, such as an Ombudsman, in the various jurisdictions where these activities are carried out.

The *Surveillance Devices Act 2004* was passed by the Commonwealth Parliament in December 2004 and implements the electronic surveillance model bill recommended by the working group. Under the Act, warrants may be issued for law enforcement agencies to place, operate and retrieve a range of surveillance devices — including listening devices, optical surveillance devices, data surveillance devices, equipment or programs used to monitor computer input and output and tracking devices. The Act also permits the use of some of these devices without a warrant. To address concerns about the potential abuse of these powers — which arguably give law enforcement agencies an unprecedented ability to record and monitor the private conversations and movements of members of the public — the Act also requires the Commonwealth Ombudsman to monitor and inspect records relating to the use of these devices.

During the year we had some preliminary discussions with NSW Police about their intention to develop a proposal for a new legislated regime for the use and monitoring of surveillance devices in NSW modelled on this new Commonwealth legislation.

Controlled operations

Approval for controlled operations is given by the chief executive officer of a law enforcement agency without reference to any external authority. To ensure accountability for these undercover operations, we have a significant role in monitoring the 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 also required to inspect the records of each agency at least once every 12 months. We have the power to inspect their records at any time and make a special report to Parliament if we have concerns that we feel should be brought to the attention of the public.

During 2004–05, we inspected the records of 419 controlled operations. The number of records we have inspected has increased steadily from year to year — and has doubled since 2001–02.

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

A review of the Act was completed by the Ministry for Police and tabled in Parliament in June 2004. The review recommended a number of changes to the controlled operations regime, but no changes to the Ombudsman's monitoring function. The recommendations included the introduction of two tiers of controlled operations based on the seriousness of the criminal conduct involved — with the lower tier of operations having a streamlined and devolved authorisation process. During the year we have had discussions with the Police Ministry about the proposed amendments to the Act which, at the time of writing, had not been submitted to Cabinet.

Telecommunication interceptions

A judicial officer or member of the AAT scrutinises the process of granting a warrant for a telephone interception, so our role does not include ensuring compliance with the approval procedures. However we do audit the records of agencies carrying out telephone interceptions. These records document the issue of warrants and how the information gathered was used. Some of the records have to be given to the Attorney General 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.

Our role is to make sure that these provisions are complied with. We are required to inspect each agency's records at least twice a year and have discretionary power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney General. Under the Telecommunications (Interception) (NSW) Act, we must not include any information about what we do, or omit to do, under that Act, in our annual report or in any other public report we prepare.

During the year, staff from our secure monitoring unit met with telecommunications interception inspectors from other jurisdictions to discuss common inspection issues and concerns. We also developed a new database to help us track monitoring and notification data relating to telecommunications interceptions and controlled operations.

5. Witness protection

‘Your prompt response to our letter ... was a breath of fresh air. We are not accustomed to getting a reply so quickly, indeed any reply at all to a written complaint regarding anyone in Government or the Public Service. We are thankful you are an independent authority.’

The Ombudsman is responsible for hearing appeals about the exercise of certain powers under the *Witness Protection Act 1995* and handling complaints from people participating in the program.

Appeals

The Act gives the NSW Commissioner of Police the power to refuse someone entry to the witness protection program or to remove them from the program. The 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 heard just one appeal from someone refused entry to the program. We upheld this appeal and directed the Commissioner to provide the witness with protection under the Act.

Complaints

Complaints usually relate to management practices and personality conflicts between participants and their case officers, particularly at the beginning when participants are coming to terms with their situation. We usually try to conciliate these complaints because of the need to maintain the ongoing relationship between the participants and the officers responsible for their protection. The management of the program has become more sophisticated over the years and the number of complaints received has continued to decrease.

6. General complaints about the public sector

We report on our work relating to police, corrections, local government and community services in other chapters. In this chapter we discuss some of the issues arising from complaints we received about a wide range of other NSW public sector agencies. These include large organisations such as the Department of Health, the Department of Education and Training, the Roads and Traffic Authority and smaller authorities such as the Dust Diseases Board. Please see Appendix C for a list of the agencies we finalised complaints about this year.

When our office was first established in 1975, our jurisdiction was confined to complaints about the kind of public sector agencies discussed in this chapter. We did not deal with complaints about councils or police, or have any of the non-complaint functions that we discuss in other chapters of this report.

In our first year of operation 30 years ago, 14 staff dealt with a little over 400 complaints and oral inquiries per person about 136 different public authorities. This year staff in our general team, who are responsible for dealing with complaints about public sector agencies, dealt with close to 700 matters per person and 182 different agencies. Many of these agencies are the same ones we have dealt with over the years, although some have slightly different names, but quite a few are no longer within our jurisdiction and a number — such as the Australian Gas Light Company, the Egg Marketing Board, the Government Printing Office, the Rural Bank and the Timber Advisory Council — have ceased to exist.

During 2004-05 we received 1,355 complaints in writing (which we call 'formal' complaints) and 4,385 complaints over the telephone or in person (which we call 'informal' complaints) about these agencies. About a third of these complaints were from people who were concerned about the way the law has been enforced against them — most relating to fines or land tax, which are discussed in this chapter. Many complaints were also from people who were concerned about issues affecting their property and homes, and about the provision of transport services, particularly roads. See figure 33.

Figure 33 - Number of general complaints received in 2004-2005 about the public sector – by agency category

This figure does not include complaints about public sector agencies that fall into the categories of police, community services, local government, corrections or FOI.

Category of agency	Formal	Informal	Total
Law and justice	454	1,453	1,907
Property and housing	133	869	1,002
Transport and utilities	236	652	888
Business	135	416	551
Education	143	429	572
Health	107	319	426
Environment	94	115	209
Aboriginal Land Councils and services	10	12	22
Culture and recreation	15	27	42
Emergency services	19	33	52
Other	9	60	69
TOTAL	**1,355**	**4,385**	**5,740**

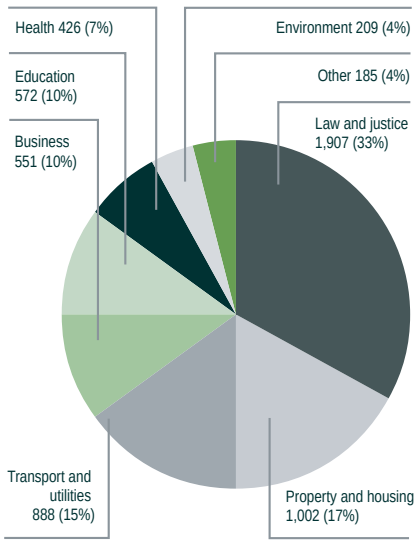


Figure 34 - What people complained about in 2004-2005 (general complaints about the public sector)

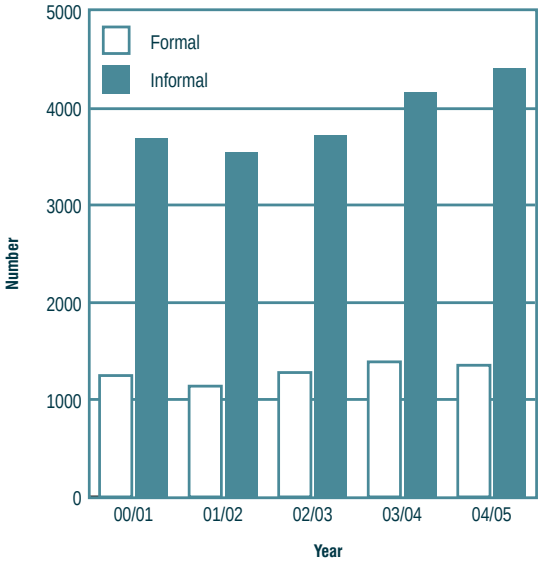
This figure shows the complaints we received in 2004-2005 about NSW public sector agencies other than those complaints concerning police, community services, councils, corrections and freedom of information, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Charges/fees	278	734	1,012
Customer service	223	699	922
Enforcement	159	522	681
Complaint handling	181	492	673
Object to decision	92	385	477
Approvals	91	322	413
Information	94	223	317
Outside our jurisdiction	71	213	284
Contractual issues	49	225	274
Other	14	194	208
Policy/law	37	170	207
Natural justice	17	95	112
Misconduct	28	68	96
Management	19	56	75
Child protection (employment-related issues)	2	11	13
Child protection (non-employment related issues)	0	5	5
Total	**1,355**	**4,414**	**5,769**

Figure 35 - Number of general complaints received about the public sector – five year comparison

This figure does not include complaints about public sector agencies that fall into the categories of police, community services, local government, corrections or FOI.

	00/01	01/02	02/03	03/04	04/05
Formal	1,249	1,140	1,280	1,390	1,355
Informal	3,690	3,546	3,719	4,161	4,414
Total	**4,939**	**4,686**	**4,999**	**5,551**	**5,769**



Poor complaint-handling, customer service issues (such as failure to reply to correspondence, delays, inadequate service and inconsistent treatment) and disputes about charges and fees continue to rank as the three most common reasons for a complaint. See figure 34.

We receive complaints from not only individuals and their advocates, but also from public sector agencies and political parties. For example, see case study 20.

We have received an increasing number of informal complaints over the past four years — see figure 35. We deal with these either immediately or within a day or two. In the majority of cases we are able to help the complainant by contacting the agency involved to resolve the matter, by giving the complainant some information, advice or an explanation, or by suggesting that they complain to another agency — which may be the agency they are dissatisfied with.

This year we finalised 1,386 formal complaints. In over a quarter of those cases, after looking into the complaint and making some preliminary inquiries, we gave complainants advice and information about their concerns. In some cases this was because there was insufficient evidence of wrong conduct.

Another 16% of those cases were resolved to our satisfaction. In some of these we were able to persuade the agency to take some action to resolve the complaint, or we made suggestions to the agency (for example see case study 19), or the agency took the initiative and resolved the complaint once they knew we had been contacted (for example see case study 18). Case studies 20, 21 and 22 are good illustrations of how an agency can accept and use the issues raised by a complaint to improve its systems. Case study 23 is an example of a matter where we were able to act in the role of mediator to help the parties negotiate a satisfactory resolution to a long-standing dispute.

Figure 36 shows some of the significant outcomes that we achieved this year.

Figure 36 - Significant outcomes achieved in relation to general complaints about the public sector finalised in 2004-2005

Outcome	No.
provided additional information	276
provided reasons for decisions	65
admitted and corrected errors	50
reviewed internal processes	48
provided another remedy	41
undertook case reviews	31
mitigated consequences of decisions taken	27
gave apologies	26
reviewed matters and changed decisions	25
changed policies or procedures	14
gave monetary compensation	7
trained staff	3
negotiated settlements	2
took disciplinary action against staff	1
Total	**616**

CaseStudy18

The managing director of a company with headquarters in Victoria complained that the NSW Office of State Revenue (OSR) had unfairly penalised the company for failing to pay payroll tax. The company had extended operations to NSW some years previously, but employees were still paid from head office by bank transfer. In 2001 the company's NSW payroll tax payments were audited by OSR and the company was assured it was following appropriate procedures in calculating its NSW payroll tax.

In June 2004 the company was audited again, but there was a very different outcome. The company was told that wages for trainee staff should have been included in the assessment of payroll tax. The company was billed for back taxes and accompanying penalties and interest.

It appeared confusion had arisen over terminology. In NSW, wages paid to apprentices are not included in the payroll tax calculation but wages paid to trainees are. The situation is different in Victoria. The company immediately responded to OSR and included a cheque for the outstanding tax. However, the company questioned the fairness of imposing penalties and interest when it had been following OSR's initial advice. OSR stated no consideration could be given to this argument until all fines were paid. The company paid the fines.

By the time they complained to us, the company had spent four months attempting to resolve the matter with OSR. Our inquiries with OSR prompted the principal compliance officer to review the case and agree incorrect information had been given to the company in 2001. As a result, the company received a refund of the penalties and interest in excess of $8,000.

CaseStudy19

A woman applied to the Department of Commerce for a certificate of registration as a real estate salesperson under the *Property Stock and Business Agents Act 2002.* She was advised her application had failed because she had declared bankruptcy after a family business collapse. The Act specifies that people who have applied for bankruptcy within the last three years are disqualified from registration unless the Department is satisfied 'the person took all reasonable steps to avoid the bankruptcy'. The woman had detailed the circumstances surrounding her bankruptcy in her application and in several subsequent unsuccessful appeals.

We asked the Department to review the matter again, taking account of the interpretation of 'reasonable steps to avoid the bankruptcy' in some recent Administrative Decision Tribunal decisions. The Department's reconsideration led to them issuing the woman with a certificate of registration.

CaseStudy20

We received a complaint from Byron Shire Council about the lack of local consultation concerning the introduction of B-double trucks on the Pacific Highway running through their shire. By the time council advised the Roads and Traffic Authority (RTA) of their opposition to allowing these trucks on that stretch of highway, the approval in question had already been gazetted (a fortnight earlier). This was partly because the RTA had not told the council there was any deadline for making a submission on the proposal.

As the council had been unable to make a formal submission on the issue, we wrote to the RTA suggesting a number of changes to their procedures that would stop this situation from arising again. The RTA agreed to amend their guidelines and introduce specific procedures to apply when they were dealing with a proposal to permit restricted access vehicles on a new route. The amended guidelines require the RTA to consult with councils, rather than consultation being at the RTA's discretion, and provide deadlines for the provision of comments by councils.

CaseStudy21

Legal Aid complained to the Department of Housing on behalf of a long-term public housing tenant. About 18 months previously the department had cancelled the tenant's rent subsidy. They debited her rent account by several thousand dollars, claiming she had committed rental fraud. The department had received information that the tenant's adult son had been living with her for some time. Housing policy required this fact and the son's income to be declared and the rental subsidy adjusted accordingly. The department said the tenant had not made the necessary declarations.

Legal Aid sought an internal review of the department's decision. They were able to show, for instance, that the son could not have been living with his mother for part of the period for which fraud was alleged. Following this review, the department credited the tenant's rent account with a significant amount of money.

However Legal Aid was still concerned about the way the matter had been handled and they complained to us. They alleged maladministration in the department's canceling of the rental subsidy, in the conduct of their review of that decision, in not refunding further money, and in their refusal to implement a recommendation of the Housing Appeals Committee. This is an independent committee to which departmental decisions can be appealed after initial internal review. It has no enforcement power so the department is not compelled to follow committee recommendations.

Our inquiries revealed deficiencies in the investigation of the alleged fraud and in subsequent departmental actions. We made a number of suggestions, including that the department:

- apologise to the tenant for failing to follow departmental policy
- conduct a compliance audit of the department's rental subsidy fraud policy and procedures and, if necessary, rewrite them
- remind staff of their file keeping responsibilities.

The department adopted our suggestions. They reviewed their policy and procedures, identified areas for improvement, and amended the policies to accomplish six major goals including ensuring there were:

- clear statements on the rights and responsibilities of the client and the department
- improved communications with the client at all stages of an investigation
- standard timeframes for each step of the investigation process.

The department also considered improvements to the notice of termination form that would set out how a tenant could dispute the notice. In addition, they advised that they were developing a client fact sheet on rental subsidy fraud, were in the process of identifying relevant staff training needs, and had apologised to the tenant.

CaseStudy22

In April 2005 we received a complaint about the NSW Maritime Authority. The complainant's boat licence expired on 21 September 2004. He received a final reminder notice to renew his licence on 5 October, but only paid the renewal fee on 16 December. Three months later, when he did not receive his licence, the complainant called NSW Maritime to find out why. He learnt his licence had been cancelled even though his late payment was accepted. The complainant was also told that licence holders were not contacted by NSW Maritime to advise them that their licence had been cancelled.

As the complainant had not raised the issue with NSW Maritime, we recommended he write to the Chief Executive and provided a letter of referral to help with lodging his complaint.

Shortly after NSW Maritime advised us that, arising from this complaint, a message now appears on all renewal /reminder notices advising customers that if payment is not received by the expiry date, then the licence may be cancelled and not reissued until a reinstatement fee is paid. With the exception of payments made via BPay or the Commonwealth Bank, NSW Maritime will not process payments for cancelled licences unless a reinstatement fee is received. NSW Maritime has no control over transactions processed via external agencies such as BPay, but if these payment options are used to renew a cancelled licence the customer is now notified of the cancellation and the requirement to pay a reinstatement fee. Alternatively, the customer is offered a full refund if the licence is no longer required.

CaseStudy23

A century ago tin-mining was a big industry in north-west NSW. Today, technology can salvage tin from the large sand heaps left from old mining sites. We received a complaint from the director of a small company which, in the mid-80s, had taken over a licence to extract tin from such heaps. One of the licence requirements was a security deposit of $20,000 with the Department of Mineral Resources to cover the costs of rehabilitating the land. The venture did not prosper and eventually the Chief Mining Warden cancelled the licence. This however did not extinguish the complainant's responsibility to rehabilitate the land. The crux of the complaint was that the land had been rehabilitated to a value of $60,000 but the security deposit had not been released. The complaint remained unresolved after nine years.

The department, now the mineral resources division of the Department of Primary Industries, maintained that rehabilitation was insufficient and incomplete. The complainant argued, among other things, that the department changed their requirements over time. There were compelling personal reasons why it was difficult for the complainant to do any further rehabilitation work, even if justified. He maintained no more work should be required and the matter was at a standstill.

We conducted detailed inquiries. As there appeared to be significant misunderstanding on both sides, we decided to host a negotiation meeting at our office. There was a willingness on both sides to find a solution and in two hours a timetable for a detailed series of steps was agreed. At the time of writing the matter was progressing well.

Transit officers

The transit officer program was established in its present form in May 2003. Currently, there are approximately 600 transit officers working in NSW. Their principal function is to ensure the safety of passengers while travelling on trains and frequenting stations and their surrounds — a function formerly performed by police officers or employees of private security firms. Transit officers have the power to issue penalty infringement notices and carry handcuffs and batons. There has been media discussion about the prospect of transit officers also carrying capsicum spray. Essentially, the transit officer program has a law enforcement function.

In a time where the public have heightened concerns about the security and safety of public transport, these officers have an important role to play. As with all public officials enforcing the law, public confidence in the people doing the job and the system they administer is critical. This means the public needs to be confident that officers will use their powers in a reasonable and fair way and be accountable for those actions. Proper accountability is not possible without a comprehensive system to deal with complaints about the use of those powers.

This year we became aware of public concerns about transit officers through media reports, discussions with youth advocacy groups, information received through our Aboriginal Complaints Unit and from a number of complaints from members of the public about assaults and the excessive use of force by transit officers.

The concerns raised included:

- the failure of transit officers to exercise discretion when dealing with members of the public
- the failure of RailCorp to resolve complaints about the conduct of transit officers to the satisfaction of complainants.

We decided to investigate RailCorp's policies and procedures for handling complaints about transit officers.

Our preliminary views

RailCorp gave us summary information about the 294 complaints that they had investigated in 2003-04. It showed that only 11 of the 294 matters (about 3%) had resulted in a sustained finding. In a number of cases, the results of RailCorp's inquiries were still pending. We thought it was relevant to compare these statistics to comparable statistics about complaints against police officers who perform similar functions. Of the 1,678 complaints about police officers that were fully investigated in 2003-04, management outcomes (including adverse findings) were made in 606 cases — over 30% of matters.

RailCorp's information also showed that in more than 80 of the 294 complaints, RailCorp investigators did not identify the transit officer who had been complained about, even though our view was that this could have easily been done. For example, in the majority of those cases, the complainant appeared to have provided substantial information about the time and location of the incident.

Transit officers keep logs of their activities and a simple check of these logs could have identified the officer involved.

In addition, we found that:

- in 10 cases, the complainant had specified the badge number of the transit officer.
- in 3 other cases, the complainant had quoted the infringement number of a ticket he or she received during the incident.
- in 7 cases, further information about the infringement notice received could have been easily obtained by communicating with the complainant after receiving their complaint.

In a number of other cases, obvious lines of inquiry did not appear to have been pursued. For instance in one very serious matter, the complainant alleged that transit officers had assaulted a man whose health was precarious because of a plate inserted into his head. The alleged assault left the man with a burst eardrum, bruising to his face, and bruising to his knees and shins. Although police were called to the station, RailCorp did not try to find out from NSW Police whether they had made a note of the names of the transit officers with whom they spoke at the scene.

Further investigation

We decided to review the nature and quality of 72 of the 294 investigation files.

We assessed that 53 investigations (or 74%) were unsatisfactory. Of these, almost half involved allegations of assault or excessive use of force during the arrest of people by transit officers.

The most common failings we found in our investigation were:

- failure to pursue lines of inquiry
- failure to identify key issues
- failure to check complaint history of officers involved
- using inappropriate methods to obtain information from transit officers.

We also found that in some cases RailCorp had:

- no record of any contact with the complainant
- failed on several occasions to properly document the outcomes of their investigations.

Our findings raised serious concerns about the investigative procedures set out in RailCorp's discipline policy and their complaint-handling processes generally.

Failure to pursue lines of inquiry

We found this deficiency in over 40 investigations. In a number of cases, investigators had failed to conduct simple and low cost inquiries such as interviewing eyewitnesses and following-up discrepancies in written accounts provided by officers through further questioning. Please see case study 24 for an example.

Another simple inquiry that investigators failed to make in a number of matters was obtaining the relevant CCTV footage. RailCorp stores CCTV footage for 14 days before it is taped over. In 16 investigations the complaint was lodged within 14 days of the incident complained about, but the investigators did not ensure in any of these matters that the available CCTV footage was secured for viewing before the recordings were taped over.

CaseStudy24

One person complained to RailCorp alleging that an arresting transit officer had grabbed a man around the neck or head in order to arrest him. Shortly after the incident another person reported to a senior transit officer at the scene that he had seen the same transit officer grab the man in a headlock before he placed him on the ground. The investigator also had information that another transit officer had observed the same incident and reported this to the senior transit officer. Because the allegation was serious — being about the use of excessive force — we were of the view that a thorough investigation was warranted which would include following all possible lines of inquiry.

RailCorp found that the complaint was unsubstantiated. However this finding was reached without interviewing the complainant, the man who had been arrested, or the other two witnesses even though all of them had been identified. RailCorp asked the transit officers concerned to provide statements, but did not take any steps to make sure the officers did not collude in providing those statements.

Another problem with the investigation was that RailCorp appeared to place some weight on the fact that the man who had been arrested did not complain to them about his treatment. However we discovered that he had in fact complained to the police about this. We are of the view that it would not have been difficult for the investigator to find this out.

CaseStudy25

One complaint was from a man who had tried unsuccessfully to process a ticket at the barrier at Central Station. He had attempted to push the barrier aside in order to walk through. Two transit officers approached him and he produced his ticket — which was valid. One of the officers indicated that he intended to issue him with an infringement notice for entering a restricted area without processing a ticket. According to the transit officers, the man then used offensive language. He was arrested for the offence of entering a restricted area without processing a ticket.

After a struggle, handcuffs were placed on the man and he was told to squat on the ground. He was detained in this manner for around 15 minutes until police arrived. His handcuffs were then removed, he was issued with infringement notices for the original offence and for using offensive language, and was allowed to leave the station.

The passenger complained to RailCorp about the way he had been treated. RailCorp's investigation focused solely on determining what had happened. The investigator looked at the notes of the transit officers concerned, CCTV footage (with no sound) of the incident, and interviewed the police officer who had attended the scene. She found that there was little dispute over what had happened, but noted that the evidence about whether or not the man had used offensive language was conflicting. She did not, however, make a positive finding on this issue.

RailCorp withdrew both infringement notices and spoke to the senior transit officer involved about the outcome of the complaint — but did not discipline him. They failed to follow up a number of systemic concerns that this complaint raised, including:

- whether or not the force used to detain the man and the public humiliation that he suffered during this incident was disproportionate to the offence for which he was originally arrested, and might have contributed to the escalation of the incident
- whether or not it was appropriate to fine the man for doing something that people may not know is an offence — the police officer who attended the incident said that she could understand how the man felt, noting that there were no signs to tell passengers that it was an offence to push malfunctioning barriers aside
- whether or not the transit officers concerned, or transit officers generally, consider themselves bound by a RailCorp policy that gives them no discretion not to issue an infringement notice where they observe an offence being committed, even if this is unreasonable in the particular circumstances, and whether further training or a change in policy may be appropriate
- whether or not the use of handcuffs in this situation was lawful
- whether or not the elements of the offence for which the complainant was arrested were made out and, if not, the wider implications of such a finding.

Failure to identify key issues

We found this deficiency in 29 investigations. Some of the key issues that RailCorp failed to identify included:

- whether or not the conduct being complained about complied with the law or RailCorp policy
- whether or not the conduct being complained about was appropriate in light of all the circumstances surrounding the incident
- systemic issues raised by the complaints.

More often than not we found that the investigators had merely done a mechanical inquiry into the bare allegations. This approach fails to utilise the opportunity that complaints raise to fix a problem or improve the way an agency performs its functions. See case study 25 for an example.

Failure to check complaint history of officers involved

In only 4 of the 72 investigations reviewed did it appear that the investigator had considered the complaint history of the officer involved. In some circumstances this will be an important step to take. If an officer has been complained about a number of times, this raises the possibility that there may be underlying performance issues that should be identified and addressed. We identified 14 transit officers who had been complained about more than three times during 2003-2004. Three of them had been complained about six times. Our examination of some of the investigations into complaints about these officers found no records to suggest that RailCorp had looked into the developing trend of complaints made against them.

Using inappropriate methods to obtain information from transit officers

We found that one process used in investigating these complaints was to provide the transit officers concerned with a statement of the raw allegations of the complaint and direct them to respond to each aspect of the allegations in writing within seven days. There are a number of problems with this kind of

process. Firstly, it fails to 'caution' the officer under inquiry in the case where some of the allegations are of a criminal nature. Secondly, there are processes by which more objective evidence could be obtained to help resolve factual disputes and discrepancies. Thirdly, this process poses the risk that groups of officers under investigation are forewarned of the inquiry and have an opportunity to collaborate and manufacture a defence to the allegations.

This appeared to happen in one case that we reviewed. The written accounts of the transit officers involved in an incident each contained the following identical statement:

The POI seemed to calm down after the threat of his removal, the other passengers saw that the transit officers would stand for no nonsense and were doing what we are paid to do.

This suggests that the officers collaborated when preparing their responses. Another piece of information that RailCorp failed to take into account was that one of the officers involved had been the subject of six complaints in 2003-2004. Both these concerns should have prompted the investigator to examine the responses of the transit officers more closely.

Recommendations

We made a number of recommendations about how RailCorp could improve their complaint-handling, including a number of specific reforms to the systems they use and a legislative clarification of the powers held by transit officers. Our main suggestion was that there was an urgent need for their complaint-handling system to be subject to more rigorous and systematic external oversight by a body such as our office. RailCorp has responded positively to this suggestion and negotiations about this are continuing.

Land valuation system

In the absence of a satisfactory explanation for some significant discrepancies in land valuations issued by the Valuer General, we began an investigation into the controls employed by the Valuer General to ensure the accuracy of valuations under the component method of mass valuation in valuation districts in NSW. Our investigation also examined the handling of objections to valuations including the provision of information to actual and potential objectors. After the complainant appeared on a morning radio program and gave some details of the investigation, we received over 160 further complaints from landowners objecting to large increases in the valuation of their properties. Complaints related to land tax also almost tripled this year (from 18 to 53).

Many of these complaints also raised questions about the methodology used by the Valuer General, which led to what the complainants believed were unrealistic and financially punitive valuations. As a valuation can only be overturned through the statutory objection system or by subsequently appealing to the Land and Environment Court, we declined many of these complaints as being premature and provided complainants with advice and referral information.

As part of our investigation, we examined thousands of pages of relevant documents and analysed the statistical returns from 90 valuation districts to obtain an insight into how effectively the land valuation system was being quality assured. At the time of writing our draft report had been provided to the Minister. The Valuer General has indicated his acceptance of all the provisional recommendations we made to improve the system.

Universities

The previous five-year rising trend in complaints received about universities (130% increase in that period) was broken this year with the number of complaints received dropping from 78 last year to 60 this year.

About two-thirds of complaints come from or on behalf of students and the rest come from staff. A significant number of the student complaints question exam, assignment or other academic assessments. Consistent with our longstanding policy, we routinely decline to second-guess academic, technical or professional judgments. However we will consider making inquiries where the complaint raises concerns about complaint-handling or appeal processes (for example, see case study 26), or there is evidence of systemic flaws (for example, see case study 27). In one case our inquiries have revealed members of an examination committee subsequently sitting on an appeal committee reconsidering their own original decisions.

An unintended consequence of increasing university fees and the number of full-fee payers appears to be students' increasing readiness to complain about what they see as poor teaching or improper assessment resulting in a failure to deliver qualifications they believe they have paid for.

Complaints from staff have generally been more complex and difficult than student complaints. If they are serious, they are almost always considered as protected disclosures. In many of these cases the member of staff had tried initially to raise their concerns with their university's administration but the matter was poorly handled. In nearly all cases

we have dealt with there has been some conflict of interests or duties that was not recognised, or was ignored or mismanaged. The nature of the allegations made have included harassment, bias, nepotism, plagiarism or other academic misconduct, attempts to silence legitimate criticism or curtail academic freedom, and improprieties in the making of academic or employment assessments.

The reputation of the individuals involved, as well as the university itself, is often at stake when these cases come to our office as many of them involve senior staff. Our investigations of a number of these matters have tended to be very resource-intensive. The process has also been extremely expensive for some of the universities involved, both in terms of internal senior staff time and external legal fees. In some cases the people involved have also felt it necessary to make extensive FOI applications which are not always completely met by the university. This in turn can lead to another complaint to our office or an application to the Administrative Decisions Tribunal to dispute the university's decision to not release certain documents.

We have identified several problems with the way universities in general seemed to be handling complaints from both students and staff. These concerns were raised particularly through our investigation of the University of NSW (see case study 72 in the protected disclosures chapter). We decided to survey relevant procedures in all ten NSW public universities and publish a discussion paper on the subject. We are currently considering the responses we have received to our discussion paper and plan to formulate a set of minimum standards for university complaint-handling that should be applicable not only in NSW but in other states and territories as well.

The experience of other Ombudsman indicates that universities around Australia face similar difficulties in dealing with complaints. In April 2005 a letter was published from our Ombudsman and Ombudsman from the Commonwealth, the Northern Territory, Queensland, Tasmania, Victoria and Western Australia in *The Australian* Higher Education Supplement expressing concern about university complaint-handling and the need to make a range of improvements.

The future place of universities in terms of commonwealth-state relations is under review by the Federal government. This is because, while established by state statutes, universities now receive a large majority of their government-sourced funding from the Commonwealth. While these issues of ultimate governance are being resolved, we will continue our work towards improving the quality of internal university complaint-handling.

CaseStudy26

An overseas student in the Faculty of Nursing at the University of Sydney failed her clinical placement. The university decided that, before being allowed to re-enrol, she must undertake additional academic requirements. She appealed this decision. Her complaint to us concerned the time it was taking the university to examine her appeal. The delay could have led to her being in breach of her student visa which required her to be enrolled to remain in Australia. The university reviewed the matter after we made inquiries and allowed the woman to enrol in the course she wished to undertake pending the result of her appeal.

CaseStudy27

A final year business degree student complained that, despite telling the university on several occasions that she could only attend evening classes in 2005, she had been allocated daytime tutorial classes. On contacting the university she was told students were only allowed to attend tutorials at the campus at which they had enrolled. Her campus of enrolment, Campus A, did not provide evening classes for her course — they were only held at Campus B. This rule had only just been introduced, so over the last few years the student had attended evening tutorials at Campus B while being enrolled at Campus A.

She had not been told about this new rule on any of the previous occasions she had contacted the university. The university explained that, had this problem been identified earlier, she could have amended her enrolment to enrol at Campus B. They advised that it was now too late to do this. The impact of this was that, because the student could not attend her scheduled daytime tutorials, she would not be able to complete her degree in 2005.

She complained to the faculty's senior administrative officer who advised that they could not change the tutorials she had been allocated.

We were of the view that the student should not have to delay the completion of her degree by an entire year because she had not complied with an administrative rule of which she had not been aware. After we contacted the university, they agreed to allow her to attend the evening classes at Campus B.

Environmental issues

In November 2004, we finalised our investigation of a complaint from a coalition of peak environment groups about the former National Parks and Wildlife Service (NPWS) which is now part of the new Department of Environment and Conservation.

This complaint raised a systemic issue that affects any public sector agency that consults the public as part of making a decision. Through our research and investigation of this matter, we found that public sector agencies do not have access to any external guidance on how public submissions should be considered or the process that should be followed to provide fairness to all the parties concerned and ensure the public interest is served.

It is important that agencies develop their own internal guidelines on these issues to ensure consistency and transparency when they are dealing with sensitive issues about which the public has a range of differing opinions and points of view. See case study 28.

CaseStudy28

A few years ago the NPWS conducted an assessment of the southern regional area of NSW to determine whether or not to recommend to the Minister for Environment to declare certain areas as wilderness areas. The process for making this decision involved:

- putting on public exhibition a report outlining the costs and benefits of a number of proposals
- consulting the public by calling for submissions on those proposals
- considering those submissions and reporting publicly on how they had been taken into account in making recommendations to the Minister.

At the end of this process, the government declared 67% (or 122,000 hectares) of the identified lands within the southern region's reserve system as wilderness areas. This was a significant increase in the amount of wilderness declared in southern NSW.

The complainants were unhappy that other particular areas had not been declared as wilderness areas. They also complained about the way NPWS had considered their submission (called the *Wilderness 2000 Protection Plan*) which had been supported by over 19,000 other public submissions.

We found that the report on how the public submissions had been considered inadequately recorded the full range of public submissions and was insufficiently transparent in terms of the basis on which the recommendations were made.

NPWS had initially publicly exhibited a report setting out 16 separate proposed wilderness areas and providing three options for declaring wilderness for these areas — ranging from declaring most of the identified areas as wilderness to only a modest proportion.

The NPWS received 26,545 public submissions responding to this report. Of these, 94% (25,064) were form letters, 4% (1,010) contained personal comments and suggestions taken from organised groups (called hybrid submissions) and only 2% (or 471) were personal letters. The majority of form letter and hybrid submissions were pro-wilderness and the majority of personal letters were anti-wilderness.

At the time NPWS had an internal document in draft form called *Guidelines for Assessing Wilderness in NSW* which provided limited guidance on how public submissions should be analysed. Instead of considering the submissions like a poll and counting the raw numbers for and against wilderness, they used a form of multi-dimensional statistical analysis of the issues raised in the submissions. This grouped all issues into a number of categories and sub-categories in a hierarchy of relevance to making decisions on declaration recommendations.

The report was presented in a way that appeared, on the face of it, to be a simple step-wise relationship between the data extracted from submissions, the summaries of those issues, the key issues from the summaries and the recommended boundaries.

However, on closer analysis, we found that the methodology used gave more weight to the minority of personal submissions because they were considered to be most relevant. The rest were considered to be 'background' only. The repeated discussion of the same largely anti-wilderness issues — relating to such things as the use, access and socioeconomic impacts of declaring areas as wilderness — from several different perspectives had the effect of strengthening those arguments.

In addition, the way the information was summarised and presented encouraged the reader to conclude the analysis of public submissions played a much more significant role in the recommendations that were put to the Minister than was the case.

We recommended the NPWS' draft guidelines be revised to standardise the process. We also recommended the complainants and other stakeholders be consulted in revising the guidelines.

Any member of the public or an interest group can write to the NPWS asking them to consider recommending that certain areas be declared wilderness. In the interests of resolving this particular complaint we recommended that any future proposals put to the NPWS by the complainants be assessed under the new guidelines. The new department accepted our recommendations.

The fine enforcement system

The two agencies central to the administration of the fine enforcement system in NSW are the Infringement Processing Bureau (IPB) and the State Debt Recovery Office (SDRO). For several years we have been obliged to devote significant resources to dealing with complaints about one or both of these authorities. Problems with administering this kind of system, which processes an enormous volume of fines, are almost inevitable. However we have made a number of suggestions over the years to try to improve the process of dealing with problems that arise.

This year, there has been an overall drop of about 16% in the number of written complaints we have received about the major fine enforcement agencies, although complaints specifically about the SDRO have increased.

There has also been an overall drop in the number of telephone inquiries to us about fine enforcement matters. However matters of this nature continue to represent a disproportionate part of our work as they can have a serious effect on people's lives. Central to the system is the suspension of a driver's licence as a penalty for not paying a fine. To many people, the authority to drive is crucial to their ability to go about their day-to-day lives — whether it be working, caring for another person or attending to their own medical needs. This means that if the system makes a mistake or fails to work within the timeframes it promises (for example, see case study 29), this can affect people unduly harshly. Intervention by our office led to improved outcomes for many people affected by fines this year.

One of the most common problems that occurs is when fines and penalty reminder notices are sent to the wrong address. Sometimes this is because records are wrong or not up-to-date, or sometimes fines are wrongly issued. For example, please see case studies 30 and 31. On a number of occasions we were able to have these fines withdrawn and obtain refunds of monies already paid, after explaining the situation to the IPB or SDRO. Case study 32 is an example of a fine being withdrawn after we contacted the RTA.

A more systemic issue we took up during the year related to the IPB's policies for releasing information. Following our inquiries, the IPB sought legal advice about whether a person nominated in a statutory declaration as the driver at the time of an alleged offence is entitled to be told who had nominated them. The advice suggested that it was appropriate for that information to be released.

CaseStudy29

A man living in rural NSW, whose licence was suspended for non-payment of a fine, paid the money he owed to the SDRO. They advised that his suspension would be lifted in 24 hours but this deadline was not met. He needed to drive to a specialist medical appointment that day but could not get a reason for the delay from the SDRO. He called us and we called the SDRO and they told us that an administrative difficulty was causing the delay. They promised to lift the suspension within a few hours of our call.

CaseStudy30

The SDRO told a Windsor man his parking fine had been referred to them as he had failed to pay by the due date. He currently holds a mobility parking scheme card and was fined for exceeding a parking zone time limit. The mobility parking card allows the holder to park in designated areas for an unlimited time. When the man contacted the SDRO he was told he must attend court to have the matter heard. After receiving the man's complaint, we made inquiries with the SDRO. We then obtained a copy of the man's mobility parking card which we sent to the SDRO acting director. We were advised that the fine would be withdrawn.

CaseStudy31

A man fined for parking his car in a disabled zone made representations to the IPB that there had been no signage to indicate he was at risk of attracting a fine. The IPB replied indicating the penalty would stand. Only after the man's complaint to us did the IPB contact the local council who sent a ranger to check if there was a sign designating the area in question for disabled parking. The ranger confirmed there was no sign and an error had been made. This matter was followed up with the issuing officer and the fine was withdrawn.

CaseStudy32

A man was issued with two separate fines for exceeding the speed limit. The speeding was detected by two separate speed cameras only 300 metres apart near Sydney's Spit Bridge. We contacted the RTA and they agreed to turn off one of the cameras and check their records to find out who else had been fined twice for speeding along this stretch of road. The RTA advised that they would withdraw one of the fines and re-instate any demerit points lost because of the multiple offences.

Carolyn Campbell-McLean
Community Education Officer, Community services division

My name is Carolyn Campbell-McLean and I am a community education officer in the community services division. I joined the Ombudsman's office as part of the merger of the Community Services Commission in 2002. One of my main achievements in this position has been developing *The Rights Stuff* consumer education program, which involved publishing the *Rights Stuff Toolkit* and conducting over 50 workshops with consumers across NSW. I also coordinate and conduct complaint-handling training for service providers, and have recently developed the *Solving Problems — Right at Home* program for residents and staff of licensed boarding houses.

I am passionate about hearing the voices of consumers, and use my people skills in promoting the work of the office and how it can help people. I think offering people information and resources, coupled with us learning from their experiences, is a dual role for community education. I also really enjoy travelling to regional areas of the state.

My background is as a social worker and working in disability advocacy. Currently I am Chair of the Muscular Dystrophy Association's Members Advisory Committee, and teach an elective subject, *Disability Issues*, at the University of Western Sydney.

7. Community services

Introduction

Our work with organisations providing community services focuses on promoting improvements to the delivery of these services by:

- resolving problems and achieving better outcomes for individuals receiving or needing community services
- reviewing the effectiveness of the overall system for delivering community services and, if systems improvements are needed, making recommendations for change
- monitoring the progress of agencies in achieving improved outcomes in areas we have identified.

Community services in NSW are primarily provided by the Department of Community Services (DoCS), the Department of Ageing, Disability and Home Care (DADHC) and numerous non-government agencies that are funded, licensed or authorised by the Ministers responsible for these portfolios. The services provided include child protection and out-of-home care for children and young people, services for people with a disability — such as accommodation services, respite care and in-home support — and accommodation and support services for homeless people.

Our statutory functions include:

- handling, resolving and investigating complaints about community services
- monitoring the implementation of recommendations we make for improving services
- providing advice or assistance to people making inquiries
- reviewing complaint-handling systems of agencies
- coordinating the official community visitors scheme
- providing information and training to consumers of community services and agencies about complaint -handling and consumer rights and needs
- promoting improvements to community service systems
- reviewing the situation of people in care
- reviewing the causes and patterns of the deaths of certain children and people with a disability, and identifing ways in which those deaths could be prevented or reduced
- promoting access to advocacy support for people receiving, or eligible to receive, community services to make sure that they are able to participate in making decisions about those services.

In this chapter we discuss the work we have done specifically in relation to children and families, people with a disability and people who are homeless.

Although our work in reviewing people's deaths and coordinating the official community visitors scheme is reported in separate annual reports, there is a brief outline of the work we do at the end of this chapter.

Complaints about community services

In 2004-05 we received 667 formal complaints about agencies providing community services, up from 531 last year. See figure 40. Of these, 349 complaints or just over 50% were about DoCS, with another 161 or 24% about services provided by DADHC. See figure 39. The most common complaints were about case management or decisions affecting a person receiving a service. See figure 41.

We finalised 683 formal complaints and 45% of them were resolved. In some cases, we conciliated an outcome. See figure 42.

Figure 37 - Number of formal and informal complaints received in 2004 - 2005 about agencies providing community services – by program area

Program area	Total	Formal	Informal	%
Child protection services	604	176	428	32.6%
Out of home care services	393	173	220	21.2%
Disability accommodation services	342	180	162	18.5%
Disability support services	234	96	138	12.6%
Aged services	20	4	16	1.1%
Children's services	33	12	21	1.8%
SAAP services	28	15	13	1.5%
Adoption services	15	4	11	0.8%
General community services	10	4	6	0.5%
Family support services	6	2	4	0.3%
Disaster welfare services	1	1	0	0.1%
Other	4	0	4	0.2%
General inquiry	161	0	161	8.7%
Total complaints received	**1,851**	**667**	**1,184**	**100.0%**

Reviews of people living in care

One of our functions is to review the situation of children, young people and people with a disability who live in care. Reviews may look at any aspect of the welfare of an individual or their circumstances in general. The aim of a review is to identify whether any change is needed to promote the welfare and interests of an individual, or a group of individuals. Please see figure 38 for information about the characteristics and placement of the 138 people we reviewed in 2004-05.

Figure 39 - Number of formal and informal complaints received in 2004-2005 about agencies providing community services – by agency category

Agency category	Total	Formal	Informal	%
DoCS:				
Child protection services	599	174	425	32%
Out-of-home care services	361	160	201	20%
Other (incl. requests for assistance, licensing)	36	11	25	2%
Adoption	14	4	10	1%
Sub-total	**1,010**	**349**	**661**	**55%**
DADHC:				
Disability accommodation and support services	173	101	72	9%
Home care service	87	24	63	5%
Policy and strategic services	119	36	83	6%
Sub-total	**379**	**161**	**218**	**20%**
Non-government funded or licensed services:				
Disability services	127	87	40	7%
Out-of-home care services	31	13	18	2%
Home and community care services	60	22	38	3%
SAAP services	25	15	10	1%
Childrens services	9	4	5	0%
Boarding houses	18	8	10	1%
General community services	10	4	6	1%
Family support services	2	1	1	0%
Other	19	3	16	1%
Sub-total	**301**	**157**	**144**	**16%**
Other (general inquiries)	161	0	161	9%
Total	**1,851**	**667**	**1,184**	**100%**

Figure 38 - Characteristics and placement of the people living in care we reviewed in 2004-2005

	DoCS management	DoCS management / non-government agency care	DADHC management and care	DADHC management / non-government agency care	Non-government agency management and and care
Child or young person	0	7	0	0	7
Child or young person with a disability	7	20	9	7	43
Adult with a disability in care, including residents of boarding houses	0	0	4	15	19
Total	**7**	**27**	**13**	**22**	**69**

Figure 40 - Number of formal and informal complaints received about agencies providing community services – three year comparison

	02/03	03/04	04/05
Formal	599	531	667
Informal	1,559	1,209	1,184
Total	**2,158**	**1,740**	**1,851**

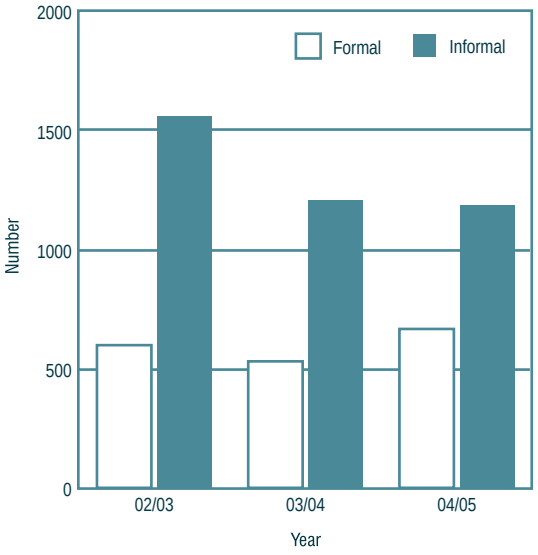


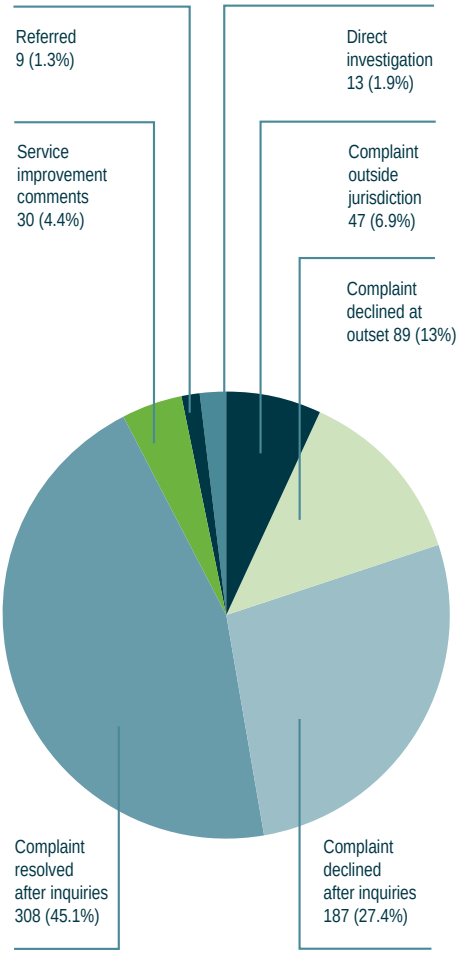
Figure 41 - What people complained about in 2004-2005 (agencies providing community services)

This figure shows the issues that were complained about in 2004-2005. Please note that each complaint we received may have been about more than one issue.

Issue	Formal	Informal	Total
Case management/decisions	147	276	423
Poor quality services	175	109	284
Access to or exit from services	117	178	295
Complaint handling by services	116	163	279
Case planning and casework	129	124	253
Individual needs not met	91	54	145
Service provider management	60	61	121
Inadequate service policies	48	72	120
Contact with family, friends	81	50	131
Non-provision of information	15	62	77
Professional conduct of staff	39	42	81
Clients not involved in decisions	29	26	55
Funding of services or providers	11	37	48
Other issues	58	206	264
Total issues raised	**1,116**	**1,460**	**2,576**

Figure 42 - Outcomes of formal complaints finalised in 2004-2005 about agencies providing community services

Outcome	Total
Complaint outside jurisdiction	47
Complaint declined at outset	89
Complaint declined after inquiries	187
Complaint resolved after inquiries, including local resolution by the agency concerned and complaints conciliated by our office	308
Service improvement comments or suggestions to agency	30
Referred to agency concerned or other body for investigation	9
Direct investigation	13
Total	**683**



Services for children and families

The *Children and Young Persons (Care and Protection) Act 1998* provides the statutory basis for the care and protection of children and young people in NSW. Under the legislation, the Department of Community Services (DoCS) has a range of responsibilities including:

- receiving and assessing reports of children and young people who may be at risk of harm
- arranging or providing support services to families to help them better care for their children
- determining if a child or young person is in need of care and protection
- providing and/or funding services to children and young people placed in out-of-home care.

DoCS as an organisation is undergoing significant change. The department is in the process of implementing a five-year plan to improve the care and protection system in NSW through a substantial budget increase of $1.2 billion. This enhancement and the department's reform agenda are positive steps. There are significant challenges for DoCS in building a more effective system for protecting children and assisting families, particularly with high and growing demand during the transition period.

This year our first reviewable deaths annual report for 2003-04 (tabled in December 2004) highlighted a number of areas for improvement in the way DoCS carries out their care and protection functions. For example, one area was DoCS policies and practices for assessing and acting on reports of risk-of-harm to children and young people. The observations we made are supported by the findings of our investigations into individual matters concerning the care and protection system in NSW.

This system, which includes services to children and young people placed in out-of-home care, continues to be the most complained about area of community services provision. In 2004-05, 33% of complaints were about DoCS' child protection services and 21% were about out-of-home care services either funded or provided by DoCS. See figure 39.

What have people complained about?

In the area of child protection services the most common issue people complained to us about was the adequacy of DoCS response to risk-of-harm reports, particularly the adequacy of their assessment of risk.

Other areas of complaint concerned the department's:

- response to requests for assistance from families
- communication with parents — including making and returning phone calls to families to provide information about the outcome of risk-of-harm assessments, about Children's Court matters and processes, or about the situation of their children in the Director General's care
- action in relation to Aboriginal families — including not allocating Aboriginal workers, not placing children with Aboriginal carers and not working effectively with relevant Aboriginal agencies or the community.

In the area of out-of-home care services the most common issue complained about was the adequacy of contact arrangements between children in care and their families.

The other main areas of complaint were:

- financial matters — such as incorrect or non payment of allowances to foster carers and travel costs, particularly for access visits
- lack of planning to ensure children and young people placed in out-of-home care were in stable, secure, and permanent care arrangements
- the adequacy of the monitoring of children placed in funded services by DoCS
- lack of support and assistance to foster, kin and relative carers
- the adequacy of support provided to young people leaving statutory ('state') care.

CaseStudy33

A young child diagnosed with shaken baby syndrome had been cared for by his grandparents for over two years, since being removed from the care of his parents. DoCS had allowed the Children's Court order that gave 'parental responsibility' to the Minister to expire. After the expiry of the order, the grandparents continued to provide care for their grandson but DoCS stopped paying them a foster carer's allowance. The grandparents were having difficulty meeting the costs of care for their grandson, including medical costs related to his past injuries and abuse.

As a result of the grandparents' complaint to us, DoCS reinstated their carer's allowance, back-paid the allowance owing, and are now helping them to meet the costs of ongoing medical care. DoCS is also conducting a review of their case management of the child.

Findings and observations

We initiated 19 investigations about the care and protection system in 2004-05. The investigations were started using our 'own motion' powers following our reviews of deaths of children or as a result of complaints we received . Our focus was on the adequacy of child protection services provided to the children who had died and/or their siblings. We looked into the conduct of DoCS for each of these investigations and, in some instances we also investigated the conduct of other agencies such as NSW Police, NSW Health and the Department of Education and Training.

Of the 19 investigations — one was discontinued, 13 were finalised and five are ongoing.

Our work has identified a number of significant challenges confronting the child protection system. Some of the key areas that we have identified as warranting closer scrutiny include the following.

Premature closure of cases

The first area is DoCS closure of cases where risks to the children have not been resolved. DoCS policies for managing workloads allow for cases to be closed at any time if they assess there are cases of a higher priority. This can include cases where the children have been assessed as being at risk of harm. Closing these cases can result in children not being effectively protected.

High risk non-urgent matters

The second area is DoCS response to risk-of-harm reports where their initial assessment indicates the risk is high but they consider that a further assessment is not urgent. Staff on the DoCS helpline make these initial assessments when they first receive reports of harm. They categorise cases in terms of risk and urgency and send the reports to DoCS community service centres (CSCs) for further assessment.

We have evidence suggesting that the practice in some DoCS regions is to respond only to cases initially assessed as requiring an urgent response. This means that reports about children exposed to high risk — but where the matter is not considered to be urgent — may receive a lower priority. In some cases these reports may not be allocated to a child protection officer and closed without any further assessment being made or any other action taken.

We have identified that reports about children being neglected, children living with parents using drugs and/or alcohol, and those living with domestic violence often fall into this category. In many cases the domestic violence is associated with drug and alcohol abuse.

Risks to babies not yet born

The third area is DoCS' response to risk-of-harm reports about babies who are not yet born (pre-natal reports). The care and protection legislation allows for people to report their concerns to DoCS before the birth of a child. This could be, for example, where parents have a history of substance abuse, mental illness or other problems that may affect their ability to care for a child. In a number of cases we reviewed, we found that DoCS did not take proactive steps to protect children who had been reported to them before they were born. For example, please see case study 34.

Temporary care agreements

The fourth area is the use of temporary care agreements and voluntary or informal undertakings given by parents. Our work has identified that DoCS staff have, at times, used these agreements and voluntary undertakings in circumstances where they have provided inadequate protection for the children concerned.

Coordination between agencies

The fifth area is the adequacy of communication and coordination between agencies that have some responsibility to protect children. We have found that there are significant problems with liaison, information exchange, coordination and collaboration between DoCS and other agencies.

Aboriginal children and young people

The sixth area is the over-representation of Aboriginal children and young people in the care and protection system. There appear to be continuing problems in the government's efforts to effectively support Aboriginal families and protect Aboriginal children and young people. Please see case study 35.

How DoCS has responded to our concerns

We have made a range of specific recommendations on how these issues could be addressed, which we report in detail in our reviewable deaths annual report 2004-05.

Reviews of children and young people in care

This year our reviews of children and young people in care have focused on the quality of care provided to people with high support needs arising from their disabilities.

In response to a referral from the Children's Guardian, we reviewed the circumstances of five young children temporarily placed with an agency on a fee-for-service basis while waiting for permanent placement with carers.

CaseStudy34

A baby boy, born prematurely with severe disability and high medical needs as a result of parental substance abuse, died at two months of age. In the months before his birth, DoCS received three reports about the baby from mandatory reporters concerned about the continued use of amphetamines by the baby's mother, escalating domestic violence and poor pre-natal care. The local CSC closed the reports without assessment. They also failed to assess a number of reports about the neglect and abuse of the baby's 5 year old sister that had been made both before and after the baby's death.

It appeared to us that, at the time DoCS finalised this matter, they did not know precisely where the sister was living, who was caring for her, or whether the concerns for her safety and welfare had been resolved.

We investigated the department's handling of the matter and found their conduct to be unreasonable. Over a 2 ½ year period, DoCS received 15 reports about the children but did not visit either child or speak to their mother about the issues raised in the reports. They did not conduct any comprehensive risk assessment, despite there being escalating and persistent indications of risk raised by the reports, and despite the death of the baby which was, in part, a consequence of his mother's actions.

We recommended that DoCS attempt to locate the little girl and conduct a comprehensive risk assessment, review casework practice by the two CSCs involved with the family, and review the adequacy of guidelines to helpline caseworkers in assessing pre-natal reports.

In response to our provisonal report, DoCS acknowledged the problems with their handling of the case and accepted the recommendations. They have put in place arrangements to review the practice of the two CSCs, and have located the girl and started a comprehensive risk assessment. We have asked DoCS to keep us informed of their implementation of our recommendations.

We also reviewed the circumstances of a group of young people placed by both DoCS and DADHC with a funded disability service provider. Please see case study 36.

A third review looked into the arrangements for a group of young people with a disability leaving statutory care. Please see case study 37.

Our reviews found that there are significant problems in finding secure, family-based placements for children with a disability who are in care. There is also room for improvement in some services caring for young people with disabilities, and some young people with a disability who leave statutory care are not well supported in this change.

CaseStudy35

We investigated the conduct of five agencies who had contact with a young teenage Aboriginal girl in the two years leading up to her murder by her boyfriend. The events took place in a country town. In those two years, the teenager had been placed to live with her aunt and this placement was supervised by an Aboriginal childrens service. At some point, the girl's relationship with her aunt broke down and she moved about between family members. During this time the girl was reported to DoCS as a child at risk, and her attendance at school was poor.

She also became involved with a young man who assaulted her on a number of occasions, bringing her to the attention of the police and health services. The young man was later convicted of her murder.

Our investigation found that the Department of Education took reasonable steps to try to address the girl's poor school attendance. However we found the other services failed to take the necessary and appropriate steps to protect the girl. In particular, at no stage did the agencies communicate with each other and develop a coordinated response to her situation.

We made recommendations to four of the five agencies involved and as a result:

- the health service have reviewed and amended their child protection practices
- DoCS has committed to improving the child protection inter-agency arrangements in the region where the girl lived
- our investigation report is being used to inform a review of the Aboriginal childrens service
- NSW Police have undertaken to convene a meeting with all the agencies involved to look at ways to intervene earlier to protect young people in similar life situations.

CaseStudy36

Our review of a group of young people placed with a non-government disability service included a young person with a moderate level of intellectual disability. He had an extensive history of childhood neglect and abuse and had severe behavioural problems as a result of that experience. At the time we reviewed his circumstances, he had been at the service for seven months following the breakdown of a long-term foster placement.

We found a number of problems with the way the young man was being cared for. In particular:

- there was no program in place to meet his specific needs
- plans for his care were poorly coordinated and implemented inconsistently
- there was poor communication about his progress between the service and DoCS
- information about his progress was poorly kept, and staff lacked relevant knowledge to effectively support the young man or other residents in the group home.

We made a number of recommendations to the service and DoCS to try to improve the care being provided to the young man.

Ten months later, we reviewed the young man's circumstances again and found a number of improvements had been made. The service had provided members of staff working with him with some training and further guidance on how to support him. They had also made one member of staff responsible for ensuring his specific needs were being met. The service and DoCS were working together to support the young man and using professional behaviourial management help where necessary.

CaseStudy37

In November 2004 we reported on our reviews of the circumstances of 27 young people with developmental delay, intellectual disability and autism. They were under the parental responsibility for the Minister for Community Services and were about to leave statutory care because they were turning 18. The report is available on our website.

Because of their level of need, the leaving care plan for seven of the 27 young people was to move them from their care arrangement with DoCS to an appropriate alternative placement either funded or provided by DADHC.

Our review found that eligibility for DADHC services is no guarantee of a seamless transfer from statutory care arrangements to supported accommodation funded or provided by DADHC. It is particularly difficult for young people with a disability who have come into contact with the criminal justice system. The situation may improve with the allocation of additional funding to DADHC in the last state budget for an additional 120 accommodation places for young people transferring from DoCS or from juvenile justice and correctional centres.

We also had concerns about the situation of the 20 young people who were not eligible for accommodation funded or provided by DADHC or the services of a caseworker. Although there are agencies funded by DoCS to provide 'after care' support, these agencies only receive funding to provide a maximum of two hours case management for each young person per month. In most cases this is inadequate to meet the needs of young people with a disability learning to live independently.

Many of these young people had little choice but to move to independent living arrangements, even though their DoCS caseworkers were concerned that they lacked the capacity to do so.

We recommended that DoCS consider the scope for, and potential benefit of, funding 'after care' services to provide intensive case management for young people with a disability who need help to develop the skills to live independently.

In March 2005, DoCS advised us that they allocate substantial funding for the provision of after care services to children and young people who have left out-of-home care, and are currently developing a policy on after care services that will take into account our report findings and recommendations.

We have asked them to provide us with a copy of this policy once it is finalised.

Responses of services to our recommendations

At the end of each review of a child or young person in care, we often make specific recommendations about how that person's care may be improved. We also make recommendations at the end of each investigation and in our special reports to Parliament. Most of our recommendations are accepted and acted upon by agencies. They have also usually been willing to implement recommendations related to broader service-wide or systemic issues.

In our December 2004 reviewable deaths annual report, we made 18 specific recommendations to DoCS. The then Minister for Community Services advised NSW Parliament that the recommendations would be accepted. DoCS also advised us directly that they accepted all of our recommendations, although two of them only 'in-principle'. However, DoCS' initial response to a number of our recommendations did not enable us to assess whether, and to what extent, the recommendations would be addressed by the department's proposed actions. We asked DoCS for further advice, and received more information that indicated many of the recommendations would be addressed in the broader context of reform initiatives. While we note that our proposals have been put to DoCS in a period of intense growth and structural reform for the department, we will closely monitor progress in relation to the individual recommendations.

Special report to Parliament

In December 2004, we tabled a special report to Parliament — *Improving outcomes for children at risk-of-harm: a case study* — which reported the findings of our investigation into the circumstances of a young sister and brother (the brother died aged three) who were reported to DoCS on a number of occasions over a two-year period and were also known to police. Our investigation revealed significant deficiencies in the way DoCS handled the case. The report is available on our website.

As a result of the investigation, we recommended that DoCS review its involvement with the two children. We also asked NSW Police to advise us of the outcome of its review of the case by the Child Protection and Sex Crimes Squad. These reviews have now been completed.

We were satisfied with the review by NSW Police and will be taking no further action.

In response to our provisional report, DoCS had advised us that all decisions in the matter 'were made in good faith, in line with the resources available and departmental procedures were appropriately applied'. Subsequently, DoCS own review of the matter revealed a range of deficiencies in the system and challenges for the department. Some of these were that there was:

- Lack of detailed assessment — DoCS found that all the risk assessments done by staff about these children were 'incident focused' and had therefore failed to adequately weigh-up and analyse the level of risk to which the children were exposed. DoCs found that this method of assessing risk may be a systemic failing that affects the way DoCS do their work generally.
- Inadequate integration of history — DoCS found that they had failed to pull together the different sources of information about the children to make a thorough assessment of the capacity of the adults in the children's lives to look after them.
- Failure to identify risk factors — DoCS found that they did not adequately identify neglect and parental emotional unavailability as primary risk factors in this case. Formulating an effective response to information about children at risk because of chronic neglect appears to currently be one of their biggest challenges. A comprehensive policy on neglect is scheduled for release at the end of 2005. DoCS found that to be effective, this policy must address situations where people have raised concerns about the capacity of the parents to respond emotionally to their children's needs.
- Failure to do a comprehensive risk assessment of the children — on one occasion DoCS took action to remove the children from the unit where they were living. They had been left alone, without food, and the unit was apparently filthy and in a state of disarray. DoCS spoke to the children's mother about the situation to decide whether or not they should be returned to her care. Without doing a comprehensive risk assessment, DoCS decided to enter into a temporary care agreement with the mother. This placed her children in foster care for a short period of time only (between two to seven days) before returning them to her care. The DoCS' review noted that these temporary care agreements are used frequently across NSW. DoCS found that it is critical that a proper risk assessment is completed to ensure that it is more appropriate to enter into such an agreement than take more serious forms of intervention.
- Inadequate file documentation and record keeping — DoCS found that the files for the two children did not adequately document decision-making processes or any analysis of the issues affecting the children's welfare. They noted that this is 'typical of the files in many neglect cases'.

DoCS intend to take a number of steps to address these deficiencies including:

- a review of their practice framework for assessing risks to children
- an audit of the use of the risk assessment model currently being used across all regions, and the development of strategies for improving practice in units that perform poorly
- better training for managers in the use and supervision of risk assessments
- training to accompany the new policy on neglect, due in late 2005
- clarification of their practice guidelines and further training of staff on the use of temporary care
- further training for staff on the appropriate use of formal and informal undertakings
- consideration of a proposal to require staff to inquire about the outcome of any referrals to other services, such as counselling, before a child protection notification is closed
- an evaluation of DoCS offices currently piloting revised file documentation practices.

DoCS are also running a trial to evaluate the effectiveness of peer / practice review. A new case closure policy is also being piloted and evaluated. We will be closely monitoring their progress in these areas.

Further work in the care and protection system

We will continue to monitor the progress made by DoCS and the sector in responding to the issues we have identified and reported about, with particular consideration of the capacity of agencies to respond appropriately to children at risk of harm. We will particularly focus on the response of the care and protection system to the needs of children who have been neglected, those who are being cared for by people with substance abuse problems, and those in Aboriginal families where there is domestic violence.

We also intend to examine:

- issues concerning cooperation and coordination between agencies responsible for ensuring the safety of children at risk of harm
- the interaction between the child protection system and the Children's Court. Our work to date has identified possible issues of concern. We intend to look in more detail at the role of the court in ensuring the safety, welfare and best interests of children in NSW
- service arrangements for young people at risk, including those who are homeless.

Services for people with a disability

The *Disability Services Act 1993* provides the statutory basis for the provision of accommodation and support services to enable people with a disability to achieve their maximum potential as members of the community. DADHC has a range of responsibilities to provide, fund and license services to meet the objects and principles of the Act, and ensure that the services provided meet the disability service standards set out in the Act.

The *Youth and Community Services Act 1973* provides the statutory basis for licensing residential centres or boarding houses for 'handicapped people'. DADHC is responsible for administering licences and monitoring boarding houses to make sure they meet their licence conditions.

DADHC is also responsible for administering the federally funded Home and Community Care (HACC) program in NSW. This includes providing and funding community-based services for older people and people with a disability, and monitoring services against the HACC standards.

DADHC is currently in the process of implementing a number of important changes aimed at improving the quality of services provided to people with a disability. These include the relocation of people from large institutions to the community, ongoing reform of the boarding house sector to improve conditions for residents, and the development of:

- accommodation models that will meet varied support needs
- a service system for better supporting the needs of children with a disability and their families
- a service system for better supporting people with a disability who may come into contact with the criminal justice system
- a robust system for monitoring and improving the quality of services DADHC provides and funds.

There are significant challenges for DADHC in achieving a responsive service system for people with a disability — particularly when unmet demand for services is high and increasing, and available resources for meeting current levels of need are limited.

During the year, we received regular briefings from senior DADHC staff about their reforms. These meetings were also a good forum to bring to their attention any concerns we had arising from our work.

What have people complained about?

The service system for people with a disability is the most complained about area of community services after care and protection services. This year 19% of complaints were about disability accommodation services and 13% were about services to support people with a disability. See figure 37.

The most common concerns about agencies providing accommodation services were:

- service management — such as the use of agency staff to provide direct care services and the adequacy of training and support for staff to properly care for residents
- the way agencies deal with incompatibility between residents and respond to residents' behaviour
- changes in accommodation and the management of vacancies, including the adequacy of consultation about decisions to move residents — for example, see case study 38
- planning and providing services to meet people's specific needs.

The most common concerns about disability support services, including those about the HACC program, were:

- access to respite services — for example, see case study 39
- access to home care services
- funding and eligibility for day programs
- withdrawal of services.

Case study 40 is an example of a complaint we received this year about a boarding house.

CaseStudy38

Over six months, we received a large number of complaints about transfers of residents between DADHC group homes and the way these transfers were managed. The complaints concerned five DADHC regions and alleged:

- a lack of consultation with residents and their families about the transfers
- inappropriate assessments of the individual needs and compatibility of residents, including lack of consideration for relationships where residents had lived together for many years
- poor planning, leaving staff ill-prepared to support residents through the transfers
- deterioration in resident care and increases in critical incidents as a result of some transfers that did proceed.

One of the complaints lodged by an official community visitor was about the decision to move a man with an intellectual disability who had lived in the same group home for 16 years. DADHC made this decision despite strong opposition from his family. They felt that he was happy, content and functioning well in his current home. There had been no incidents in the group home involving him, nor had there been any complaints about his behaviour. As a result of the complaint a meeting was arranged between the man's family and senior DADHC staff, and it was decided not to move him after all.

At the time we received these complaints, the department had an 'interim' policy about placing DADHC clients in group homes pending the development of a vacancy management system for the whole disability accommodation sector. Each DADHC region had developed their own procedures to implement this interim policy.

The Deputy Ombudsman (CSD) met with senior officers of DADHC to try to find a way to address the systemic issues that had been raised. As a result of DADHC's slow progress to address this issue we continue to monitor it closely.

CaseStudy39

A woman complained to us about DADHC's cancellation of respite services to her daughter. The woman is the sole and full-time carer for her profoundly disabled daughter who is now in her late 30s and is reliant on her mother for all aspects of her care. The mother depends on regular respite care provided by DADHC for support.

DADHC cancelled the respite care with short notice because of an emergency. Another person required the respite bed because their carer was hospitalised and would not be able to resume the care of their adult child for some weeks. The mother took her daughter to the respite service as normal but, because they had no capacity to take care of her, the service arranged for the daughter to be taken to the nearest hospital by ambulance. The hospital social worker contacted us to tell us that this had caused the family great distress. The mother took her daughter home.

As a result of our intervention, DADHC apologised for their actions and arranged to provide alternative support for the mother during the period the regular respite service was not available. They have also reviewed and enhanced the level of support they are providing to the family.

CaseStudy40

We received a complaint from an official community visitor about the possible mistreatment of residents in a licensed boarding house. The visitor reported that the proprietors shouted at and intimidated residents, favoured some residents over others, discouraged residents' self-reliance, and failed to foster independent living skills and residents' choice. The visitor was also concerned about the amount of domestic work the proprietors expected of the residents.

Our staff met with the proprietors to discuss the allegations and then referred the complaint to DADHC to investigate. DADHC conducted a review of the boarding house which confirmed some of the visitor's concerns, including the demeaning of residents through verbal abuse.

As a consequence of the review, DADHC identified a number of areas where services provided by the boarding house could be improved. These included providing residents with an area so that they could make tea and coffee during the day, ensuring each resident's bed had two sheets, improving the quality of the tobacco sold to residents, and reviewing the cost of cigarettes made up and sold to residents. Residents were also linked to an advocacy group and provided with ways to complain without fear of retribution. The department is also addressing a number of fire safety hazards that existed.

Findings and observations

This year we began six investigations into services for people with a disability. Three are finalised and three are ongoing. The three finalised investigations, which are discussed below, concerned:

- DADHC's conduct as lead agency for the senior officers group 'for people with a disability and the criminal justice system'
- DADHC's management of the program of appliances for disabled people (PADP)
- DADHC's handling of allegations of assault of a resident of a group home by a staff member.

We have monitored DADHC's actions about the recommendations we made last year to improve services to children and young people with a disability, and reported our concerns about DADHC's slow progress to implement an effective system for monitoring disability services against the disability service standards. We have monitored DADHC's response to recommendations we made last year about improving policies and practice for individual planning for people living in disability accommodation.

This year we reported to DADHC and a number of funded disability services on issues arising from our reviews of the deaths of people with a disability who were living in supported accommodation. In those reports we made a number of recommendations to reduce risk factors associated with preventable deaths.

Our work has identified a link between poor health care coordination and premature deaths of people with a disability in care. We therefore recommended that DADHC address issues such as the lack of health care plans and the failure to provide timely referrals to specialist medical assessment and treatment, and to follow up specialist recommendations.

People with an intellectual disability and the criminal justice system

People with an intellectual disability experience significant problems when they come into contact with the criminal justice system. There have been many initiatives to address the issue, including establishing a cross-government senior officers group (SOG) in 2002, chaired by DADHC, to develop a whole-of-government policy on the needs of people with an intellectual disability who come into contact with the criminal justice system, appropriate post-release support, and strategies to prevent these people from re-offending.

This year we investigated a complaint by the NSW Council for Intellectual Disability alleging that the SOG had failed to make significant progress against their terms of reference. We found that, in the absence of effective project planning, the focus of the SOG had changed over time — from developing a whole-of-government policy to overseeing and reporting on a collection of agency projects. DADHC also did not have an endorsed policy in relation to the people affected. We concluded that DADHC had failed to promote the achievements and targets set out in the SOG's terms of reference.

DADHC acknowledged our findings and undertook to:

- remain in the role of lead agency for the SOG, with their Deputy Director-General as chair
- review the SOG's terms of reference
- develop a strategic plan for the SOG
- report progress regularly to the Human Services CEO forum.

In May 2005 DADHC provided us with draft new terms of reference for the SOG, advice about the steps being taken to finalise the terms of reference and a strategic plan, and the progress of their own work to provide support to this group of people. We were told at the time that it was anticipated that the terms

of reference and strategic plan would be finalised during July 2005. DADHC has not yet provided this information. Given the importance of a strategic plan for progressing across-agency work in this area, we will continue to monitor these issues closely.

Management of PADP

Many people with a disability rely on aids and equipment such as wheelchairs to live independently and participate in the community. Others rely on aids to minimise the pain or discomfort associated with their disability. The NSW Health operates PADP — a program of appliances for disabled people — for people with a disability living at home, or living in the care of non-government organisations. DADHC funds aids and appliances for people in the residential services they provide.

This year, we investigated a complaint about DADHC's arrangements for providing and paying for aids and equipment for residents of DADHC group homes and large residential centres. The complainant alleged that the existing arrangements were inequitable — residents were paying for aids and equipment that would have been provided without charge, or at minimal cost, to residents of non-government disability services or people with a disability living at home.

We found that although DADHC had recognised problems with the administration of PADP in 2003, implementation of the scheme across DADHC regions continued to be inconsistent.

In response to our investigation report, DADHC advised that they are:

- reviewing expenditure patterns in relation to the purchase of aids and equipment
- developing policies and guidelines for PADP that will apply to all DADHC regions
- liaising with the Office of the Protective Commission to review their inter-agency protocols to ensure they are consistent with policies and procedures for the administration of PADP
- allocating $2.5 million in their budget for 2005-06 to assist with the purchase of appliances for residents in their care.

We will continue to monitor DADHC's actions to address this issue.

Responding to allegations of assault

People with a disability living in supported accommodation services are often vulnerable because of their disabilities. They may have difficulties expressing their needs, they may not be able to speak, or they may have physical disabilities that restrict their movement. In all cases, they are reliant on their carers to be supportive and encouraging and treat them with dignity and respect.

During the year we investigated DADHC's actions in response to allegations that a staff member of a DADHC group home displayed inappropriate behaviour to one resident and assaulted another. DADHC initiated an investigation into these allegations and we examined the quality of the investigation. We also looked at whether their employee-screening processes for permanent, casual and contract staff provide sufficient protection for residents, and whether their policies and procedures for responding to these kinds of allegations were adequate.

The investigation found that DADHC did not have adequate systems to ensure an appropriate response to serious allegations against their staff by residents of their group homes.

To remedy this, DADHC are:

- currently reviewing their processes for screening employees, including contractors
- ensuring that all staff are aware of their procedures for screening or re-screening staff before they can be transferred or promoted to disability service positions
- reviewing their policies for responding to and reporting allegations of abuse and neglect.

We will continue monitoring DADHC's actions to address this issue.

Services for children and young people with a disability and their families

In April 2004 we tabled a special report to Parliament about deficiencies in the way DADHC was implementing their policy for children and young people with a disability who could not remain living with their families. This report is available on our website.

Overall we found that their implementation strategy was poorly conceived, lacked clarity and did not provide guidance to staff about how to use it. There was confusion about how families seeking support might access services, and a fragmented service system for those who were able to access it.

In response to the problems we identified, DADHC committed to a 12 month action plan and over the past year they have reported regularly to us about the progress of this plan. Most aspects of the plan have now been implemented. Policies have been developed, training has been provided, and communication and intake systems have been put in place to ensure people can get information about available services and how to access them. Staff have

also been appointed to help connect people with services. Arrangements to improve communication with DoCS continue to be implemented. A new family-based care program has been funded and respite funding has been increased.

Some aspects of the action plan have not yet been fully implemented. These include establishing new services to deliver family support and alternative family placement services. Discussions with 'mainstream' child and family services and peak bodies about opportunities to increase access to these services by children with a disability are still at the preliminary stage.

DADHC advises that they are committed to ensuring ongoing improvements to the way they support children with a disability and their families. They have established a steering committee to drive their strategies, policies, program planning and service development and senior staff have been appointed to the family and children's program area.

In January 2005, we agreed to the department's request to extend the timeframe for their final report about implementation of the action plan. It was due in July 2005. DADHC has appointed an independent consultant to review the action plan and its impact on the way in which their children's policy is now being implemented.

Compliance with disability service standards

DADHC is responsible for monitoring how well agencies providing services to people with a disability are meeting the disability service standards, and ensuring that improvements are made if they are not.

During the year we reported to DADHC our concerns about their lack of progress in implementing an effective framework for fulfilling their monitoring responsibilities. There has been a history of attempts and delays in implementing such a framework, going back to 1995. We were concerned that a monitoring system proposed by DADHC in 2003 would not be implemented.

In an audit of individual planning for people living in supported accommodation provided by 10 non-government services, we found that it had been between two and six years since the last visit by DADHC to monitor the quality of services being provided.

Monitoring the quality of disability services is important for ensuring compliance with legislative and funding requirements and safeguarding the rights, welfare and interests of the people concerned. Proper monitoring gives DADHC an opportunity to systematically identify and respond to poor service delivery, and helps ensure that agencies continuously improve the quality of the services they provide.

It is also important that DADHC closely monitors the quality of their own services. For example, this year official community visitors intervened to stop an unlawful practice in a DADHC institution for people with a disability where staff tied residents to chairs because there were not enough staff. Senior staff running the centre were not aware of the practice until the visitors brought it to their attention.

DADHC has advised us of progress towards developing systems to monitor the quality of services being provided by non-government agencies, and they expect a monitoring system for DADHC-funded services to start in July 2005. This is important progress, but much work remains before the system is fully operational across all DADHC funded and operated services. We will continue to monitor progress closely in the coming year.

Individual and health care planning

Our work continues to highlight problems with the adequacy of individual and health care planning for people with a disability living in supported accommodation. Individual planning helps agencies ensure that the services they provide meet people's assessed and identified individual needs and goals. Health care planning makes sure that each person's health care needs are responded to in a timely, coordinated and appropriate way. We have found that documentation of both health care plans and individual plans, including steps taken to implement these plans, is often inadequate.

This year our work in reviewing the deaths of people with a disability living in a residential care service identified problems in health care planning and coordination for those people. We decided to examine in more detail how these problems may impact on other people living in supported accommodation and will report our findings in our reviewable deaths annual report for 2004-05.

Another issue concerned people being discharged from government-provided institutional care to community care settings without adequate health care plans. This has adversely impacted on these people's wellbeing. On a number of occasions, disability accommodation services have organised for people in their care to see specialist health care professionals but then failed to follow the specialists' recommendations.

In our reviewable deaths annual report for 2003-04, we recommended to both DADHC and the NSW Health that they advise how they plan to improve inter-agency communication and coordination to ensure that they effectively share responsibility for providing support

and care to people with a disability living in supported accommodation. From their responses to date, it appears that joint work is in initial stages only and we will continue to monitor this issue closely.

Further work with disability services

Over the past year DADHC has done work to ensure that their policies and procedures are integrated, updated, appropriately cross-referenced and more easily accessible to staff. We will be closely monitoring whether these changes lead to an improvement in the quality of services.

We also intend to examine:

- the disability services sector's application of WorkCover requirements as our work has identified that this may be an issue affecting people who use disability services.
- DADHC's monitoring of licensed boarding houses, and the results of this monitoring for residents
- the provision of services to residents in large residential centres, given the slowing down of the devolution of these centres and DADHC's paper on accommodation models.

Services for people who are homeless

The supported accommodation assistance program (SAAP) is a jointly funded federal / state program that provides accommodation and support services to people who are homeless. In NSW, SAAP is administered by DoCS and delivered through non-government, community-based organisations with some local government involvement. The program funds around 400 services in NSW and provides support to around 25,000 people each year.

Access to SAAP services

In May 2004 we tabled a special report to Parliament, *Assisting homeless people – the need to improve their access to accommodation and support services*, which detailed the findings of our inquiry into access to and exiting from SAAP services. One key finding was that certain groups of homeless people faced a high possibility of being excluded from assistance through SAAP, potentially in contravention of anti-discrimination and SAAP legislation and SAAP standards.

We made a range of recommendations to DoCS and agencies providing SAAP services. These recommendations included:

- changes to service standards and policies to ensure non-discriminatory and fair approaches to client eligibility, access and exiting
- improved guidance and training and development opportunities for SAAP staff
- additional resourcing to enable SAAP agencies to provide accessible services
- a review, by DoCS, of the effectiveness of agreements or protocols between SAAP and other service systems in achieving outcomes for clients at the local level.

The response from DoCS

DoCS has indicated support for 13 of our 19 recommendations, with a further four being 'mostly' or 'partly' accepted. To implement those recommendations, DoCS have:

- provided funds to peak agencies — Homelessness NSW / ACT, the women's refuge working party and the NSW youth accommodation association — to revise their policies and procedures and develop access and equity plans
- funded the development of a risk assessment tool for SAAP services
- agreed to revise the agreements they have with services to make them aware that global exclusions are not in line with policy.

DoCS has also told us that some of our other key recommendations will be addressed by other initiatives already in progress. These include reforms to improve their monitoring of SAAP services and the development of generic standards for service delivery that all services will need to meet.

The areas where DoCS have not accepted our recommendations are that:

- Revised SAAP standards should prescribe minimum standards, rather than 'best practice' aspirations. DoCS' position is that a continuous quality improvement model can achieve the same results as a minimum standards / accreditation model. We acknowledge this view.
- DoCS, through WorkCover's Health and Community Services Industry Reference Group, address the need for clear guidance for services in client risk assessment and risk management. DoCS' view is that this is primarily a matter for WorkCover. We do not fully agree with this view, but note DoCS role in funding the development of the risk assessment tool will go some way to addressing our concerns.
- DoCS negotiate additional resources for SAAP agencies to enable them to accommodate people who have a limited capacity to pay rent or service charges. DoCS' view is that it would be inappropriate to seek enhancement of SAAP funding to address reductions in Commonwealth support programs. We maintain however that doing this would be consistent with the *Supported Accommodation Assistance Act 1994* and the NSW SAAP standards.
- DoCS initially indicated support for our proposal that they review the scope and status of protocols and interagency agreements between SAAP and other service systems. In April they advised us that 'the NSW Partnerships Against Homelessness (PAH), chaired by DOH (the Department of Housing), is the lead agency responsible for homelessness and oversights coordination of responses to homelessness across State Government agencies', and that 'DoCS therefore considers that PAH is the appropriate forum for this type of review'. DoCS has said that the recommendation will be referred to PAH. As interagency coordination has been identified as a critical factor in supporting people with complex needs in SAAP, we will maintain a close interest in this issue.

We will continue to monitor DoCS' efforts to address the problems we identified in our special report.

Responses from SAAP agencies

SAAP agencies had been critical of some aspects of our special report, but this year we have worked closely with SAAP peak bodies and individual organisations to implement our recommendations — with good results. Peak bodies have been open and willing to discuss issues with us. Although they still believe that policies to exclude certain groups of people from SAAP services must be understood in the context of limited resources and failures in other systems to provide assistance to homeless people, the sector is open to scrutiny and keen to address the core issues identified in our report.

In June 2005 we co-hosted a public forum on exclusion in SAAP — attended by representatives from SAAP peak bodies, the City of Sydney Council, and key government agencies with some responsibility for providing services to homeless people. We also made presentations to four large forums of SAAP service providers and other interested parties in metropolitan and regional areas. These forums provided a good opportunity to discuss the findings of our report and our recommendations with service providers.

In February, we contributed to a special edition of the national publication *Parity* called 'exclusion / inclusion' which aimed to further the debate on these issues.

One of our key recommendations was that SAAP agencies should be inclusive of all people within their stated target group, and people should only be excluded after the agency assesses their individual circumstances and makes a reasonable attempt to manage any risk that is identified. Individuals should not be denied access to SAAP services solely because they presented with a particular characteristic such as pregnancy, mental illness or a disability.

The SAAP peak bodies are working on a risk assessment tool to help SAAP agencies make decisions about who to exclude from their services. However they have advised us that this tool is likely to legitimise higher levels of exclusion from SAAP services. We have had some concerns about approaching client assessment from the basis of assumed risk and will closely monitor the trial and implementation of the tool.

Although we have previously stated we would monitor the response of SAAP agencies to our recommendations within 12 months of the release of the report, we have delayed this monitoring to mid-2006 as a number of reforms are currently being implemented.

Handling complaints

This year, 1.5% of the complaints we received in the community services area were about SAAP services. See figure 37. These complaints were mostly about access and exiting (eg see case study 41) and the quality of services being provided to residents.

CaseStudy41

We received a complaint about the decision of a youth refuge to exclude a young person who had a recent history of mental illness. He also had a reported history of violence and drug and alcohol use. The complainant claimed the refuge had not based their decision on a considered assessment of all the relevant circumstances, and did not make any attempt to manage any identified risk he may have posed to himself or others.

We reviewed a number of documents — including some the complainant had given to the refuge indicating there had been recent positive changes to his behaviour and the refuge's service specifications agreement with DoCS. We concluded that there was no evidence that, in deciding to exclude the complainant, the refuge had done a considered individual assessment of his needs at the time of the referral.

The refuge is now reviewing their policy and procedures about client eligibility and access and equity. We will look closely at the results. At the time of the complaint the young person had located accommodation at another refuge.

Further work in SAAP

We propose to hold further discussions with SAAP agencies about a number of critical issues that have emerged in the course of our work this year:

These issues include:

- The impact on services of the requirements of occupational health and safety legislation, and agencies' understanding of these requirements in a human service context. New occupational health and safety obligations have been consistently put forward to us as a key reason for the exclusion of certain clients from SAAP.
- The assistance provided to SAAP services by other agencies in supporting people with complex needs, particularly people with substance abuse issues and mental health problems. SAAP services have correctly identified that their role in effectively supporting homeless people relies on the expert assistance of the wider service system.
- Gaining a clear picture of people whose needs cannot be met by the SAAP system. Understanding the nature and extent of exclusions from SAAP that have resulted from considered assessment of individual needs and service capacity is essential to developing alternative support options.
- The need to evolve the models of service provision within the SAAP system. We have noted, for example, that the congregate care model can lead to exclusion from assistance, particularly for people whose behaviour or characteristics make it difficult for them to function well in a shared environment.
- The role of DoCS, SAAP and other agencies in providing support to homeless young people.

Reviewing deaths

We review the deaths of certain children and young people, people with a disability in residential care, and residents of licensed boarding houses. We monitor and review these deaths, identify trends and recommend changes to policies and practices that might prevent untimely deaths in the future.

We are required to prepare a separate annual report on our work in this area. Our next report will include a detailed analysis of deaths that occurred in NSW between 1 January and 31 December 2004. It will be available on our website later in 2005. In this section, we provide a brief summary of our responsibilities in this area.

The deaths that we review

Under Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, we review the deaths of:

- any person with a disability who was living in, or temporarily absent from, a residential care service authorised or funded under the *Disability Services Act 1993*
- any person living in a licensed boarding house
- a child in care
- a child in respect of whom a report of risk-of-harm was made to DoCS in the three years before the child's death, or a child whose siblings have been so reported
- a child who may have died from abuse or neglect, or whose death occurs in suspicious circumstances
- a child who was living in, or temporarily absent from, detention at the time of their death.

In reviewing deaths, we need information and assistance from a range of government and non-government agencies. These include the Registry of Births, Deaths and Marriages, the NSW Coroner, DoCS, DADHC, NSW Police, the NSW Health and non-government agencies that provide community services. We have a legislative right to full and unrestricted access to records that we reasonably require to fulfil our reviewable deaths function.

Our focus

We examine systemic issues concerning the circumstances in which people die, and review trends and make recommendations about policies and practices that may prevent or reduce untimely deaths and improve the welfare of children and people with a disability. We are required to keep a register of reviewable deaths.

We also have a responsibility to respond to matters raised by individual deaths. We can undertake a detailed review of individual deaths and, if appropriate, investigate the conduct of agencies who may have had certain responsibilities towards the person who died.

During 2004-05 we reviewed the deaths of 212 people. As a result of these reviews we:

- started or finalised 19 investigations in relation to 11 children who died — some of these investigations looked into the circumstances leading up to the death of the child concerned, others looked into the care and support provided to the child and their siblings (before and after their death), and some looked into the care and support provided to the child's siblings
- undertook preliminary inquiries of the specific circumstances surrounding the deaths of three people
- referred issues and recommendations to agencies in eight individual cases.

If appropriate, we also refer concerns about the safety or welfare of surviving siblings to DoCS, and notify DoCS and the Coroner if we identify previous deaths of other children in a family. We notify the Coroner of the deaths of people if they have not already been reported to the Coroner.

Annual report

In December 2004, we tabled our first reviewable deaths annual report in NSW Parliament. It concerned 161 children and 110 people with a disability who died between 1 December 2002 and 31 December 2003. This first report covered a 13 month period because our functions in this area began on 1 December 2002.

Our second annual report will report on our work into the deaths of 105 children and 93 people with a disability that occurred in the calendar year 2004 (covering only a 12 month period).

Deaths of children and young people

Last year we reported that although we are required to review all deaths that are within our jurisdiction, we were only able to review 137 of the 161 cases because full information to determine all of the reasons a death is reviewable was not available for the other 24 cases.

Definition of deaths due to abuse, neglect or in suspicious circumstances

In 2003, 83 of the 137 deaths of children were due to abuse or neglect or occurred in suspicious circumstances. In 2004, we modified our definition of 'neglect' and 'suspicious'.

This modification was intended to:

- screen out 'neglect' deaths that resulted from single incidents of oversight on the part of a parent or carer
- align our definitions of 'suspicious' with those of NSW Police and the Coroner.

We anticipate that this will decrease the number of deaths included as reviewable by excluding cases where sudden infant death syndrome (SIDS) or suicide is the cause of death (as established by an autopsy) and the child or a sibling had not been reported to DoCS in the three years before their death. Our annual report this year will aim to provide a valid basis for comparison of abuse, neglect and suspicious deaths.

Figure 43 - Deaths of children, as reported in 2003 and 2004

	2003*	2004**
Registered child deaths	605	540
Deaths in jurisdiction	161	105
Jurisdiction not yet determined due to insufficient information	20	28
Child known to DoCS - reports made about the child	121 of 161 (78%)	97 of 105 (92%)

Deaths of people with a disability

Figure 44: Deaths of people with a disability, as reported in 2003 and 2004

	2003*	2004**
Deaths notified to our office	114	98
Deaths in jurisdiction	110	93
Deaths in residential care (Disability Services Act)	89 (81%)	69 (74%)
Deaths in licensed boarding houses	21 (19%)	24 (26%)

* 2003 data includes the month of December 2002 (13 months total).

** These figures are correct as at the time of writing but may not be identical to the figures reported in our reviewable deaths annual report for 2004-05, which will incorporate information that becomes available later in 2005.

Expert advisory committees

Two expert advisory committees assist us to perform our reviewable deaths functions. In 2004-05, both the reviewable child death advisory committee and the reviewable disability death advisory committee met on three occasions. These advisory committees provide the Ombudsman with valuable advice on complex child or disability death matters, policy and health practice issues.

Reviewable disability death advisory committee – membership

Mr Bruce Barbour:	Ombudsman (chair)
Mr Steve Kinmond:	Deputy Ombudsman (CSD)
Dr Helen Beange:	Clinical Lecturer, Faculty of Medicine, University of Sydney
Mr Michael Bleasdale:	Director, NSW Council on Intellectual Disability; Senior Researcher, Disability Studies and Research Institute
Ms Linda Goddard:	Course Coordinator, Bachelor of Nursing, Charles Sturt University
Dr Alvin Ing:	Senior Staff Specialist, Respiratory Medicine, Bankstown-Lidcombe Hospital and Senior Visiting Respiratory Physician, Concord Hospital
Dr Cheryl McIntyre:	General practitioner (Inverell)
Ms Anne Slater:	Physiotherapist, Allowah Children's Hospital
Dr David Williams:	Acting Director, Department of Neurology and Clinical Senior Lecturer in Medicine, University of Newcastle
Dr Rosemary Sheehy:	Geriatrician/Endocrinologist, Central Sydney Area Health Service

Reviewable child death advisory committee – membership

Mr Bruce Barbour:	Ombudsman (chair)
Mr Steve Kinmond:	Deputy Ombudsman (CSD)
Dr Judy Cashmore:	Associate Professor, Faculty of Law, University of Sydney and Honorary Research Associate, Social Policy Research Centre, University of New South Wales.
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:	Senior Staff Specialist in Intensive Care, The Children's Hospital, 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
Assoc Prof Jude Irwin:	Associate Professor, School of Social Work and Policy Studies, Faculty of Education and Social Work, University of Sydney.
Ms Toni Single:	Senior Clinical Psychologist, Child Protection Team, John Hunter Hospital, Newcastle
Ms Tracy Sheedy:	Children's Registrar, Children's Court of NSW

Official community visitors

Role and function of visitors

Official community visitors are appointed by the Minister for Community Services and the Minister for Ageing and Disability Services, on the Ombudsman's recommendation, to visit places providing accommodation for children, young people and people with a disability, and people living in licensed boarding houses. These services are provided directly by DoCS, DADHC and non-government agencies funded by those departments.

The role of official community visitors is to:

- inform the Minister/s and the Ombudsman about the quality of services provided
- encourage the promotion of the legal and human rights of residents — including the right to privacy, adequate information, consultation and the right to complain
- act on issues raised by residents, staff or other people having a genuine concern for the welfare, interests and conditions of residents
- provide information to residents about advocacy services to help them with their concerns
- help resolve complaints.

Visitors act as the 'eyes and ears' of the Ministers and the Ombudsman. They have legislative authority to enter and inspect places at any reasonable time, talk in private with any person who is a resident or employed by a service, and inspect any document relating to the service's operations. However they cannot require an agency to answer questions or take up their suggestions.

If visitors see practices that concern them but they are unable to achieve any changes, they can report their concerns to us. We may become involved if we feel it is in the public interest to do so. Sometimes visitor reports enable us to identify systemic flaws that may affect a number of agencies. We have the power to investigate or review the circumstances of a person in care and try to achieve improvements across a whole sector.

Administering the scheme

We are responsible for coordinating the scheme, supporting visitors in their work, allocating resources to make sure that visits are made to the most vulnerable people in care, promoting understanding of the scheme, and preparing an annual report on the work and activities of the visitors. We also work closely with visitors to share information that could help them resolve complaints locally and help us better understand the situation of people living in care.

This year, to improve the effectiveness of the scheme overall, we revised and reissued the visitors' reference manual and streamlined our consultation processes with visitors by amalgamating three visitor working groups into one.

Our separate annual report on the work of the visitors will be available on our website later in 2005.

Statistics

During 2004-05 the number of services eligible for visiting under the Community Services (Complaints, Reviews and Monitoring) Act increased by 49 or 4% to 1,218 services. This includes 62 licensed boarding houses. The increase in the number of services was significant compared to the modest increase of around 1% during 2003-04.

There were 20 visitors at the start of year, four of whom have since left. Thirteen new visitors were appointed during the year, taking the total number to 29.

Visitors made 2,776 visits in 2004-05, 345 less than last year. Please see figure 45 for more details. The number of hours spent on visiting activities was 9,750. This time is spent visiting services, talking to residents and families, writing reports, attending meetings, and monitoring how services respond to the concerns raised during or following visits.

Allocating resources

The recurrent budget for the scheme in 2004-05 was $724,133, similar to the previous year. Resources were allocated to visiting and providing training and support to visitors.

This year we made sure that every licensed boarding house and, wherever possible, every agency that was not visited during 2003-04 was visited this year. We also arranged for more visits to be made to services for children and young people, and those that had more than five residents.

This year we were not able to resource visits to 196 services (16%), compared to 254 services (22%) in 2003-04.

Supporting visitors

Visitors work alone and the nature of the work can be stressful and demanding. We support them in a variety of ways and offer assistance with complex service issues.

In 2004-05 we:

- held conferences in November 2004 and May 2005 to provide training and networking opportunities for visitors
- coordinated a representation of visitors to meet with the then Minister for Community Services in December 2004
- conducted briefings for visitors to childrens services in May 2005
- consulted with visitors through four regional groups
- prepared newsletters to visitors to promote good practice ideas and provide updates about the sector
- accompanied visitors at meetings with agencies to help them resolve particular systemic or serious issues of concern
- gave advice to visitors on how they might resolve individual matters.

Figure 45: Number of visits made by official community visitors in 2004-2005

Target group of services	Number of services	Number of residents	Number of activity hours	Number of visits	
				03/04	04/05
Children and young people	119	263	1,231	282	363
Children and young people with a disability	47	159	506	184	162
Children, young people and adults with a disability	26	236	340	144	76
Adults with a disability in residential care, including boarding houses	1,026	5,870	7,673	2,511	2,175
Total	**1,218**	**6,528**	**9,750**	**3,121**	**2,776**

Responding to issues identified by visitors

Visitors reported 2,810 issues of concern during 2004-05, a decrease of 289 from last year. However, on average, visitors were able to resolve 49% of issues they raised compared to 39% last year.

Figure 46 shows that, although some agencies address concerns as soon as they are brought to their attention, others are often unable or unwilling to make the necessary improvements or the issue is complex and takes longer to resolve. Visitors try to always follow up unresolved issues with the agency concerned on their next visit.

Promoting stakeholder understanding

It is important that people who live in residential services, their families and support people, and those who provide these services understand the role of visitors and how the scheme can benefit them.

To promote this understanding in 2004-05 we:

- distributed the revised booklet *A voice for people in care: answering your questions about the official community visitor scheme* and the 2004-05 visitors' annual report to 1,700 services and agencies
- provided information about the scheme to the new Ministers for Community Services and Disability Services
- answered queries from people who work in these residences and families of people who live there
- made presentations to services and families about the role of visitors.

Figure 46: Issues reported by visitors in 2004-2005

Target group of services	Total no. of visitable services	No. of issues identified	No. of issues resolved as a percentage of the no. of issues identified
Children and young people	119	386	201 (52%)
Children and young people with a disability	47	167	79 (47%)
Children, young people and adults with a disability	26	161	74 (46%)
Adults with a disability in residential care, including boarding houses	1,026	2,096	1,011 (48%)
Total	**1,218**	**2,810**	**1,365 (49%)**

Michelle Powell
Principal Investigator, Community services division

My name is Michele Powell. I joined the office in 2002 and was previously with the Community Services Commission where I commenced work as a senior investigation officer in 1994.

Currently as principal investigator with the community services division of the office my job involves working on investigations and other projects aimed at improving the provision of community services to members of the public, including children and people with a disability.

I find my previous experience working in disability services, child protection, rehabilitation and aged care, provides me with a good understanding of many of the challenges and opportunities agencies face in providing services to people in NSW.

The part of my job that I enjoy is identifying opportunities for service improvements, and seeing these occur in practice.

8. Local government

Complaint trends and outcomes

This year we received 814 formal (written) complaints about councils and 2,138 informal (oral) complaints. This is slightly less than we received in 2003-04. See figure 47.

Last year we reported a significant increase in complaints about corporate or customer service issues — including delays, inaction, poor service, and decisions to disclose or not to disclose information. This year, while the numbers of these complaints remained steady, they still made up 27.6% of the complaints we received about councils. See case study 42 for an example of this type of complaint. The other significant area to attract complaints this year was council actions in relation to property development, (see, for example, case study 43) which made up 20% of complaints. See figure 48.

We were able to obtain significant outcomes for the complainants in 253 — over 60% — of the 416 matters we formally investigated or made inquiries into during 2004-05. Almost 100 of these matters were resolved by providing the complainant with information.

Other positive outcomes included councils:

- changing decisions
- providing reasons for decisions or admitting and correcting errors
- giving apologies
- providing compensation or negotiating settlements
- training or taking disciplinary action against staff
- changing policies or procedures.

For examples, see case studies 44, 45, 46 and 47.

Figure 47 - Number of formal and informal matters received about local government – five year comparison

	00/01	01/02	02/03	03/04	04/05
Formal	959	760	774	840	814
Informal	2,409	2,247	2,226	2,194	2,138
Total	**3,368**	**3,007**	**3,000**	**3,034**	**2,952**

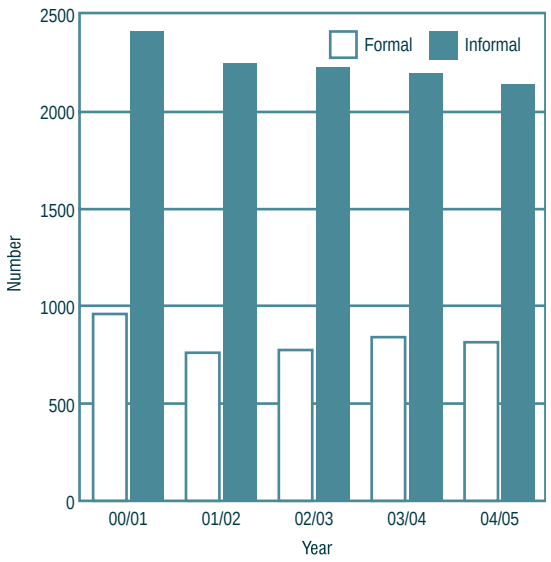


Figure 48 - What people complained about in 2004-2005 (local government)

This figure shows the complaints we received in 2004-2005 about local government, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Corporate/customer service	314	502	816
Development	158	442	600
Enforcement	108	207	315
Rates charges and fees	35	205	240
Engineering services	52	158	210
Environmental services	45	161	206
Object to decision	41	156	197
Misconduct	28	101	129
Uncategorised	6	82	88
Outside jurisdiction	10	37	47
Community services	12	33	45
Strategic planning	3	39	42
Management	2	13	15
Child protection (employment-related issues)	0	2	2
Total	**814**	**2,138**	**2,952**

CaseStudy42

An environmental group complained that Palerang Council had failed to respond to complaints about unauthorised activities impacting on native vegetation and fauna. The group had sent 16 letters over 9 months, which had not been responded to by council. Our initial efforts to resolve this matter informally were unsuccessful and raised questions about council's ability to deal with correspondence.

We wrote to council's newly appointed general manager asking him to advise us about council's policy on replying to correspondence, and their average response time.

In his response, the general manager acknowledged that council had replied to only 1 of the 16 letters received from the complainants. He explained that, in the past, environmental complaints had low priority and limited resources allocated to them. However an environmental services team of four to five staff members had now been created. He had also instigated a review of council's IT systems and was establishing new procedures for records management. We referred council to our publications and guidelines for effective complaint-handling to help them develop an improved complaint management system.

The complainants wrote to thank us for our assistance. They stated they were cautiously optimistic that these changes will improve council's action on compliance issues and their communications with the community.

CaseStudy43

A couple complained about Wollondilly Shire Council's failure to stop unlawful activities that were being carried out on a neighbouring property. The zoning of the area is designed to protect the land's agricultural potential, and prohibits commercial premises and industries from operating on the land.

The complainants advised that the owner of the property was carrying out illegal businesses from the land — including sand and gravel supplies, a retail nursery and equipment hire — exposing the couple to high levels of dust and noise. They also complained about considerable tree felling on the property.

Council files showed that consent had been granted in 1994 for the construction of a shed and attached residence on the property. The owner had also installed a petrol bowser and wash bay, and had begun storing equipment and operating from the premises. When these activities were originally drawn to council's attention, they sought legal advice. The advice was that although the activity was prohibited under the local environment plan, it could be regarded as ancillary to the approved development, and recommended council take no action on the matter. The files indicated council had not inspected the property.

Council subsequently approved further development applications for the property including a sand and gravel supply business, retail nursery, and plant and equipment hire. The land had been cleared for the various activities and unauthorised structures had been erected. At the time of the complaint to us, the operator of the site had submitted a development application (DA) to 'regularise' all operations being carried out on the site.

The neighbouring couple gave us a copy of the legal advice they had obtained which was contrary to that relied upon by council. We spoke with council about our concerns that the activities and operations were prohibited and suggested they seek senior counsel advice. Council agreed. This advice stated some of the development was prohibited under the local environment plan and that unauthorised activities were being conducted. It also recommended the current DA to 'regularise' operations be refused.

Council subsequently dealt with the matter in a closed session and resolved that they would proceed with the actions recommended by senior counsel. They wrote to the operator advising of their intention to serve notices to cease operations and remove structures. Council will inform us of further developments.

CaseStudy44

A woman wrote to us after receiving no reply from Harden Shire Council to her letters and phone calls. For six months she had been asking council to intervene to reduce the level and frequency of noise caused by the continuous operation of a gas scare gun being used to deter birds in a neighbouring orchard. The woman included a diary she had kept of the frequency and number of the 'booms' from the discharge of the gun. This showed the gun had discharged 35 times in a repeating pattern over a 35-minute period on a Sunday afternoon. The woman complained of being unable to sleep and rest properly as the gun operated throughout the night, although with less frequency.

When we contacted council, they told us they would write to the woman. She received a letter seven weeks later. Council explained that, after the woman's earlier complaints, they had left a message for the orchard owners reminding them of the need to operate the guns in accordance with criteria established under the old environmental noise control manual. Unfortunately the Environment Protection Authority's revised noise control guidelines do not address noise disputes relating to gas scare guns and sonic scarecrows. Council advised that they would attempt to address noisy farming activities in their new local environmental plan and would also negotiate with existing operators to make sure such noise was appropriately controlled.

CaseStudy45

A tourist accommodation operator contacted our office after Gwydir Shire Council removed his advertising brochures from the council operated tourist information centre. The brochures were removed because council had received a complaint about the accommodation service. The accommodation operator objected to not being given a chance to respond to the complaint before council took action. The situation was complicated by a long running disagreement between the accommodation operator and the council staff member who runs the tourist information service.

As a result of our inquiries, council apologised to the owner for not giving him a chance to respond to the complaint before removing the brochures. They also restocked the brochures at the tourist office and agreed to develop policies for dealing with complaints about accommodation services that incorporated principles of procedural fairness.

CaseStudy46

We received a complaint that Parramatta City Council had refused to explain their decision to deny liability for allegedly failing to ensure a development purchased by the complainant complied with a building approval. Council's letter to the complainant simply stated that her claim was rejected. The complainant contacted council and asked for reasons for the decision. She gave council a copy of our guidelines on the need to provide full and meaningful reasons. The woman wrote to us when council again refused to provide reasons.

We always advise councils and other government agencies to give comprehensive reasons for their decisions, particularly those which deny compensation claims. However when we contacted council we were told that it was not their standard practice to do so. We outlined our policy and reiterated our view that people have a right to know why a decision has been made against their interests. After considering the matter further, council advised they would send another letter to the complainant with full reasons for denying liability. Since this time, council has confirmed that it is now their practice to provide full and meaningful reasons wherever possible.

While we have acted on other matters where reasons were not provided, it is encouraging to note that most complaints made to our office about decisions to deny liability indicate that full reasons were generally provided at the outset.

CaseStudy47

A resident of Gosford City Council complained he was not given the full pensioner rebate on water access charges to his property. We found that council required ratepayers who do not use the council water supply to pay a flat rate, and this fee was exempt from the pensioner rebate. We believed that there was no statutory basis for such a policy and the Department of Local Government agreed with our view. We made further inquiries with council into the basis for the policy, how many people it affected, and whether they had sought legal advice about it. Council's reply was that they did not have such a policy and this had been a 'procedural error'. The practice had however been followed since 2001. Council subsequently reimbursed the people who had been affected by this practice and advised us that they were working to develop a clear statement for staff about how to apply the relevant provisions of the *Local Government Act 1993*.

Charges for inspecting council documents

In our 2003-2004 annual report, we commented on our concerns about some councils charging fees for access to documents that should be provided free of charge under section 12 of the *Local Government Act 1993* (LG Act).

We still receive complaints from people who have been charged to access council documents. We are continuing to investigate this area, and sent notices to 50 councils asking them to tell us how they deal with requests from the public for their documents — including whether they charge fees or require applications under the *Freedom of Information Act 1989* (FOI Act) for documents that may otherwise be available under s. 12.

We have received the responses and are currently preparing our preliminary findings on this matter. It appears that a number of councils are charging fees and some have difficulty determining which documents should be made available under the Act. Several councils also told us they are concerned about the inconsistencies between s. 12 of the LG Act, the *Privacy and Personal Information Protection Act 1989* (PPIP Act) and the FOI Act. We are also concerned about these inconsistencies. This issue is discussed below.

Release of personal information

Last year we suggested to the Minister for Local Government that he consider amending s. 12 of the LG Act to make it clear that the PPIP Act — which regulates the disclosure of personal information — does not prevent information being released under the LG Act. The Minister has not acted on our suggestion.

The interaction between s. 12(6) of the LG Act and the PPIP Act were discussed in *NT v Randwick City Council* [2005] NSW ADT 45. In that case a person applied to the ADT for a review of the way council dealt with their personal information. It was alleged the council contravened the PPIP Act by giving a neighbour of the applicant access to letters the applicant had written to council about the neighbour. Council argued that they had released the information under s. 12(6) of the LG Act and had therefore not breached the PPIP Act. Section 12(6) of the LG Act states that a council must provide its documents unless it is satisfied that providing the document would be 'contrary to the public interest'.

In the judgment, while noting that the matter was outside the ADT's jurisdiction, the presiding officer made some comments relating to the view he would have taken had the matter been within the ADT's jurisdiction. His interpretation of the section was that it requires a council to consider the public interest before they release any document that contains personal information.

The public interest test in the provision only relates to a refusal of access, not a decision to grant access. It provides that documents must be released unless, in relation to a particular document, it is not in the public interest to do so. We are of the view that, therefore, councils are only obliged to consider the public interest when they wish to refuse to allow inspection of a document.

Hopefully, if this issue again comes before the ADT, a different view will be taken about the interpretation of s. 12(6) of the LG Act. If not, this will place a particularly onerous obligation on councils not only to formally consider the public interest before releasing documents under s. 12(6), but also to be able to prove that they have done so should the matter end up in the Tribunal.

Councillors' conflicts of interests

A general manager of a metropolitan council asked us to comment on some concerns he had about the conduct of councillors during their inspections of development sites. We were familiar with this issue as it had arisen in our investigation of Mosman Municipal Council, discussed in last year's annual report.

The types of conduct that may be inappropriate could include councillors:

- enjoying afternoon tea offered by a person with an interest in a development proposal
- discussing the merits of a proposal with the applicant's architect before the development application (DA) is assessed by council staff
- discussing their own DA's with other councillors on the site and at other times.

This conduct may not only breach council's code of conduct, but may also give rise to a perception of bias in council's consideration of a DA — exposing council to the risk of decreased public confidence in their decisions or even a legal challenge. Councillors must be careful to ensure they are not considered to be taking advantage of their position to obtain unfair benefit for themselves or their associates.

The attendance of some councillors at the invitation of an objector at site inspections conducted by council solicitors — as occurred in the Mosman investigation

Friends and favours

Ombudsman rules councillors must go

— is also inappropriate. Mosman Municipal Council's existing code of conduct already required councillors who attended on-site conferences convened by a Land and Environment Court Commissioner to do so strictly in an observer capacity. We suggested this be extended to include attendance at associated inspections by solicitors and consultants engaged by council. Council has advised they have changed their code of conduct in line with our recommendations.

We also receive complaints about councillors allowing their private interests to conflict with their official duties in other areas of their work. Case study 48 is an example of this.

Mayoral powers

One of the complaints we dealt with this year involved the allegation that a mayor had inappropriately used his powers under section 226 of the LG Act. This section allows a mayor to use the policy-making powers of the council between council meetings in cases of necessity. In this case it was alleged the mayor had used his powers to vary council's policy relating to front building lines for the benefit of the son of another councillor who had a DA before council.

The mayor told us that he had used his powers under s. 226 after the councillor's son had contacted

CaseStudy48

We received complaints about a council's handling of a DA for property owned by an elected member of the council who also was a member of Parliament. When council considered the matter, the applicant councillor correctly declared his pecuniary interest, did not participate or vote on the matter, and left the chamber during the debate. Another councillor — who was a director of the company that was contracted to build on the site — also correctly declared his pecuniary interest. The application was subsequently approved.

While the applicant councillor did not stand at the local government elections in 2004, his electorate officer was elected to the new council. The applicant lodged another DA which was considered and approved at a council meeting. The new councillor voted on the matter. Our office received a complaint alleging that the new councillor had a conflict of interests, as he had previously worked for the applicant.

It was council's view that it was the new councillor's responsibility to determine whether he had a conflict of interests in the matter. We made some inquiries and found that, although the new councillor had stopped working for the applicant some time ago, they had an ongoing friendship and regularly visited each other's homes.

We wrote to the new councillor advising that it appeared that a conflict of interests did not arise because of the employment relationship he had with the applicant. However in light of their history and ongoing friendship, it was possible that any ongoing involvement in the consideration of the applicant's DA might give rise to at least the reasonable perception that he had a conflict of interests.

The guidelines to council's code of conduct state that if a councillor thinks he or she has a conflict of interests it is better to be cautious and declare the interest. We informed the new councillor that the prudent thing to do in the circumstances may have been to declare an interest arising from his friendship. We suggested he re-read the code of conduct and its guidelines. We also wrote to the general manager to convey our views and assist him in dealing with similar situations in the future.

him about problems he was having with processing his DA. The mayor said the son approached him in response to a standard letter he sends to all DA applicants offering to assist them if they have difficulties with their application. He said he intervened because he believed that the councillor's son's DA had been unreasonably delayed and council staff had treated him inconsistently because he was related to a councillor.

Our inquiries showed that the DA had taken a lot longer to process than an average DA, even though it related to a straightforward single-storey dwelling. The delay was largely due to a request by the councillor's son for council to vary their policy relating to front building lines to allow for a lesser setback. Staff were unwilling to do this without a streetscape analysis. There was no evidence to suggest that the councillor's son had been singled out because he was related to a councillor.

At the time the DA was being processed, senior staff were already proposing to seek an amendment to the policy to allow for a lesser setback. Council's adoption of the proposed amendments would have effectively removed the impediment to the approval of the DA. However staff processing the DA were unaware of this.

Before seeking to exercise his powers under s. 226 to vary the front building line policy, the mayor had senior staff confirm in writing that they considered the front building line policy to be anomalous and that they proposed to seek its amendment. By exercising his powers under s. 226 to vary the front building line, the mayor removed the impediment to approval and the DA was subsequently approved shortly afterwards.

We found there was no evidence to suggest the mayor exercised his powers for improper motives, or that the councillor related to the applicant had sought his intervention or discussed it with him directly. However given that amendments to the policy were to be considered within a few weeks at the next council meeting, we considered that this situation did not represent a 'case of necessity' as required under s. 226. We therefore considered that the mayor lacked the power to amend the policy and his conduct was contrary to law.

One of our recommendations was that the Department of Local Government issue a circular to all councils and their mayors providing administrative guidance on the exercise of the policy-making role of mayors under s. 226. The department has agreed to do so.

'I would like to thank you for handling my case. The result you have achieved, while not being all that I had hoped for, does, I think, go a long way in correcting the course of justice in this matter. I thank you very much for your efforts in achieving this significant result.'

Mystery shopper audit — Sutherland Shire Council

Each year we conduct an audit of a NSW public sector agency by having a number of 'mystery shoppers' pose as members of the public making inquiries about their services. This year we tested the customer service provided by Sutherland Shire Council. As in previous years, the aims of the audit were to assess council's standards in dealing with the public and highlight any deficiencies in their service.

Our staff wrote, emailed, telephoned or attended council's offices seeking access to information and services. The scenarios we used were based on complaints made to our office about Sutherland Shire Council and other councils, and on council's own material about their services. The requests were limited to the provision of relatively straightforward information that we felt the public could reasonably expect would be readily available.

The audit was conducted between April and June 2005 and involved 71 separate interactions — 20 telephone calls, 11 face-to-face meetings, 20 letters and 20 emails.

Telephone

None of our mystery shoppers had difficulty getting through to council and, on average, only waited for the phone to ring five times before their calls were answered. In 95% of cases, the person who answered the phone provided the council name and, in 90% of cases, the council officer offered an appropriate greeting along the lines of 'How can I help you?' or 'How can I be of assistance?'

Our mystery shoppers rated the courtesy of the initial reception person. No one felt they had received discourteous service from the frontline telephone staff. They found 45% were helpful and actively interested in the scenarios they were presented with, and the remaining 55% showed at least a businesslike interest. Of the twenty calls, seven were referred to another person. In six of the seven cases, the second person was actively interested in the caller's problem and, in the remaining case, they were businesslike. Overall the results indicated that council staff showed a pleasing interest in callers' problems.

Council staff were able to readily answer the questions asked or provide the requested information in all cases. On average, the calls took just over three minutes from start to finish.

Face to face

Ten mystery shoppers visited council during the audit period. An additional mystery shopper made a visit to the main branch of Sutherland Library. Each person visited council to make an inquiry about council's work or how to access a council service.

The physical aspects of the customer service centre were rated on a five-point scale where (1) represented very poor and (5) represented very good. The signposting of council's facilities was rated on average at 3.8 — indicating that it was considered to be more than adequate. The appearance of the facilities was rated even higher with an average of 4.2. All mystery shoppers agreed that council provided reasonable access for people with a disability, and they were all served without delays. On average people waited in queues for less than half a minute. The visitor to the library ranked all the facilities listed above as very good.

When asked to rank the interest shown in their problems, five out of ten said they found council staff to be interested and helpful and five found them to be at least neutral. The visitor to the library found the staff to be interested and helpful with her inquiry.

Council staff were able to readily provide information or to perform the service requested on all but one occasion. One person who asked for a copy of council's code of conduct — which should be publicly available under s. 12 of the LG Act — reported that this request caused some confusion. Generally however it appeared that council had a high standard of customer service.

Letters

During April 2005 we sent 20 letters to council covering a variety of issues. They promptly responded in writing to 12 of these with the information requested. The name, position and signature of a staff member was on every letter. The response letters were of a high quality and were received in an average of 15 days. In one further case, council responded by telephone. As the mystery shopper did not indicate she wished to pursue the matter she had raised, the lack of a written response was not of concern.

However, no response at all was received to 7 of the 20 letters until we reported to council on the outcome of our survey. By then these 'customers' had been waiting for a response for periods between 48 and 73 days.

Email

We sent 20 requests for information to council by email. In the great majority of cases, council promptly sent an acknowledgement email. However substantive responses had only been received for 14 of the 20 emails by the time we reported to council, more than a month later. Those responses that had been received took an average of almost five days. The quality of the responses ranged from businesslike to outstanding.

Summary

Council performed well in regard to telephone and face-to-face challenges and council's frontline staff deserve praise for handling their duties in a professional and friendly manner. It was extremely pleasing that the vast majority of telephone and face-to-face inquiries were successfully brought to conclusion without the need for follow-up action. The helpfulness of staff responding to face-to-face visits in particular attracted many positive comments from our mystery shoppers. It is notable that, in more than 30 separate scenarios, no mystery shopper indicated a council officer was discourteous or uninterested in a matter that was brought to their attention.

In responding to letters and email, council's performance was less praiseworthy. The correspondence we sent requested relatively straightforward information, and did not require council to carry out any investigations or other detailed work. When a response was received, the letters and emails sent by council were of a high standard. However the lack of response to over 30% of inquiries is disappointing and clearly an area where significant improvements can be made.

9. Corrections

Correctional centres

For 30 years we have been involved in overseeing the NSW correctional system. We aim to improve the administration of correctional centres, which are extremely closed environments, and promote more humane conditions for people in custody. Our work continues to be important, particularly as there are now over 9,000 people living in correctional centres in NSW.

We do our work under the *Ombudsman Act 1974*. This gives us the power to make inquiries on the basis of a complaint or on our own motion, and we have the discretion to decide when and how to investigate a matter. Although we remain an office of last resort — encouraging people to try to resolve their concerns directly with the agency — sometimes we feel it is appropriate to pursue a corrections matter even if the complainant has not previously raised their concerns with the agency concerned. A number of these complaints come to our attention during our visits to centres. We usually try to take some immediate action if the issues are straightforward and the centre management is amenable to constructive suggestions. We will also become involved if the complainant alleges serious misconduct, such as in case study 49.

In some cases we are able to resolve matters more quickly and effectively than the individual complainant could. Case study 51 is an example of a situation which the complainant tried to rectify through systems within the correctional centre, but our involvement prompted the centre to take action more quickly.

Sometimes it is necessary for us to start a formal investigation and use our coercive powers under the Ombudsman Act. These provide us with the ability to enter premises, require people and organisations to provide information and documents, and require witnesses to appear and give sworn evidence.

However most of the time we can make reasonable and commonsense recommendations for change without needing to use our formal powers. Many complaints from inmates can be easily resolved with the correctional centre directly or by giving the inmate information or an explanation.

While a significant part of our work involves resolving individual complaints, an equally important part is the work we do in identifying and remedying systemic issues that can impact on a number of people or the correctional system as a whole. In the past year we have contributed to the improvement of a number of the policies and procedures of the Department of Corrective Services (DCS) and GEO Pty Ltd — a private company that runs Junee correctional centre. Addressing systemic issues improves the way correctional centres are administered and reduces dissatisfaction among inmates and staff. Please see case studies 50, 52 and 53 for examples.

CaseStudy49

An inmate at Long Bay Hospital 2 alleged that, during a cell search the previous week, a specialist security unit officer had hit him on the back of the head and told him, 'That's from John'. The inmate fell into the sink and hit his head, requiring stitches. He further alleged that another officer then forced him to sign an inmate application form to the effect that he fell out of bed and hit his head, and then threatened that 'they'd be back to get him' if he made any complaint.

When we receive an allegation that an inmate has been assaulted by a member of staff, we usually send it to the department's professional conduct management committee and ask them to refer the matter to the police unit attached to DCS. Allegations of this kind require a criminal investigation rather than investigation by our office.

As a result of our referral, the officer has now been charged with 'assault occasioning actual bodily harm' and suspended from duty with pay while legal action is proceeding. The court case has not yet been finalised.

CaseStudy50

We reported last year on an investigation into Junee correctional centre's administration of victims compensation levy (VCL) deductions and their response to inmates' inquiries on this topic. Since then GEO – the private company that runs the centre — have reported that they have complied with our recommendations and the problems appear to have been addressed. In particular, GEO has put together a set of local instructions about how Junee will administer inmates' VCL records. These instructions cover the initial receipt of information from DCS, how to make deductions at the centre, and how to complete the monthly report to DCS.

Our investigation also touched on the centre's inmate application procedure, as a result of concerns about the handling of inmate's local inquiries about their VCL. GEO has introduced a new system, similar to that used in centres managed by DCS. It is a numbered system that is regularly audited to make sure that outstanding matters are followed up.

Our investigation also indicated that there are possibly simpler ways GEO can electronically receive and update inmate's VCL liabilities. To follow up this issue we have written to DCS asking them to discuss these options with GEO and advise us of the outcome.

CaseStudy51

An inmate called us to complain that all the windows in the wing where inmates participating in the drug court program lived were bolted down so they had no fresh air. There was no air conditioning in the unit, just a small fan. Without adequate air flow there was condensation and the mattresses were damp. A deputy governor of the centre had promised to try to address the issue the previous week.

After we contacted the centre, management explained that the windows had been bolted down because inmates had been passing items through the windows and climbing through them. However they acknowledged this problem could have been addressed by bolting down some, but not all, of the windows. The windows were opened and arrangements were being made to fit a security grille to the front door of the wing so that it could also remain open.

CaseStudy52

The inner west domestic violence court assistance service for women complained to us on behalf of a female client after DCS failed to properly serve court papers for an AVO on an inmate. When the inmate was released, the police could not locate him to serve the papers so the client and her children remained in fear for their safety. The inmate was later arrested for a violent crime against another woman and sent back to a correctional centre. However he was eventually released again with the AVO papers still having not been served on him.

We contacted DCS on several occasions to make inquiries, and on each occasion they claimed they had not received the papers. They took the view that it had not been their responsibility to serve the papers on the inmate. We eventually found that, although Cessnock correctional officers had verbally advised the inmate of his scheduled court appearance, they did not record their actions in the correct manner and the records clerk at Cessnock did not return the 'affidavit of service' to the court as required. Essentially there was not a proper record of what had happened.

We then asked the Commissioner to review the poor procedures and policies that appeared to have caused this problem. He advised that the policy and procedures had been rewritten, the department had met with the Attorney General's Department to 'investigate ways of improving service of documents to persons in custody', and he had offered an apology to the woman affected.

CaseStudy53

An inmate complained about the different outcomes of two similar charges that were brought against him for failing to provide a urine sample. Urinalysis — the testing of inmate's urine to identify if they have used illegal or other non-prescribed substances — is an essential practice in a modern correctional system. It is used to inform decisions made about an inmate that relate to security and program needs. An inmate who fails to produce a sample when one is demanded, or one whose sample tests 'positive', may be charged with a correctional centre offence and their placement and classification security rating may be detrimentally affected.

The inmate had been charged with failing to supply a urine sample on two occasions, at different correctional centres. At the first centre he was found guilty. At the second centre the charge was dismissed even though the circumstances were identical.

After checking the DCS policy and making preliminary inquiries on the way the policy was applied, we came to the view that the procedure in the policy could be being applied differently at different centres because it was ambiguous.

The centre that dismissed the charge believed the policy meant that an inmate only committed an offence if they failed to supply a sample within two hours of a sample being demanded. In contrast, the centre that found him guilty interpreted the statement in the procedure 'At any time before the expiration of two hours, the second demand is to be made…' as meaning that the inmate would commit an offence if he did not provide a sample when it was demanded of him a second time, even if the demand was made within two hours of the original demand.

We felt that it was likely the procedure included the time periods to provide the best chance of actually obtaining a sample. Our view was further supported by the inclusion of some discretion in the procedure to allow an inmate a possible total of four hours to supply a sample before they will have committed an offence. We contacted a senior officer within the DCS inmate management area to discuss the issue. We then proposed a revised procedure that clarified the words and reflected our understanding of the perceived aim of the procedure — to allow a sample to be obtained. The department accepted our draft and issued new procedures together with advice about how to appropriately apply them.

People are now allowed a full two hours to supply a urine sample, if that is what they need. While a request can be made before the end of that period, an inmate will have committed an offence only if two hours after the first demand he has still failed to supply a sample.

Our corrections unit

The establishment of a specialist corrections unit in our office came about with the closure of the Office of the Inspector General at the end of 2003. There are five staff members in the unit who deal solely with complaints from inmates and issues within the corrections area. We set up the unit in anticipation of receiving more complaints as a result of the closure of the Inspector General's office. As the table in figure 49 shows, there has been an increase in both formal and informal complaints about correctional centres in the last two years compared to 2002-03. However, another possible cause of this could be an increase in the inmate population to more than 9,000 and an increase in the number of correctional centres to 31 during that period.

One of the main benefits of having dedicated staff is the expertise and specialised knowledge they develop through their work. Contacts have been established within the correctional system and a professional rapport has been built up with both staff and inmates. We also have a good working knowledge of activities or developments that are occurring within DCS and within individual correctional centres. This enables us to easily understand and respond to many concerns raised by inmates, without needing to make further inquiries of the correctional centre concerned. We can then put resources into more serious and systemic issues requiring closer intervention.

The level of contact we have had with both DCS and GEO about more serious issues has increased over the past year. We are in frequent contact on day-to-day matters and also hold regular formal liaison meetings with senior departmental staff. These professional relationships enable us to discuss our concerns in a constructive way and achieve practical improvements.

In 2004-05 we were able to achieve some important outcomes for individual complainants whose matters we dealt with formally. Figure 50 shows that in over two-thirds of complaints finalised (407/613), DCS or the correctional centre concerned took some action in response to the complaint — this included correcting errors and providing information and reasons for their decisions. Please see figure 68 for more details about the number of complaints we received, broken down by institution, and figure 67 for the action we took on formal matters finalised this year. These figures are in Appendix E.

Figure 49 - Number of formal and informal matters received about corrections – five year comparison

	00/01	01/02	02/03	03/04	04/05
Formal:					
Correctional centres, DCS and GEO	346	291	299	412	561
Juvenile justice centres and DJJ	15	19	22	25	19
Justice Health	18	24	15	30	41
Sub-total	**379**	**334**	**336**	**467**	**621**
Informal:					
Correctional centres, DCS and GEO	2,956	3,156	2,585	2,773	2,852
Juvenile justice centres and DJJ	223	209	254	318	216
Justice Health	152	350	292	327	283
Sub-total	**3,331**	**3,715**	**3,131**	**3,418**	**3,351**
Total	**3,710**	**4,049**	**3,467**	**3,885**	**3,972**

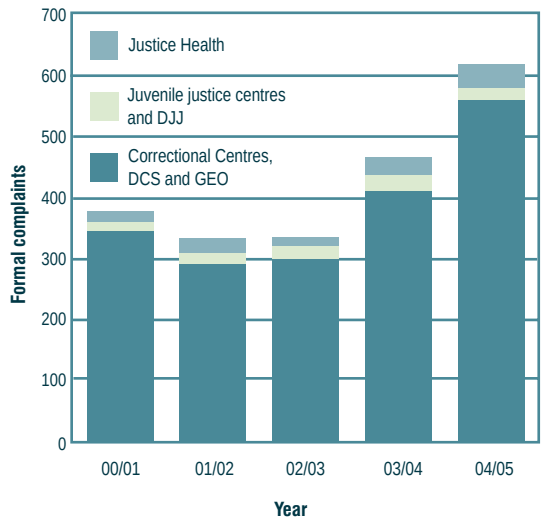


Figure 50 - Significant outcomes achieved in relation to complaints about corrections finalised in 2004-2005

Outcome	No.
provided additional information	147
provided reasons for decisions	75
admitted and corrected errors	41
provided another remedy	36
undertook case reviews	24
mitigated consequences of decisions taken	21
reviewed matters and changed decisions	16
changed policies or procedures	12
reviewed internal processes	12
took disciplinary action against staff	7
gave apologies	6
gave monetary compensation	6
trained staff	3
negotiated settlements	1
Total	**407**

Figure 51 - What people complained about in 2004-2005 (corrections)

This figure shows the complaints we received in 2004-2005 about correctional centre concerns, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue. Also note that this table includes issues relating to Kariong Juvenile Correctional Centre for the period 20/12/04-30/6/05.

Issue	Formal	Informal	Total
Daily routine	84	526	610
Property	60	286	346
Records/administration	76	216	292
Visits	43	220	263
Classification	25	182	207
Transfers	24	174	198
Officer misconduct	55	137	192
Other	8	124	132
Unfair discipline	18	113	131
Work and education	24	96	120
Case management	22	97	119
Buy ups	20	92	112
Medical	15	67	82
Security	10	65	75
Mail	3	71	74
Legal problems	10	63	73
Segregation	13	54	67
Probation/parole	9	58	67
Food and diet	7	51	58
Information	14	42	56
Day/other leave/works release	7	34	41
Failure to ensure safety	10	25	35
Outside our jurisdiction	2	33	35
Periodic/home detention	0	13	13
Court cells	2	10	12
Community programs	0	3	3
Total	**561**	**2,852**	**3,413**

Kariong juvenile correctional centre

On 10 November 2004, Kariong juvenile justice centre was handed over to the control of DCS. The handover followed a period of unrest at Kariong among both detainees and staff. Kariong had been a cause of concern for our office for many years and has been the subject of two of our special reports to Parliament. It houses young people who have been convicted of serious offences — they have often been given a lengthy sentence that they may have to finish serving in an adult correctional centre. Detainees who are judged to be a high risk to the security and discipline of juvenile justice centres may also be placed in Kariong.

Shortly after the handover, new legislation was introduced to proclaim Kariong juvenile correctional centre. This means that, as a correctional centre, Kariong is now subject to a different legislative and administrative regime. However the legislation envisages that some people in the juvenile justice system will move into the program run at Kariong, and others in Kariong may move into juvenile justice centres.

Since the handover to the DCS we have visited the centre on three separate occasions. We are monitoring the implementation of the new procedures and also the movement of young people in and out of the centre. The routine has changed significantly. In line with other correctional centres, days are now more structured and lock-in for the day occurs at 3.45pm for most detainees. A hierarchy of privileges has been introduced by DCS to provide an incentive to progress through a three-stage program. One of the rewards for those on the highest level of privileges is that lock-in occurs later in the day. The program also gives some Kariong detainees a chance to return to the juvenile justice system if they conform to certain standards of behaviour — and a number of them have already achieved this.

While we received a number of complaint calls from young people following the handover from the Department of Juvenile Justice, the overall impression we have from our observations so far is that the centre is running smoothly. On the occasions we have visited, it appears cleaner and the atmosphere is calmer. A number of the detainees have commented to us that correctional staff are consistent and fair in their dealings with them. We will continue to monitor Kariong on a regular basis.

The high risk management unit

A relatively small number of inmates are housed in the high risk management unit (HRMU) but we receive proportionally more complaints about this unit. Inmate dissatisfaction is somewhat understandable given the very strict regime under which they live – especially those on the lower end of the 'hierarchy of sanctions and privileges', a program that aims to maintain good order and security in the unit by encouraging inmates to conform to certain standards of behaviour. As the name suggests, only inmates who have been classified as 'high risk' are housed in this unit.

The HRMU program has been operational since late 2001 and some inmates have lived there since then. Timeframes are not included in the HRMU program and it is possible that some inmates will serve the majority, if not their entire, sentence in the unit. Documentation on the program refers to exit strategies and the latter stages of the program being conducted outside of the HRMU, but to date few inmates have left the program on that basis.

The main focus of the program is on changing the behaviour of inmates who, through the offences they have committed or how they have behaved in the corrections system, have been assessed as posing a risk to other people. Each person is carefully case managed, with members of staff recording their observations of how each inmate is behaving and complying with rules and routines. These observations are reviewed periodically and changes made to each person's program accordingly.

There is little doubt that among those who are housed in the HRMU are people convicted of some of the state's most serious offences. However we are of the view that the unit must be run in such a way as to maximise the chances of rehabilitation and minimise the risk that these people will pose to society when they are eventually released. Treating the inmates consistently, reasonably and within the law — and being accountable for the management of their behaviour — is essential to the unit's effectiveness.

During the past year inmates in the unit have raised a series of complaints about unreasonable policies and practices that affect their day-to-day conditions. In the highly regulated environment of the HRMU, decisions of this nature can be perceived as arbitrary and oppressive and develop into significant points of dispute between inmates and staff. This in turn can work to undermine any therapeutic value of the program. Following our intervention there have been a number of changes made to address inmates' concerns. See case studies 54, 55, 56 and 57 for some examples.

Segregation orders

We reported in last year's annual report that we had begun a formal investigation into the HRMU. The investigation involved complaints from two inmates who separately alleged they had been illegally segregated.

One of the inmates had been referred to the HRMU for assessment, but did not meet the criteria for the program. During the two week assessment period, inmates are placed in the assessment area on a segregation order and not allowed to associate with any other inmate. This is part of the strict system of controls that the HRMU places on inmates. The complainant raised concerns after he was forced to remain in segregated conditions in the HRMU after the two weeks was over, and despite the segregation order being revoked — because there was a delay in returning him to the program he had transferred from.

The second inmate complained because he was moved to the assessment area of the HRMU and kept under segregated conditions when an illegal item was found in the day room of his regular cell. No formal segregation order was made. He stayed there while the HRMU investigated how the illegal item came to be in his cell.

After we initially contacted HRMU management, the first inmate was moved from the assessment area and given the opportunity to apply for association with other inmates. In the second case, another inmate admitted ownership of the item found in the complainant's day room and he was returned to his normal accommodation in the HRMU.

We investigated the segregation of both inmates, the operation of the program in terms of how the various accommodation areas were being used, and the levels of sanctions within the program and the unit.

Our investigation found that:

- both men had been illegally segregated
- the structure of some aspects of the program meant that some inmates could effectively be held in segregated conditions without a segregation order — thereby denying them the statutory right of review associated with such orders
- the management of the two men who had complained to us had been oppressive in some regards.

We sent DCS a provisional report on our investigation, including our draft findings and recommendations. The Commissioner agreed with our recommendation that segregation orders should be made for any inmate who is not allowed to associate with other inmates on a daily basis. He also agreed to formally evaluate the program currently operating in the HRMU, and this evaluation is expected to be completed by late 2005.

At the time of writing we had sent a report of our investigation to the Minister for Justice.

CaseStudy55

An HRMU inmate called on behalf of another inmate confined to his cell to advise us that the confined inmate had been refused access to legal calls. When we contacted senior staff at the HRMU we were told it was common practice to deny all such calls to inmates confined to their cells. As this advice did not match our understanding of the legislation and DCS policy, we sought specific details about the authority they had relied on to make this decision. We were told legal advice would be sought from head office.

We were also told the officer who made the decision had formed a view that the inmate did not have any urgent legal matters requiring a legal call, and so a call was not approved. HRMU staff believed that 'the inmate just wanted to be let out of his cell'.

The HRMU governor was aware of the inmate's right to legal access but believed that, if there was no urgency, the inmate should not be let out of his cell. We again asked for the legal basis for this decision, but none was provided. We were eventually told that DCS head office had advised HRMU that the inmate should be allowed to make the legal call, as this was not a privilege that could be withdrawn. The inmate called us shortly after to say he had been let out to make the legal call and to call us. He said he had originally asked to make a legal call and to call the Ombudsman and had been refused.

We were concerned that a number of staff at the HRMU did not know the legislation or policy on inmates' rights of access to legal calls. Since then, the A/Senior Assistant Commissioner has issued a notice about withdrawal of telephone privileges during segregated custody or placement in a specific program, and amendments are being made to the operations procedures manual to inform all staff of the correct procedures and inmate rights.

CaseStudy54

The prison doctor recommended that an HRMU inmate should use an electric shaver, instead of the disposable razors issued by DCS, to avoid exacerbating his particular medical condition. The inmate put in several request forms asking for an application form so he could get approval to purchase the electric shaver with his own money, but officers did not give him the request or application form. After our intervention, he received an application form.

His application for the shaver was then rejected because a check had been made with reception and 'it was not part of the policy'.

After further inquiries the HRMU governor, together with the doctor, agreed that under the circumstances it would be appropriate for the inmate to have an electric shaver — as long as it was kept with the officers and only given to the inmate for use under supervision.

CaseStudy56

An HRMU inmate alleged he was wrongly refused association with another inmate on the basis of an allegation (which he denied) that he had 'blocked the camera' during the other inmate's legal visit to his cell. The inmate told us that he had never been told about this alleged incident or charged with any correctional centre offence in relation to it, plus the incident was alleged to have occurred many months before. We discussed this matter with the HRMU governor. He advised the decision to refuse association was not based solely on those alleged actions, and that the inmate had taken an officer's comment in relation to the allegations out of context.

The governor agreed that the allegation had not ever been raised with the inmate, and there was no proof that any such incident had occurred. We consider that it was unfair to rely on such information to make decisions about the inmate without affording him procedural fairness to either respond to the allegation or defend a charge.

Eventually the governor agreed that the officer was wrong to give the alleged incident as a reason why the requested association was not approved. He agreed to speak to the inmate to explain.

CaseStudy57

An inmate had been advising his family on business ventures for some time while he was housed in the HRMU. He was aware that correctional staff monitored all written material and phone calls, and that information obtained from these sources had been passed on to other law enforcement agencies — but he was not concerned as he felt he was giving advice on legitimate matters.

An officer then advised the inmate that he had impounded all his letters over a three-week period. The officer said he was concerned there would be problems if 'someone in the Opposition found out that the inmate had been advising on family business from inside prison'. We confirmed with the officer that this was the case, and asked under what authority he had done this. He told us he had 'done it off his own bat' while he was waiting for someone more senior to make a decision about it.

The officer agreed that the inmate had not breached the good order of the centre, the material was not obscene, no threats had been made, and the mail had been inappropriately withheld. When the matter was raised with the HRMU governor, he immediately arranged for the mail to be given to the inmate.

Visits to correctional centres

One of our primary aims when we set up our corrections unit was to increase our presence in correctional centres, and to identify issues that may not be brought to our attention via inmate complaints. We have largely been successful in achieving this. During the past year we have spent 138 person days visiting 26 centres. In this section we report some of the observations we have made on our visits and some of the outcomes we have achieved.

Mulawa correctional centre

A number of inmates had contacted us before our visit to Mulawa. For a number of years there have been plans to redevelop the centre. There are longstanding and very valid reasons for such a redevelopment and plans had reached a critical point by mid 2004. However housing all the inmates in the centre during redevelopment posed some practical problems. It was our understanding that DCS was hoping that alternative housing could be found for inmates once the Mid North Coast and Dillwynia correctional centres were opened.

In the meantime, inmates were relocated within Mulawa and some units closed to allow essential demolition work to begin. Women had to double up in cells designed for single accommodation. Mattresses had been placed on cell floors, forcing them to sleep under a bench and next to a toilet and shower they then shared with their cell-mate. As well as the accommodation problems, Mulawa had serious problems with their overtime budget. Operational agreements within correctional centres have long meant that when staff absences reach a certain level, activity for inmates is progressively restricted. This meant the women who had to share accommodation were also being locked in their cells for extended periods of time.

We acknowledged the difficult situation faced by the governor at Mulawa, but felt it was imperative that something be done about the inmates' living conditions. We raised our concerns with senior departmental staff. The Senior Assistant Commissioner, Inmate and Custodial Services considered our concerns and — in light of the delays in commissioning Dillwynia — he approved an extension of Mulawa's overtime budget to relieve the number of lockdowns, and the short term re-opening of one of the closed units (which had simply been intended for another use, not for demolition) to allow the inmates to move from the cell floors.

CaseStudy58

An inmate from Mulawa complained that some women were being denied their right to buy food and other supplies, known as 'buy ups'. These women were subject to the Drug Court of NSW and live at the centre as part of the drug court program.

The inmate complained that buy up procedures seemed to change on a weekly basis. Their main concern, given that many of them were de-toxing from other drugs, was the lack of tobacco.

We were advised by staff that it was their understanding that women on the drug court program were not entitled to purchase any items and were only allowed access to the tobacco they had with them when they entered the centre. We were also told the restrictions were as a result of the 'strict drug court regime'.

We contacted the drug court to clarify this information. They were unaware of such restrictions and could not see why they had been implemented. They were especially concerned about the women's lack of access to tobacco and it was their opinion that the women should, in this regard, be treated like all other inmates at the centre.

We contacted Mulawa again and, after further investigation, they found there was no written policy or procedure for managing drug court inmates in correctional centres. The centre approached the drug court to jointly develop a memorandum of understanding. Women in the drug court program living at Mulawa are now able to purchase hygiene items, stationery and tobacco. Staff apologised to them for the inconvenience they had previously experienced.

Management at Mulawa agreed there should be formal policies and procedures for the management of drug court inmates. There is a similar program run for men at another correctional centre, so Mulawa management have contacted the department's head office to gather more information about this other program.

CaseStudy59

An inmate from Mulawa complained that the centre had failed to transfer her to another centre. She was distressed and explained she needed to be transferred for urgent medical treatment that was scheduled at the other centre that day. She said she had explained this numerous times to various officers at the centre, but they had not responded.

We made inquiries with the governor who found that this was in fact the case, and organised for the inmate to be transferred for treatment the same day. They apologised to her and the officers at the centre involved were counselled.

Metropolitan special programs centre (MSPC) 7 and 9 wings

When we visited Area 4 of the MSPC in March 2004, we were concerned about the number of men living in 7 and 9 wings who were 'in transit' to their centre of classification — but were sometimes spending many months in these wings without adequate access to programs and gainful employment. Some inmates were classified as minimum security but were living in maximum security conditions, and some were soon to be considered for parole but had little, if any, opportunity to work on addressing their offending behaviour.

The increasing level of violence in the yards attached to these wings was also concerning and one inmate was assaulted by another while we were interviewing. This violence was not surprising, given these very bored men were forced to spend the majority of their day in the yard for months on end.

We discussed the issue with the governor but recognised he had little influence over which inmates were sent to the centre, or how long they stayed. Both he and the previous governor had tried to improve the conditions for the inmates, but in reality there was little they could do. We then raised this issue at a liaison meeting and subsequently inspected the wings in the company of the department's senior officers. While some of the wings had been painted in the interim, the long-term accommodation of inmates 'in transit' to other centres more appropriate to their classification had not improved. We reinforced our concerns and within a week the department took action and the inmates were moved to other centres.

Goulburn correctional centre 4 wing

We make general inspection visits to Goulburn correctional centre at least twice a year. We have been acutely aware of the issues that arose in the centre after the incident in April 2002 when some inmates then living in 4 wing rioted and attacked staff, seriously injuring some of them. Most inmates from an Aboriginal background live in 4 wing and we were approached by inmate delegates from that wing during our December 2004 visit with concerns about their living conditions and general management.

Most of the buildings at Goulburn are old and reflect earlier and outdated views of incarceration, and we appreciate the problems faced by DCS in refurbishing such accommodation. We were asked by the inmate delegates to inspect the wing, and did so with the agreement of staff. This was our first visit into the wing since the April 2002 incident.

We were concerned about what we saw. The wing was particularly dark and dank. There was very little

cell furniture as much was destroyed during the incident and had not been replaced. What was there was old, and inmates were using old boxes as tables and for storage of their property. In particular we were shocked at the number of 'hang points' in the cells, especially as most of the men who live there are from an Aboriginal background — and these kinds of conditions clearly contravene the recommendations of the Royal Commission into Aboriginal deaths in custody.

We spoke to the then governor of our concerns and were told the wing was to be painted and new cell furniture was on order. We have continued to monitor the progress of this refurbishment. On our last visit to Goulburn, immediately before writing this report, we were pleased to see the wing freshly painted, new cell furniture in place and the most obvious hang points removed.

Long Bay Hospital 2

Before we visit a correctional centre we send out posters about our visit and ask any inmates wishing to speak with us to leave their name with correctional staff. This helps us plan the time we have in the centre. On the day before our scheduled visit to Long Bay Hospital 2 (LBH2) in January 2005 we were told that 135 inmates had asked to see us. When we arrived at the centre we met with senior staff and asked to meet with inmate delegate committee representatives to try to establish if there were some common, major issues requiring our attention.

The inmate delegates spoke to us about the amount of time they were locked in their cells. These lock-ins were affecting inmate access to welfare, programs and importantly — given the centre is identified as a provider of medical services to inmates — to the clinic. The governor and nursing unit manager both told us of their plans to try and address these matters.

During our visit we went to the ICMU (the area where inmates on segregation or protection are accommodated) and were told by a number of inmates that they had not been allowed out of their cells for showers, exercise or phone calls for the past nine days. They reported that it was not uncommon for them to be locked in their cells for such lengthy periods of time, and staff on duty confirmed the only reason they were given access that day was because we were visiting.

We discussed our concerns with senior departmental staff. As a result of our concerns, and those of other interested parties, the Commissioner of Corrective Services directed an inquiry into the administration of Long Bay Hospital 2, with wide-ranging terms of reference. The Commissioner has given us detailed information about the findings of the inquiry, as well as details of some concerns he has about the physical structure of the centre. He is now planning to close the centre for refurbishment and conduct a review of local operating procedures and practices.

Bathurst correctional centre

Like Goulburn, Bathurst correctional centre is an old style gaol. While many of the wings were rebuilt after the serious riots in the mid 1970s, they do not meet the needs of a modern correctional environment. Our primary concern from this visit was the physical conditions of many of the wings – once again the cells are dark and have many hanging points. We saw some cells with the older style of bunk bed that caused serious injury to an inmate some years ago, in a case that was widely reported in the media.

Bathurst correctional centre also accommodates a high number of inmates from an Aboriginal background, and our greatest concern was with the hanging points, the cell accommodation and furniture provided. Once again this is contrary to the recommendations of the Royal Commission into Aboriginal deaths in custody. We were also concerned about the unhygienic conditions of the communal shower areas.

We raised our concerns with the governor at the time of our visit. He assured us that work was going to start to renovate some bathroom and cell areas, but they did not have sufficient funding to do all the work required. We returned to visit Bathurst again, specifically to inspect the conditions. We were pleased with the work done to date on the bathrooms, and the governor advised that cell furniture like that installed at Goulburn had been ordered.

While we recognise the financial constraints on DCS, we will continue to monitor basic amenities in an effort to ensure that no further harm comes to inmates as a result.

Use of force

It is an unfortunate fact of prison life that occasionally correctional officers need to use force on inmates to maintain good order and security. DCS has extensive policies and procedures guiding the use of force. Among these is the requirement that, except in exceptional circumstances, all uses of force should be videotaped. A use-of-force package must be completed, including notification to the department's duty officer for inclusion in the daily synopsis.

The details recorded by the duty officer include whether or not the use of force was video recorded and, if not, why. Video recording a use of force is a powerful accountability tool — it gives officers an incentive to conduct themselves professionally and discourages inmates from making vexatious complaints.

During the year we became aware that some incidents where force was being used were not being videotaped. We decided to examine the department's level of compliance with their policy over a six-month period, from January to June 2004. Our analysis examined all events listed on the synopsis as 'use of force' across correctional centres, court / police cells, escort vehicles and 'other locations'.

We found that over the six months there were 400 events where force was used, but only 151 (or 38%) were videotaped. Of the 400 events, 324 occurred in the 33 correctional centres / periodic detention centres. When we looked at compliance by individual centres, 13 of the 33 did not tape any events where force was used. Eight centres videotaped an average of 50% or more events. Only two centres videotaped every event, but only one event had occurred.

Newcastle court cells recorded the highest number of events where force was used in a court / police cell complex. There were 13 such events, but only two were videotaped.

We also analysed the reasons why force was used at various centres and the reasons given for not videotaping the events. The spontaneous nature of the incident leading to the use of force was the reason most commonly given. Other reasons included camera, film and battery failures, or insufficient staffing to allow one staff member to operate the camera.

Another of our main concerns was the relatively low use of video by specialist units involved in using force with inmates.

We gave DCS a copy of our report detailing our analysis and findings. Subsequently we met with senior staff to discuss our findings and their proposals to address the low level of compliance with their policy. Some of the solutions they proposed included additional training and amendments to the duty officer database so that a use of force incident cannot be added without a reason for not using a video. Finally the Senior Assistant Commissioner, Inmate and Custodial Services, issued a memorandum to all staff outlining the requirement to video all events where force is used. This memorandum was also published in the Corrective Services Bulletin to reach as wide an audience as possible.

Court / police cell complexes

When most people first enter custody they spend some time in a court / police cell complex. Most of these complexes are operated by the DCS court escort and security unit.

In November 2004 we again began receiving complaints about the length of time people were spending in court cells before being moved to a correctional centre. The department aims to move people out of these cells as quickly as possible and 72 hours accommodation is the usual benchmark. Legislatively, the maximum period a person can spend in such cells is seven days — but there is general agreement that this is an excessive amount of time given the minimal facilities available. The calls we received in November indicated some people were spending between five and seven days in cell complexes.

Over a three-month period from November 2004 to February 2005, we visited five court cell complexes. During our visits we spoke with the officer in charge and other staff and inspected the facilities and paperwork. We recorded our observations and the information we were given in an audit tool and compared the five centres against set criteria.

For some of the court cells we visited, this was a return visit. We were therefore able to compare our reports from previous visits with our recent observations. We found that, apart from the establishment of a Justice Health clinic at Newcastle, little else seemed to have changed in recent years.

When we started the project, we found some substance to the complaints we had received. For example, Newcastle reported that in the weeks before our visit they had some inmates housed for longer than 100 hours (more than four days). As our visits progressed, other complexes housing inmates overnight reported they had had similar problems around the end of 2004. The problem with moving inmates to correctional centres was consistently identified as being a 'lack of beds'. We prepared a report of our observations and provided it to DCS for their comment.

Inmate facilities vary enormously across the complexes, but our main observations were as follows.

- We identified a number of 'hang points' at Penrith court cells. Although there is 24-hour monitoring, there are only two officers rostered on during the night shift. If there is an incident or other emergency the officer in the cells may be called from the control room to respond, leaving the problem cells unmonitored.

- There was a lack of access to identified mental health nurses to assess people when they are first brought into custody, for any risk they may pose to themselves — this is a problem given the mental health status of many of the inmates.
- There was a lack of access to medical services at Wagga Wagga which is a 24-hour / 7-day facility. If such services are needed, inmates are taken to Wagga base Hospital or Junee correctional centre. All complexes use ambulances for emergencies.
- Surry Hills and Wagga Wagga, both 24-hour / 7-day complexes, have no televisions for inmates to watch. Staff at the other complexes reported that televisions and videos or DVDs are effective management tools, especially when inmates are kept for longer periods.
- No centre reported having access to an Aboriginal liaison officer, apart from those provided by the police or court services.
- Justice Health provided nicotine patches at a number of complexes.
- At some complexes there are no exercise options. What there is usually comprises areas in front of cells in those blocks where inmates can be secured while out of their cells. The options available also depend on the varying needs of the inmates in the complex at any time — for example, there may be women and men or high-security and low-security people. At Surry Hills the only exercise outside the cells is walking out to have a shower.
- A number of inmates do not have access to court clothes. People in custody may only have the clothes that they were arrested in which are sometimes bloodstained and torn.
- There is no access to natural light and fresh air at any of the complexes we visited. During our visits, cells ranged from dank to musty and would be a very unpleasant environment to spend time in, especially if occupied by more than one person.
- Access to showers is variable. It often depends on how many staff are on duty and whether they are able to carry out their other duties as well as supervise shower visits.
- Not all complexes had supplies of the appropriate toothbrush, none offered inmates a comb and — unless a person is spending an unusually long period of time in the complex — they are not allowed to shave, even for court.
- There were some concerns about practices of strip searching inmates and how and when these are recorded.

The Commissioner has responded positively to our report including holding further discussions with NSW Police and the Attorney General's Department that usually own the buildings, as well as with Justice Health about medical services.

CaseStudy60

An inmate claimed that DCS had reproduced his artwork on a poster and displayed it widely without his knowledge and authority. The inmate created the artwork while he was in the Ngara Nura drug and alcohol program. He later agreed to donate his painting to the program on the condition that the painting was 'proudly hung in the dining room of Ngara Nura'. He was also offered two $60 weekly buy ups.

He stated that the donation of the artwork never implied that he was giving away his rights as the artist. He also alleged the department had not met the terms of the agreement. He wanted his artwork returned and compensation for the illegal reproduction.

The Commissioner responded to our inquiries and acknowledged the department had reproduced the artwork without the inmate's permission and regretted the error. They also acknowledged that they had not consulted him about the reproduction of his artwork.

The complainant wanted to explore his legal rights further. Given the complexity of copyright disputes, we suggested he seek legal advice and referred him to the Arts Law Centre of Australia. We understand they are currently pursuing this matter further on his behalf.

'I would like to express my thanks to you for the large effort you initiated on my behalf. We are very grateful.'

Justice Health

Inmates also contact us about the health services provided in the correctional system. While we do not examine clinical or professional matters, we are in regular contact with Justice Health about many other health-related complaints and inquiries from inmates. We have agreed with Justice Health that our inquiries are dealt with by email to enable quick action.

When we visit correctional centres we try to meet with the nursing unit manager and provide them with any feedback we receive during our visit from inmates about the quality of health services. During our visit to Tamworth correctional centre, we were given a demonstration of the video-link system being used by psychiatrists and were impressed with the potential this has for inmates and health staff in remote locations.

We often receive complaints from inmates about problems with access to medical or dental treatment and about administrative matters within Justice Health. See case studies 61 and 62 for some examples from this year.

CaseStudy61

An inmate at Emu Plains correctional centre contacted our office because she was not given her methadone dose. She had been advised by staff this was because she had been late on previous occasions.

Justice Health's procedures for methadone dosing in correctional centres are supposed to reflect the general standards applied in community settings — and not to impact on the variety of services Justice Health is also required to deliver to all inmates within the centre. For these reasons the delivery of methadone is limited to specific times of the day.

Justice Health acknowledged there may be sound reasons why the procedures should be varied in a correctional setting. They undertook to review them in light of this complaint and look at the possible impact current procedures may have on inmates.

Justice Health held a meeting with the Women's Health Directorate and the Drug and Alcohol Service and it was agreed that a 'last call' trial would be implemented. The new procedure in this trial will notify all inmates through an announcement across the correctional centre as the nursing staff reach the end of the queue for dosing. It is hoped this will minimise the number of inmates who miss out on their dose as a result of not attending the scheduled dosing times.

CaseStudy62

A Spanish-speaking inmate complained he wasn't given adequate treatment for Hepatitis C at LBH2. He was convinced he had Hepatitis C and his limited English made his understanding of his condition difficult. We referred his complaint directly to Justice Health, with a copy of the inmate's original complaint (written in Spanish). We asked for of their response to the inmate for our records. We wrote to the inmate in Spanish explaining what we had done with his complaint.

The inmate contacted us again to tell us that Justice Health had responded in English and not in Spanish. Justice Health told us they had arranged for a welfare officer to interpret their response to the inmate, which advised that he did not have Hepatitis C. This was problematic for the inmate, however, as he did not want anyone else to know his medical details. He indicated to us that he still thought he had Hepatitis C and Justice Health must have made a mistake.

Given the sensitivity of this matter, we felt Justice Health should have translated their response into Spanish. If the inmate had been able to understand the information, he may have been more willing to believe it. Justice Health eventually agreed to write to the inmate in Spanish and to organise a face-to-face interpreter for the inmate's appointments.

The inmate contacted our office again still refusing to accept that he did not have Hepatitis C. He provided a letter from a doctor attached to LBH2 stating 'the patient has chronic active hepatitis C.' We were told that in making this statement the doctor had relied on the information provided by the inmate and had not checked the inmate's file. The doctor confirmed he had made a mistake and apologised for the error.

Juvenile Justice

Complaints and visits

Our staff have visited each full-time juvenile justice centre in NSW twice during 2004-2005. We also went to the juvenile justice centre at Broken Hill as part of a more extensive trip to the area, meeting with staff and inspecting the centre. This centre is only used to house people for short periods of time and has four double cells. On the day of our visit no detainees were being held at the centre.

During our visits we talk to detainees and staff, inspect the centre, examine records and look at programs and activities. We talk to members of staff who work with detainees in a variety of roles, which gives us insight into how effectively a centre is operating.

The department has recently introduced a new classification system and we will continue to monitor its implementation and impact in the coming year.

Please see figure 69 in Appendix E for more details about the numbers of complaints we received this year, broken down by institution.

Kariong

Kariong juvenile justice centre, the maximum security detention centre for young people, was transferred from the Department of Juvenile Justice (DJJ) to the control of DCS in November 2004. In the period leading up to this transfer there were a number of incidents that raised significant concerns about security and staff practices at the centre. We requested information from DJJ about, for example, alleged security breaches permitting sexual conduct to occur during a visit and mistakenly allowing a group of pensioners in a van into the centre.

Staff tensions at the centre were evident in testimony given to subsequent parliamentary inquiries into Kariong and juvenile offenders. This testimony reflected the same culture we reported on in our special report to Parliament on Kariong in 2000 — staff fractured into cliques and suspicious and mistrustful of each other. It seems that over the years DJJ had been unable to resolve these problems. The decision to transfer the centre came after the Minister commissioned a review of the centre by Vern Dalton, the former Director General of the Department of Community Services and former Commissioner of Corrective Services.

For details about subsequent developments at Kariong, please see earlier sections of this chapter.

Figure 52 - What people complained about in 2004-2005 (juvenile justice)

This figure shows the complaints we received in 2004-2005 about juvenile justice centres, broken down by the primary issue that complainants complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue. Also note that this table includes issues relating to Kariong Juvenile Justice Centre only for the period 1/7/04-19/12/04.

Issue	Written	Oral	Total
Daily routine	1	59	60
Food and diet	0	24	24
Transfers	4	19	23
Officer misconduct	2	18	20
Other	1	17	18
Unfair discipline	0	17	17
Visits	1	10	11
Case management	1	6	7
Security	1	6	7
Medical	0	7	7
Day/other leave/works release	0	7	7
Property	0	6	6
Outside our jurisdiction	2	4	6
Information	2	2	4
Classification	2	1	3
Child abuse related	1	2	3
Fail ensure safety	0	2	2
Work and education	0	2	2
Buy ups	0	2	2
Records/administration	1	1	2
Segregation	0	1	1
Mail	0	1	1
Community programs	0	1	1
Legal problems	0	1	1
Total	**19**	**216**	**235**

Centre culture

As the problems at Kariong demonstrated, staff conflict can be a significant obstacle to the effective running of a juvenile justice centre. We understand that such conflicts are, to some degree, present in all workplaces, and that those who work in a custodial setting have to deal with particular stresses. However, one way to reduce stress is for staff to behave professionally and work together cohesively. An important aspect of this is for staff to raise genuine concerns at the relevant time with the appropriate level of management to ensure any alleged misconduct is promptly investigated and dealt with. In this way those staff whose conduct is genuinely problematic can be properly managed and those who are the subject of unsubstantiated allegations can have their names

cleared. If concerns are not raised with management immediately, rumour and misinformation about colleagues can be perpetuated and significantly affect morale and teamwork, as well as have a potentially detrimental impact on security.

Case study 63 is an example of a member of staff making a number of serious, but completely erroneous allegations, some dating back a number of years. The department quite appropriately did a thorough investigation of the allegations. The evidence they found did not substantiate any of the allegations, but rather highlighted the tensions that existed between staff at the centre. In particular there appeared to be some hostility and mistrust between some staff who were security focused and others who were welfare focused. This led to rumours about colleagues who were disliked being repeated as known fact, despite there being no evidence to support them.

The change of management regime at Kariong (which resulted in a number of redundancies) will hopefully encourage frontline juvenile justice staff at other centres to work together more cooperatively and better appreciate the wider consequences of perpetuating conflict between staff.

Saying sorry

Sometimes an apology can resolve a complaint – but it needs to be promptly given. If a mistake is made or something has gone wrong the people affected will generally be satisfied if the mistake is acknowledged without argument, an explanation and apology is provided. This can be particularly effective in a detention environment, as detainees and staff continue to be in close contact with each other after mistakes are made. In some cases, particularly where a detainee or family member has specifically asked for it, an apology can be the best response, as a refusal to apologise could lead to further dissatisfaction, and possibly jeopardise the safety and well-being of all parties.

We still handle matters where management indicate their willingness to give a verbal — but not written — apology. There continues to be a misperception that written apologies expose the department or centre to a higher risk of being held responsible — and therefore liable — for the conduct complained about. The *Civil Liabilities Act 2002* makes it clear that in most cases apologies by public officials do not constitute admissions of liability. We will continue to encourage management to recognise that a simple apology is often all that is needed to resolve some complaints.

CaseStudy63

We received a complaint about staff at a juvenile justice centre that contained numerous allegations about theft, assault, nepotism, the making of false claims for payment and serious breaches of security procedures. Some of the matters raised were employment-related and therefore outside our jurisdiction. Rather than investigate isolated elements of the complaint, we asked the department to investigate all of the issues raised and then give us their investigation documentation to review. Their investigator did a thorough analysis of all of the allegations, categorising them under 14 separate headings. Having found little evidence to substantiate most of the allegations, at the end of the first phase of the investigation, the department decided to make further inquiries into only those where there was some evidence to pursue. About 50 people were interviewed during this phase and a further 18 allegations were made during those interviews. However, the evidence only justified making further inquiries into one allegation.

We reviewed all the investigation documentation — which filled seven folders — and agreed with their decision. It was clear that the department had conducted a thorough and professional investigation. It was also clear that within the centre there was a culture of malicious gossiping and rumour mongering.

The allegations went back several years and the complainant appeared to have little or no direct knowledge of, or interest in, any of the allegations they had made. They were certainly not alone in repeating demonstrably untrue claims as fact. For example, it was claimed one member of staff had falsified their professional qualifications. The validity of the qualification was supported both by the original certificate and through inquiries made with the department's head office. Another allegation was that some years before a staff member had falsely claimed maximum shift allowance when they were participating in a sporting event on a Sunday. The evidence showed that the worker had been in a morning sporting event but it was over before they signed on for the start of their afternoon shift. There was simply no evidence to support the allegation. In addition, the person who was the subject of the complaint had left the department long before the complaint was made.

Legislative reviews

We are responsible for reviewing the implementation of a number of pieces of legislation including two that relate to the corrections area. Our other legislative review projects are discussed in chapter 3: Police.

Transfer of young people from juvenile justice to adult correctional centres

The *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001* came into operation in January 2002, with a requirement that its 'operation and effects' be scrutinised by the Ombudsman for three years. The Act was introduced to ensure that anyone convicted of a serious indictable offence as a child is transferred from a juvenile justice centre to an adult correctional centre by the age of 18 years — unless the court considers there are special circumstances that justify them staying in juvenile detention. No juvenile offenders sentenced since the start of the Act are eligible to stay in a juvenile justice centre beyond the age of 21.

Our review of the legislation included:

- interviewing detainees before and after they transferred from juvenile detention to an adult correctional centre
- interviewing staff and other stakeholders
- monitoring information about detainees and inmates provided by DJJ and DCS
- examining detainee case management files
- checking court transcripts, particularly for sentencing
- considering submissions by judicial officers.

In April 2004 we released a discussion paper asking for submissions from key stakeholders and the public. This prompted 21 submissions from various departments, organisations and individuals.

The review period ended in January 2005. Since then we have been preparing a report on the outcomes of our review. We anticipate that the report will be given to the Attorney-General and the Ministers for Justice and Juvenile Justice later in 2005.

Additional powers for correctional officers, dealing with escapees and the right of victims of serious crimes to address the Parole Board

The *Crimes (Administration of Sentences) Amendment Act 2002* and the *Summary Offences Amendment (Places of Detention) Act 2002* came into operation in February 2003 and were reviewed by our office for a period of two years.

This legislation:

- changes the procedures that correctional officers and police officers must follow when an escaped inmate is arrested
- increases the powers of correctional officers to stop, search and detain people or vehicles in or near a place of detention
- authorises correctional officers to use dogs and reasonable force when stopping, searching and detaining people and their vehicles
- creates new penalties for not complying with a direction given by a correctional officer in relation to the stop, search and detention powers, and for failing to produce anything detected in a search when requested to do so by a correctional officer
- permits the seizure and destruction of property brought unlawfully into a correctional centre
- gives victims of serious offences the right to make an oral submission to the Parole Board when the offender is being assessed, without requiring the prior approval of the Parole Board.

Our review included:

- reviewing legislation in other Australian jurisdictions
- visiting correctional facilities, observing a range of search operations and auditing finds
- obtaining information from stakeholders and reviewing complaints to our office.

In March 2005 we released a discussion paper asking for submissions from stakeholders and members of the public. We received 16 submissions in response.

Our review ended on 20 February 2005. We expect to present our report to the responsible Ministers for tabling in Parliament in the near future.

David Chie
Customer Service Manager, Police team

My name is David Chie. I joined the office in April 1981 as a relieving officer with the Premier's Department. On my first day, I was assigned to the Ombudsman's office to work in the inquiries section and have been here ever since.

I was in inquiries for eight years. This initial experience has greatly assisted me in handling the various complaint situations that arise.

From 1989 to 2003 I helped develop the basics for our internal police complaints system database, and maintain the quality of the data. The importance of this cannot be understated as the accuracy of our holdings may influence a police officer's career.

Since 2003 I have been the police team's customer service manager, mainly responsible for assessing and finalising less serious police complaints.

I am presently the second-longest serving staff member with the office, having worked here for 24 years. I have had the privilege of working with all five appointed NSW Ombudsman.

I enjoy dealing with the public and NSW Police employees, many of whom I have been in contact with for several years. My work is extremely rewarding and I feel that the role of the office is immensely important. It is gratifying to see how widely accepted and respected our office has become.

10: Freedom of information

A key foundation for accountable government is that people have adequate information about what the government is actually doing on their behalf. For proper accountability, it is vital that government activities are as transparent as possible.

The main mechanism in NSW for people to obtain access to information held by government agencies was established under the *Freedom of Information Act 1989* (FOI Act). A central purpose of this Act is to open up government to greater public scrutiny and give members of the public the chance to participate in the development and implementation of laws and public policy.

Under the FOI Act, agencies are required to consider applications for the release of documents. If an agency decides not to release a document that a person has requested, there are two options available. The first is to take the matter to the Administrative Decisions Tribunal (ADT) — they can review the merits of the agency's decision and make a determination that replaces that decision. The second option is to complain to our office. We have the power to review both the merits of the decision and the way the agency dealt with the application.

We are not an adversarial organisation and do not take sides. We look at each matter from all perspectives and try to find an outcome that is in the public interest and consistent with the laws governing the release of documents by public sector agencies. These laws include the FOI Act, laws relating to privacy and those that impose secrecy requirements.

As a first step, we try to review the documents being sought to see if we agree with the approach taken by the agency in assessing the application and their ultimate decision. If we have insufficient information to be able to understand the reasons for the decision or to assess if it was reasonable, we ask the agency for additional information or documents.

If, after our assessment, we agree with the agency's decision, we explain to the applicant why. If we disagree with the way in which the agency has dealt with the matter or with the decision itself, we put a preliminary view to the agency as to how we believe the matter should be dealt with, or suggest changes to their policies or procedures. We try to handle matters cooperatively and work through any points of disagreement. Over the past few years we have found face-to-face meetings with agencies, most involving our Deputy Ombudsman, have been very effective in finding ways to address our concerns. This year we experienced some difficulties in our dealings with the City of Sydney Council relating to a number of ongoing complaints — see case study 65 for an example. In particular, they were taking a very long time to respond to our correspondence. The Ombudsman and Deputy Ombudsman met with the lord mayor and the new general manager and talked through the issues constructively. We were able to agree on council taking certain steps to resolve all the outstanding matters to our satisfaction.

Sometimes it is appropriate for us to make a formal suggestion under s.52A of the FOI Act — this can then be adopted by the agency and the matter closed.

Occasionally we feel it is in the public interest to use our formal powers and force agencies to produce documents or answer questions. In a few cases, we formally report on our finding that an agency has handled a matter in a deficient way. This year we made four reports of this kind.

No more secrecy as Sydney investigates how open it has been

Trends in FOI complaints

Complaints generally

This year we received 189 formal complaints about FOI applications, compared to around 140 in each of the previous four years. See figure 53. Most of these complaints were cases where access was refused, but a number of people were also concerned that the agency had used the wrong procedure in determining their application. See figure 54.

We finalised 182 complaints — over half of these were resolved by persuading the agency to take some steps to address the complainant's concerns or by finding no evidence of wrong conduct. Please see Appendix F for a full list of the action we took in relation to each complaint finalised this year and figure 55 for some of the actions that, as a result of our involvement, agencies took to resolve these complaints.

Figure 53 - Number of formal and informal matters received about FOI – five year comparison

	00/01	01/02	02/03	03/04	04/05
Formal	137	138	140	139	189
Informal	312	306	367	309	345
Total	**449**	**444**	**507**	**448**	**534**

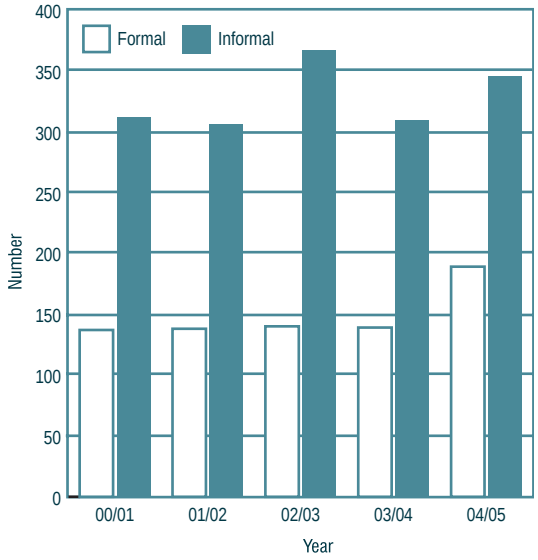


Figure 54 - What people complained about in 2004-2005 (freedom of information)

This figure shows the complaints we received in 2004-2005 about freedom of information, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Access refused	93	49	142
Wrong procedure	41	26	67
Pre-application enquiry	0	66	66
General FOI enquiry	0	65	65
Agency enquiry	0	61	61
Pre-internal review enquiry	1	37	38
Charges	14	7	21
Third party objection	12	9	21
Documents not held	10	9	19
Documents concealed	4	4	8
Amendments	4	3	7
Information	0	6	6
Outside our jurisdiction	5	1	6
Documents lost	3	1	4
Administrative wrong conduct	1	1	2
Documents destroyed	1	0	1
Total	**189**	**345**	**534**

Figure 55 - Significant outcomes achieved in relation to complaints about freedom of information finalised in 2004-2005

Outcome	No.
provided information	120
reviewed matters and changed decisions	40
undertook case reviews	37
provided reasons for decisions	20
provided another remedy	17
reviewed internal processes	14
admitted and corrected errors	9
trained staff	4
changed policies or procedures	3
negotiated settlements	3
gave apologies	2
gave monetary compensation	2
mitigating consequences of decisions had been taken	1
Total	**272**

Complaints from journalists and MPs

Media scrutiny of government operations is an important part of a functioning democracy. One way that media organisations can obtain information is through the use of the FOI Act. In previous years there was an occasional reference to the use of FOI laws in the print media, however in the past year many more print articles have indicated that their information was obtained as a result of lodging an FOI application.

Mirroring this increase in the use of FOI by the print media, we have seen a threefold increase over the past three years in complaints to us from journalists about their FOI applications. Please see case studies 64, 65 and 66 for examples.

In an address to the FOI practitioners network meeting on 18 November 2004, the Daily Telegraph's FOI editor — Mr Kelvin Bissett — stated that the Daily Telegraph had lodged 300 FOI applications over the previous 12 months, both in state and federal jurisdictions. They had been given full access to the documents requested in only 20% of those applications.

We have also received increasing numbers of complaints from non-government members of Parliament (MPs) over the past three years. This may indicate an increase in the use of FOI by MPs to scrutinise government activities more closely or an increase in the cases where agencies have refused access to documents requested by MPs.

CaseStudy64

A journalist from the Sydney Morning Herald complained to us that the Department of Gaming and Racing had, without telling her, released a report on their website that she had been unsuccessfully trying to obtain under the FOI Act. A journalist from a rival media outlet became aware of the report soon after it was posted on the website and was able to print an exclusive story based on the report. In response to our inquiries the department advised that, although they had initially refused to provide the journalist with a copy of the report, when she asked them to review their decision they had decided to release the report publicly on their website. They wrote to tell her, but sent the letter on the same day, which meant that she did not receive it until two days after the report had been put on the website. As a result of our inquiries, the Director General of the department apologised to the journalist and refunded her FOI application fees. Staff were also reminded that they must meet statutory timeframes and keep applicants informed.

CaseStudy65

The Sydney Morning Herald applied under the FOI Act to the City of Sydney Council for access to various documents relating to the proposal to introduce a bike plan for the Sydney CBD. The draft bike plan had not been publicly displayed and was still being considered by council at the time. Council determined that all the documents, including the draft bike plan, were internal working documents and exempt under clause 9 of Schedule 1 in the FOI Act.

After reviewing the determination we advised council of our preliminary view that, because the draft bike plan had subsequently been placed on public exhibition, we could see no good reason why the remaining documents should not now be released. Council's then general manager refused to meet with us to discuss the matter and reaffirmed his decision to refuse access to the documents. We therefore began a formal investigation of council's handling of FOI applications.

Following our investigation, we issued a report recommending that all documents about the bike plan be released and that council carry out an independent audit of all their FOI determinations for the previous 18 months. Soon after his appointment, we had a very productive meeting with the lord mayor and new general manager. They advised that our recommendations would be implemented and immediate action would be taken to release the relevant documents.

CaseStudy66

The Sydney Morning Herald applied to the Department of Infrastructure, Planning and Natural Resources for access to various documents about planning for current and future rail corridors. The department claimed that all the documents were exempt because they were internal working documents, but gave no good reasons to support their view.

We met with the department and the journalist to discuss the FOI applications and see if there was an acceptable way to resolve the complaint. At that meeting, the department agreed to negotiate with the journalist. Over a period of several months the journalist was given access to various documents and ultimately received a determination from the department. We thanked the department for their conciliatory approach which resolved a particularly complex and broad FOI application.

Trends in the release of documents to FOI applicants

We have now conducted eight annual reviews of the FOI statistics reported by over 100 NSW agencies in their annual reports. Since we started these reviews, the number of FOI applications made to those audited agencies has almost doubled — from 8,328 in 1995-96 to 15,791 in 2003-04 — even though the number of audited agencies decreased from 135 to 107.

There has been a significant and disturbing downward trend in the percentage of applications where all documents requested were released in full. In 1995-96, 81% of the decisions were to release documents in full but by 2001–02 this had decreased to only 63%. It has stayed around that level ever since.

The numbers of applications refused in part have more than tripled and those refused on the basis that advanced deposits were not paid have increased almost fourfold.

We have received a number of complaints about the amount of money charged by agencies as an advanced deposit —sometimes it is thousands of dollars. This raises the possibility that agencies are unreasonably denying people access to documents by making unrealistic calculations of the time involved in processing applications or by failing to negotiate with applicants to reduce the scope of their applications. Handling FOI applications in this way is contrary to the purposes of the FOI Act. We actively encourage agencies to work with applicants to find a practical way to provide access to documents without expending an unreasonable amount of resources.

CaseStudy67

A commercial real estate agent complained to us about Penrith City Council's refusal to give him copies of all the marketing submissions for some industrial land. Council had called for marketing proposals for the land which they planned to sell. The agent had made one of the three submissions received. He was unsuccessful and made an FOI application for copies of the other submissions. Council agreed to provide him with one of them, but the authors of the third submission objected to its release claiming the submission disclosed trade secrets. Council accepted this argument and decided not to release the submission on the basis of the 'trade secrets' exemption in clause 7(1)(a) of Schedule 1 to the FOI Act.

We were concerned about a number of aspects of council's handling of the application and decided to investigate. In our view the submission did not contain trade secrets and council staff should not just have accepted the representations of the authors of the submission but made their own independent assessment. The submission consisted largely of information already in the public arena – previously published brochures of successful property sales handled by the company, publicly available details about the company and its personnel, and publicly available information about sales in the Penrith area. Even if some of the submission had contained trade secrets, most of the document could have been released with the offending parts deleted. We also concluded that council had failed to give reasons for both their initial decision on the FOI application and their subsequent review.

We recommended that council redetermine the FOI application, release the submission, refund all fees paid by the applicant and arrange FOI Act training for relevant council staff. Council agreed to adopt all of our recommendations.

The authors, at the hearing of the third submission then appealed to the ADT. At the hearing, they claimed that the document should also have been exempt under cl. 7(1)(b) and (c) as it contained information of commercial value and concerned business, professional, commercial or financial affairs.

In a judgment handed down on 30 June 2005, the President of the ADT agreed with our report that the claim for the trade secrets exemption under cl. 7(1)(a) was not established, but accepted the exemption under cl. 7(1)(b) and (c).

CaseStudy68

We received a complaint from a person who had made an FOI application to Dungog Shire Council for full details of all submissions made to council about a draft local area plan (LAP) that had been on public exhibition. Ten submissions were received, all of which were summarised in a publicly available document that was presented to a council meeting. The names of the people who made submissions were not disclosed in this document.

One of the submissions was made by the mayor of the council as the LAP affected his property. Council wrote to everyone who had made submissions asking whether they objected to their submission being released. Some people did not respond, while others had no objection to the release of their submission. The only person who did object was the mayor (which he had every right to do) who claimed that it would be an unreasonable disclosure of his personal affairs. Council's FOI officer accepted this argument and released all of the submissions to the FOI applicant except that of the mayor.

When we looked at council's files, we could see no good reason why the mayor's submission should not be released. There was no sensitive personal information in his submission and its basic points had already been disclosed in the publicly available document. The substance of the submission made it clear that the property belonged to the mayor.

We informally suggested to council that the mayor's submission should be released as there was no good reason why it should remain exempt. Also, its non-disclosure did not represent good administrative practice or open or responsible government. Release of the mayor's submission would also help to show that council had not engaged in any unethical, corrupt or improper conduct in dealing with a LAP that affected his property. However council's FOI officer still refused to release the submission.

We therefore started a formal investigation. In response to our draft report, council changed their view and decided that the mayor's submission should be released.

Inconsistent laws about access to information

In a number of our annual reports since 1998-99 we have drawn attention to the practical problems that agencies face in trying to comply with a number of inconsistent laws governing access to information. The main pieces of legislation are the FOI Act, the *Privacy and Personal Information Protection Act 1998* (PPIP Act) and section 12 of the *Local Government Act 1993* (LG Act).

Over the years, the provisions of these Acts have created considerable confusion for people seeking access to information and public sector staff responsible for administering the legislation. Councils in particular have difficulty finding practical ways to comply with the LG Act — which requires them to give free access to certain documents — and the PPIP Act that restricts access to information of a personal nature. This year the ADT indicated a view that would essentially require councils to deny access to documents containing information of a personal nature until they have considered the public interest in releasing them. Please see chapter 8: Local government for more details of this case.

This year we also continued to receive complaints about councils exploiting the inconsistencies in these laws by telling people they could only apply for access to information under the FOI Act — that allows them to charge applicants a fee —rather than providing the information for free under s. 12 of the LG Act. Please see chapter 8: Local government for more information about our investigation into this issue.

Despite the continuing confusion and our repeated calls for appropriate action to be taken the NSW government has yet to address these issues.

FOI manual

In 1998 the Premier's Department and our office agreed to prepare an FOI manual that combined and updated the 3rd edition of the Premier's Department's *FOI Procedure Manual* published in 1994 and the 2nd edition of the Ombudsman's *FOI Policies and Guidelines* published in 1997. The intention was to create a single document incorporating the views of both our organisations.

We prepared the first draft of the manual and sent it to the Premier's Department and The Cabinet Office in 1999. The six-year delay in finalising this project has been largely due to the high turnover of staff at the Premier's Department and the Cabinet Office responsible for reviewing the draft. Given the size and complexity of the manual this was no easy task. There does not appear to have been one occasion where relevant members of staff of both the Premier's Department and the Cabinet Office concurrently reviewed the document in full. Over the seven years,

at least three different officers of The Cabinet Office and four different officers of the Premier's Department have comprehensively reviewed the document. Another factor in the delay appears to have been workload issues in those agencies. However in June 2005 the project had been given greater priority and an officer of the Premier's Department was given the responsibility to do a further review and have a revised draft ready for consideration by all three agencies in September 2005. This did not occur. The Ombudsman met with the Director-General of the Premier's Department to raise further concerns about the lack of action. Following this meeting, it was agreed that the Cabinet Office would take responsibility for the project being completed by the end of 2005.

Inappropriate use of exemption clauses

The objects section of the FOI Act makes it clear that the provisions of the Act are to be interpreted in favour of the disclosure of documents — unless that disclosure would be harmful to the proper administration of the government or to certain private interests that the legislature considers need to be protected.

Section 25(1) of the Act gives agencies a discretion to refuse access to a document if it is an 'exempt document'. This is a document listed in Schedule 1 to the Act. Section 25(4) makes it clear that an agency must provide access to an exempt document if it is practicable to release a copy of it with the exempt material deleted and it appears that the applicant would want to see the document in this state.

The exemption provisions give agencies some guidance as to the kind of information that might be considered 'not in the public interest' to release. However agencies have a responsibility to decide for themselves, on a case-by-case basis, whether keeping a document confidential is in the public interest. It is our view that agencies should start by assuming that releasing a document is in the public interest, and only refuse access if there are compelling reasons why this is not the case.

The only situation in which the FOI Act requires an agency to refuse access is if a ministerial certificate has been issued with respect to exemption clauses 1, 2 or 4 of Schedule 1 to the FOI Act. As far as we are aware, no ministerial certificates have been issued in the past decade.

We continue to receive a number of complaints about agencies refusing access for the sole reason that the documents sought fall within an exemption clause. The agency often just states that the documents will not be released and then cite or quote an exemption clause. This kind of approach demonstrates a misunderstanding of the way FOI operates and the way discretion should be exercised. It is also an example of agencies failing to comply with another provision of the FOI Act that requires reasons to be given.

This approach can sometimes reflect the underlying motivation of the decision-maker to protect the agency, the responsible minister or government generally from public scrutiny or possible embarrassment. While we recognise that these factors can be persuasive, the proper operation of the FOI Act requires decision-makers to exercise their statutory discretion in accordance with the Act — not in accordance with political imperatives.

CaseStudy69

The shadow Attorney-General applied to the Office of the Director of Public Prosecutions (ODPP) for four documents. Three were released. The fourth was withheld after consultation with the Attorney-General's Department. It was a document titled O*ffice of the Director of Public Prosecutions NSW Base Budget Review*. After an internal review, the document was released except for three attachments that were funding submissions for important ODPP initiatives. These were withheld as exempt under clauses 7, 9 and 13 of Schedule 1 to the FOI Act.

The Director argued that confidentiality between himself and his responsible Minister, the Attorney-General, was essential for a full and free exchange of views. Releasing these documents would compromise this confidentiality and could in the future inhibit the supply of documentary information by his office to the government. We disagreed with these views. Recent court decisions also do not support his argument. It seems unlikely to us, given the security of tenure of senior staff at the ODPP, that their ability to give open and frank advice to the Minister could be compromised by the disclosure of these documents.

We noted that the Attorney-General's office, when the ODPP consulted them on this matter, expressed some concerns but concluded that they would not press objections to the disclosure of the document. We suggested that the attachments should be disclosed and the ODPP released them the same day.

Failure to give reasons

Even though the FOI Act has been in operation for over 15 years, each year we find a significant number of written determinations that do not comply in significant respects with the requirement under section 28(2)(e) for agencies to specify:

- the reasons for the refusal
- the findings on any material questions of fact underlying those reasons
- the sources of information on which those findings are based.

In three of the four investigations we completed into FOI complaints this year, we were concerned about the agency's failure to give reasons for their refusal to release documents. This problem also arose in a number of other matters.

In most cases the agency simply referred to the exemption clauses being relied on and didn't even quote them. One notice of determination failed to even note the nature of the exemption claimed. Another failed to inform the applicant of their right to ask for an external review of the determination through the Administrative Decisions Tribunal — this is a requirement under s. 28(2)(g).

Giving reasons for decisions is one of the basic principles of good administration. People are entitled to an explanation as to why an agency has exercised a discretion to refuse them access to information.

Contracts between government and the private sector

During 2004-05 there has been an increase in the number of FOI complaints involving requests for documents about contracts between government and the private sector.

In late 2000 the NSW Premier issued memorandum No 2000 - 11 on the *Disclosure of information on government contracts with the private sector*. The memorandum provides guidelines that all agencies need to follow when considering a request to release details of contracts with private companies or people.

The guidelines set out the information that must be made public for all contracts above $100,000 and those above $5 million. Agencies need to release the name of the successful tenderer, the period of the contract, the total amount of payments to be made and certain basic information about the contract. The more a contract is worth, the more details need to be released.

The memorandum also outlines the information that should remain 'commercial in confidence' for all contracts. This includes the identity of unsuccessful tenderers.

A person is entitled to information about government contracts on request and does not need to lodge an FOI application.

In issuing this memorandum, the government recognised that making public certain information about contracts between government and the private sector ensures transparency and good administrative practice in these kinds of commercial dealings. It also reduces the likelihood of corruption, conflicts of interests and cronyism in the awarding of contracts.

In their report on the review of the *Government (Open Market Competition) Bill*, the Parliamentary Public Accounts Committee recommended that the Audit Office conduct an audit of how agencies are complying with the memorandum, and the government should reinforce that the instructions in the memorandum should be considered standard practice for agencies. The government has accepted that recommendation and the Premier advised the committee that a circular will be issued to agencies.

As part of their program of compliance audits, the Audit Office is currently reviewing whether a selection of agencies are complying with the memorandum or, in the case of state owned corporations, whether their procedures for disclosing details of contracts with the private sector comply with instructions. Their report is expected to be published in November 2005.

Cabinet confidentiality

We have seen a marked increase this year in agencies claiming Cabinet confidentiality as a reason for refusing access to documents. Clause 1 of Schedule 1 to the FOI Act states that a document is an exempt document if it has been prepared for submission to Cabinet or it contains information about any deliberation or decision of Cabinet.

It is not clear whether more documents are being refused on this ground because more applications are being made for high level government records. We are concerned that agencies may be inappropriately classifying documents in this way to avoid releasing them to the public.

A recent decision of the Administrative Decisions Tribunal (*National Parks Association of NSW Inc v Department of Lands [2005]*) has made it clear that agencies must adopt a narrow interpretation of the Cabinet document exemption.

The mere fact that a document or part of a document was attached to a Cabinet submission does not automatically mean the document is covered by this exemption.

If we are handling a complaint about an agency, we ask them to obtain a certificate from the head of the Cabinet Office confirming the requested document is indeed a Cabinet document. Please see case study 70 for an example. It is our experience that the Cabinet Office carefully scrutinises such requests and will sometimes disagree with an agency and refuse to issue a certificate for a document.

We intend to continue monitoring this issue closely.

CaseStudy70

We received a complaint from a Member of Parliament (MP) who applied to the Department of Infrastructure, Planning and Natural Resources (DIPNR) for access to documents about contamination of land on a former rifle range. DIPNR initially replied that they did not hold any of the documents requested. However, when requesting an internal review, the MP identified an email the department should hold that was subject to his application.

In their internal review determination, DIPNR claimed the email was a Cabinet document as it contained information that would disclose a deliberation of Cabinet. We wrote to the department asking for their FOI files and advising that, if they wished to continue to assert that the email was a Cabinet document, they should obtain a certificate from the head of the Cabinet Office under s. 22 of the Ombudsman Act certifying this. DIPNR provided their FOI files, including a copy of the subject email, and restated their view that it was a Cabinet document. They also asserted that most of the information in the email was not actually subject to the MP's FOI application.

After further correspondence, DIPNR still claimed the email was a Cabinet document but was prepared to release a small part they claimed was covered by the FOI application. They still claimed that the majority of the email was not requested by the MP. We restated our view that the entire document was clearly the subject of the FOI application, it did not appear to disclose any deliberations of Cabinet and should be released to the applicant. We commenced a formal investigation and DIPNR decided to release the document.

Misuse of the legal professional privilege exemption

Each year we see examples of agencies misapplying or misusing the legal professional privilege exemption clause.

Decision made on the basis of legal advice

One case we looked at this year involved a proposal to film several scenes for a movie in a wilderness area of a national park. Early on the film-makers realised that certain approvals and consents would be required under various environmental legislation.

Over a number of months, the Department of Environment and Conservation (DEC) considered whether the proposed filming-related activities were permissible under the various pieces of legislation related to the protection of the environment — such as the *Environmental Planning and Assessment Act 1979*, the *Wilderness Act 1987* and the *National Parks and Wildlife Regulation 2002*. In the course of this process, DEC obtained legal advice from internal solicitors and an external senior counsel. Because certain members of staff thought that the advice from the senior counsel was incomplete and did not fully answer the permissibility question, additional legal advice was sought from the Crown Solicitor's Office (CSO).

In mid-April 2004, DEC issued a formal approval and consent for the proposed filming activity. However in late April 2004, the Land and Environment Court granted an injunction against the proposed activity.

The National Parks Association (a non-government conservation group) made an FOI application to DEC for access to the legal advice about the film proposal. In both their original determination and their internal review, DEC decided that all but one of the 37 documents or parts of documents requested by the Association were exempt on the basis of legal professional privilege.

The Association complained to our office requesting a review of DEC's decision. They felt that it was in the public interest to reveal what legal advice was provided to DEC as this would make the decision-making process more transparent. The Association suspected that DEC's legal advice may have indicated that there was some question about the legality of the original development application. If that was the case, then this information should at least have been passed on to both the film company and the public before the development was considered.

In fact it was arguable that the development consent should not have been given if DEC knew that the activity was illegal.

In reviewing the contents of the exempt documents, we found statements that indicated that in mid-February 2004 the CSO gave verbal advice on their likely view about the permissibility of the proposed activity. It appears that, after receiving this verbal advice, DEC staff cancelled their formal request for advice.

Given the apparent importance placed by various senior staff on the CSO's verbal advice, and the impending receipt of written advice, there was no explanation on the documents as to why written advice was no longer required. By the time they cancelled their request for the advice, most of the work had been completed. DEC was still billed $7,547.80 for this work, which they paid.

Conduct like this leaves the way open for an outside observer to suspect the decision was taken to avoid receiving written legal advice expressing an opinion that DEC may have found inconvenient.

Information from DEC's file also indicated that representatives for the film-makers had been informed of the substance and effect of the verbal advice received from the CSO. A number of courts and tribunals have found that privilege has been waived in relation to advice where the substance of the advice — the ultimate conclusions of the advice and its effect — has been disclosed (*Mann v Carnell* (1999) 201 CLR 1, *Attorney General for the NT v Maurice* (1986) 161 CLR 475, and *Bennett v Chief Executive Officer of The Australian Custom Service* [2004] FCAFC 237). In other words, waiver of one part of a privileged communication (ie the conclusion) should result in waiver of the rest of the communication ie the reasons leading to that conclusion (*Queensland Law Society v Albietz and Anor* (1998) Supreme Court of Queensland, No.6571). We therefore recommended that all documents covered by the FOI application be released. DEC rejected this recommendation.

The core of DEC's argument for refusing access to the legal advice was that agencies might be reluctant to seek legal advice if questions could be raised about how this advice was considered and used. In our view this approach fails to appreciate the importance of transparency in the way decisions by public sector agencies are made. Public sector staff are accountable to the public and responsible for making a range of decisions that affect them. The whole premise of the FOI Act is to facilitate greater public scrutiny of these decisions. This particular case is a very good example of a decision for which the agency needs to be held properly accountable.

Dominant purpose of a communication

Another case we looked at this year involved a complaint that NSW Police had deleted parts of a report into the death of an Aboriginal man in police custody. The complainant did not agree with the two reasons NSW Police had given for not releasing the deleted material — that it was legal advice and an internal working document. We agreed with the complainant.

Firstly it appeared to us that the report was looking at the standard of previous investigations, not their legality. Although the author of the report happened to be a solicitor, the dominant purpose of the report was to do an administrative review of the investigations — not to give legal advice. Secondly, the report was prepared nearly five years ago about events that occurred over 23 years ago. The 'internal working document' exemption is primarily aimed at allowing agencies some scope to keep their deliberations confidential while a decision is being made. We did not think it applied to these documents. Following discussions, NSW Police agreed to our suggestion that the report be released in full.

Denial of access to best and most credible records

During the year we received a complaint from a legal firm on behalf of a school boy who fell from play equipment in his school yard and dislocated his elbow. The firm had applied under FOI for all documents about the report written by school staff immediately after the accident, including witness statements. The Department of Education and Training claimed that the report was subject to legal professional privilege because these reports are mainly compiled to contest any litigation or seek legal advice about litigation arising from the accident.

We have raised our concerns about this issue in the past. We believe that school accident reports are written for a multitude of purposes, not just to contest any litigation that may eventuate. By refusing people access to these reports, the department is in effect preventing the parents of these children from having the best and most credible information about the accident in which their child was hurt.

Remarkably, DET informed us that they had no intention of limiting their claims of legal professional privilege over school accident reports just to cases where there was in fact clear evidence that litigation would be taken against them, that is, to those circumstances where, in our view, the privilege actually applies. We advised the complainant that their best option would be to take the matter to the ADT — they may disagree with the department and make a contrary decision which would be binding.

Capacity of NSW Police to handle FOI workload

We have become increasingly concerned at delays by NSW Police in dealing with FOI applications. Our assessment of reported figures shows that FOI applications to NSW Police have increased by about 40% each year over the last three years, and this increase shows every indication of continuing. In 1995–96, they received 2,265, compared to 8,505 in 2003–04.

Their FOI unit has responded commendably by increasing their productivity significantly, but this is not sufficient to deal with their increasing workload. We have raised our concerns with NSW Police. Unfortunately, although some short-term measures have been introduced to attempt to deal with the backlog of FOI applications, no significant long-term measures have been put in place to enable NSW Police to comply with the statutory timeframes for assessing applications.

We have now begun a formal investigation into these issues.

11. Protected disclosures

Introduction

Whistleblowers perform an essential service in our society. They can bring to light serious problems with the management or operations of an organisation. In many respects disclosures by whistleblowers provide an invaluable early warning system for management about problems that, if unaddressed, can sometimes reach catastrophic proportions. The position of whistleblowers is of particular interest to our office for a number of reasons. Firstly, our interest in complaints — how to manage and resolve them — includes complaints from 'insiders'. Secondly, good administration is not possible without staff being managed and supported effectively. There are few situations in a work environment more challenging to manage than when a member of staff decides to speak up about organisational problems.

We have responsibilities under the *Protected Disclosures Act 1994* (PD Act), which sets out certain rules and processes that apply when public officials report serious problems within the public sector. We approach these kinds of matters using principles of good administration and good management.

In this chapter we discuss some of the issues that have come to our attention through our work this year. We also discuss our involvement in policy development, training and education in this area.

Giving advice

The PD Act is very technical. Its provisions only apply if a disclosure is made in a certain way, to certain people or organisations, about certain types of issues. In the past year a number of agencies have asked for advice in situations where the Act does not technically apply, but where they still face the same difficult issues that arise when a member of staff complains. This year we received 65 inquiries about protected disclosure-related issues and 49 complaints in writing. See figure 56. We receive these complaints as part of our function under the PD Act to investigate disclosures made directly to us.

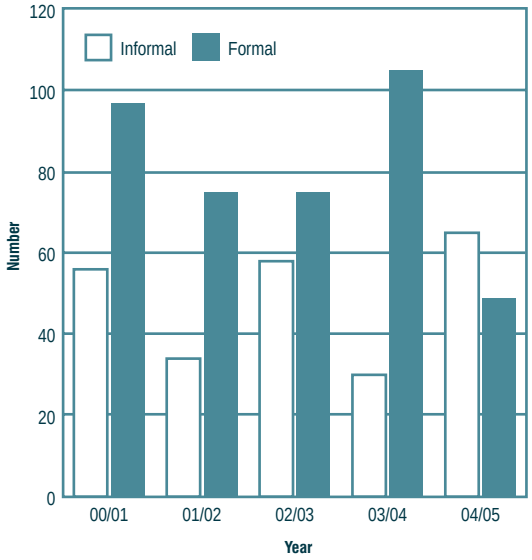
We have found that a lot of the advice we give focuses on how these kinds of situations can be best managed, whether or not the Act applies. Most cases highlighted the fact that when a person complains internally about something going on inside their own workplace, it affects a range of people — the complainant, the people who have been complained about (there may be more than one), the colleagues of both the complainant and the people complained about, staff in managerial or supervisory roles and staff who are involved in investigating or resolving the complaint. See case study 71.

This year we handled an inquiry from a person who had been told that a 'protected disclosure' had been made and that, as a result, every person in their section was going to be interviewed individually for an hour. Because the people being interviewed

were given no other information — including what a 'protected disclosure' was or what to expect after the interview — they became anxious about their interviews. In such a situation, there are often very good reasons why an investigator might not provide any further details, including the risk that this may reveal the identity of the person making the complaint, or jeopardise the investigation by contaminating evidence. However, there was general information that could have been passed onto the interviewees to put them more at ease during the interview process. We advised the caller to contact the investigator for this information.

Figure 56 - Protected disclosures received - five year comparison

	00/01	01/02	02/03	03/04	04/05
Informal	56	34	58	30	65
Formal	97	75	75	105	49
Total	**153**	**109**	**133**	**135**	**114**



CaseStudy71

We received a phone call from a protected disclosures coordinator seeking advice. He was investigating claims that F — a member of staff who had had a protected disclosure made about him/her — had harassed the person who investigated the disclosure. F had denied this allegation, stating s/he was just trying to round up support by asking colleagues to provide statements that backed-up his/her version of events. The caller advised that F had a reputation for being a bully in the workplace, and wanted to know what options the agency had under the PD Act.

Our advice was that the caller needed to stay impartial and keep two things in mind. Firstly, that s. 20 of the PD Act made it a criminal offence for anyone, including the person a protected disclosure is made about, to take detrimental action 'substantially in reprisal' for the making of that disclosure. However, only reprisal action against the person who *made* the protected disclosure is an offence, not action taken against an investigator or witness. Therefore, s. 20 did not apply in the situation the caller described.

Secondly, it may be necessary for the agency to explain to F what actions s/he could take to gather evidence in his/her defence. One possibility could be to suggest that F tell the investigator the names of people who supported him/her and make an undertaking that the investigator would gather information from those people independently. Hopefully if F felt that s/he was being treated fairly, the investigation of the original protected disclosure could proceed smoothly.

Statutory schemes covering workers outside the public sector

In September 2005 the NSW government introduced a bill proposing to amend the *Registered Clubs Act 1976* with the aim of providing protection for any club employee or director who discloses information to the Director of Liquor and Gaming concerning conduct of the club or of someone who may be investigated under that Act. We had concerns that this legislation extends, on an ad hoc basis, some elements of the protected disclosure scheme into other areas of work.

The new provision simply made it an offence for a person or registered club to take detrimental action substantially in reprisal for such a disclosure. It did not refer to the PD Act or attempt to replicate any other aspects of the scheme set up under the PD Act.

While the rationale behind the policy was clearly well-intentioned, the bill failed to address some of

the fundamental practical problems that arise in the implementation of the current protected disclosures scheme. Our view is that this meant a well-intentioned policy idea ran the risk of failing in practice. One major omission was any kind of legislative obligation on clubs themselves to provide a safe environment for staff to report wrong conduct. Our long experience with whistleblowers is that unless people feel comfortable coming forward within their own organisations, these kinds of matters are unlikely to be easily resolved. The bill has since been withdrawn but we have suggested to The Cabinet Office that some consultation — with our office or with some of the other agencies with expertise in whistleblowing — during the drafting stages of such policy initiatives may be helpful.

The Steering Committee: (back row, from L-R) Deputy Ombudsman Chris Wheeler, Stephen Horne (Audit Office), John Pritchard (ICAC), Dominic Riordan (DLG), Peter Barnett (PIC); (front row, from L-R) Selena Choo (Ombudsman), Judith Withers (Premier's Department), Linda Waugh (ICAC), Glynnis Lapham (NSW Police)

Working with other agencies

We continue to play an active role in the work of the PD Act Implementation Steering Committee. Our Deputy Ombudsman, Chris Wheeler, is the chairperson. The committee was set up in 1996 to encourage and facilitate the disclosure of corrupt conduct and other forms of misconduct by strengthening the scheme established by the Act. The other members of the committee are representatives from the Independent Commission Against Corruption (the ICAC), the Audit Office, the Police Integrity Commission, the Department of Local Government, NSW Police (internal witness support unit) and the Premier's Department.

This year the committee developed a new work plan for 2004-2006 setting out some projects that our agencies could work on cooperatively. We decided that training for two distinct groups would be necessary. The first group was public sector staff. Our collective experience continues to indicate that knowledge of the scheme is still relatively low in this group.

The second group was senior executives. In recent times many departments have amalgamated into 'mega-departments'. The process of amalgamation requires a focus on adjusting to new staff and setting up new consolidated administrative arrangements. Interest in, and knowledge of, issues such as protected disclosures can become almost non-existent following such changes, and there is a risk that when these situations arise, agencies find themselves ill-equipped to handle them effectively. The committee decided that a targeted approach was necessary to familiarise a new group of senior executives in issues surrounding protected disclosures.

It was also decided that having senior officers from all three major watchdog agencies (our office, the ICAC and the Audit Office) present during these information sessions may be an effective way to persuade senior executives to take these matters more seriously.

Late in 2004, the Department of Commerce asked for just this kind of training. In February 2005 the Deputy Ombudsman and senior executives from the ICAC and the Audit Office gave a presentation to the new CEO and his senior executives. The session was well received and the presence of senior figures from the three watchdog agencies was appreciated. We plan to conduct similar information sessions for some other government departments next year.

In terms of training for public sector staff, the committee decided that although none of the agencies had the resources or capacity to provide wholesale training across the public sector, our office could collaborate with the ICAC on a project to develop train-the-trainer materials to present to internal trainers, so that they could then train their own staff on these issues.

The Deputy Ombudsman and an ICAC training officer piloted the train-the-trainer module with 20 trainers in Gosford as part of the ICAC's regional outreach work in May 2005 and received very positive feedback. We plan to run further training sessions in 2005-2006.

This year the committee also developed an information fact sheet aimed to help CEOs, senior managers and protected disclosures coordinators to effectively handle internal staff complaints. We will be widely distributing copies of these fact sheets to both state government agencies and local councils in 2005-2006.

Implementation of the Act

To determine the potential audience for training and obtain up-to-date information about how the Act was working in practice, we surveyed over 100 state agencies, asking a number of questions about agencies' internal reporting policies, how many protected disclosures they had dealt with over the last 10 years, and inviting them to express an interest in receiving training for their trainers.

We were pleasantly surprised to receive responses from almost 85% of agencies, with 81% of those providing a copy of their internal reporting policy. Agencies also ordered over 5,000 *Thinking of Blowing the Whistle?* brochures for staff, and requested training for a total of more than 300 people.

Over 30 agencies advised that they had not dealt with any protected disclosures at all since the introduction of the Act in 1994, compared to some of the larger agencies, which had dealt with hundreds each year. We were concerned about some agencies that reported they had not kept any data on these matters. Nine agencies reported that they had no internal reporting system. We will raise our concerns with individual agencies in 2005-2006.

Deputy Ombudsman Chris Wheeler speaking about protected disclosures with the CEO and senior officers at the Department of Commerce

Parliamentary review of the Act

In May 2005 the government announced that the Parliamentary Joint Committee on the Independent Commission Against Corruption would be conducting the third review of the PD Act. The Act was last reviewed in 2000. We provided the Parliamentary Committee with some background material outlining our concerns about the Act. In particular, we drew their attention to the research we conducted last year reported in our Issues Paper *The Adequacy of the Protected Disclosures Act to achieve its objectives* (April 2004). After more than 10 years of operation, we believe it is clear that the Act in its current form fails to achieve its objectives and we are hopeful that the review will result in some constructive changes to the scheme.

Specifically there are significant differences between the Act and similar Acts in other states, and we hope the review will consider some of the important provisions in other Acts relating to whistleblower protection and agency responsibilities. We also intend to make a submission supporting the establishment of a protected disclosures unit within our office to monitor how well the scheme is working, to make sure that agencies fulfil their responsibilities and to analyse trends and patterns.

National research project

This year we continued our involvement in the three-year collaborative national research project called *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*. As we reported in last year's annual report, the aims of the project are to describe and compare organisational experience under various public interest disclosure schemes across the Australian public sector, and to identify 'current best practice' systems for the management of public interest disclosures.

The project is being managed by Griffith University in Queensland and there are 20 partners, consisting of six universities and 14 leading public sector integrity agencies, including most Ombudsman around Australia and the ICAC. The three-year project has raised funds in excess of $1 million, with over $500,000 being granted by the Australian Research Council, over $200,000 financial and almost $500,000 'in kind' contributions from the project partners.

This year the project team finalised the methodology that will be used for the research. They also organised a whistleblowing symposium held in July 2005 that brought together national and international speakers to examine different approaches to managing internal witnesses. Two PhD students — including a former senior investigation officer of our office — have also been awarded grants under the project to undertake related research projects.

CaseStudy72

We commenced two related investigations into the University of New South Wales (UNSW) in late 2003. The first related to a council member's protected disclosure alleging that he had been subject of unfair disciplinary action as a result of his criticism of the council of the university administration's handling of complaints about the Educational Testing Centre (ETC) and about Professor Bruce Hall. This led to our second investigation, which looked at UNSW's complaint-handling procedures generally, using the handling of the complaints about the ETC and Professor Hall as case studies.

As part of our investigation we surveyed all ten NSW public universities and distributed the results in a discussion paper on university complaint-handling. We received submissions relating to the discussion paper from universities, staff unions, student bodies and interested individuals. We are currently preparing a set of minimum standards to help universities improve their complaint-handling systems. Universities from other Australian states have also expressed interest in our work in this area.

Although our second investigation strongly focussed on UNSW's complaint-handling procedures, it became necessaryto examine broader issues that were raised by these complaints — for example to determine how conflicts of interests, conflicts of duties and bias may have influenced the way the complaints had been handled.

We used our royal commission powers to summon and hear 19 witnesses, and our investigation files accumulated over 10,000 pages of documentation. We sent a preliminary document — summarising the evidence and foreshadowing findings and recommendations — to parties concerned for comment. In response,we received 22 submissions comprising some 800 pages, which we are currently analysing. We anticipate that the final investigation report — together with our paper on minimum standards for university complaint handling — should be issued in late 2005.

Sue Phelan
Principal Investigator, Child protection team

My name is Sue Phelan and I'm the principal investigator in our child protection team. I have been with the office for three years. One of my primary responsibilities is to conduct investigations into serious matters involving allegations that people working with children have behaved in ways that could be abusive to those children.

I have a background in front-line child protection. I worked in Victoria for a number of years as a caseworker and team leader, including some time in a service which deals with the out-of-hours crisis response to serious matters.

When I moved to NSW I spent a year at the DoCS Helpline. My investigation and risk assessment skills have been valuable in my current role.

The office gives me opportunities to keep up with current theory and case practice in child protection. I am also undertaking a Graduate Diploma in Public Administration. This has enhanced my knowledge about process and management in the public sector.

I believe that the work we do is important and valuable because it aims to ensure that those who work with children are appropriate to do so, and that any reportable allegations about employees within our jurisdiction are transparently and appropriately dealt with.

12. Workplace child protection

Introduction

Part 3A was introduced into the *Ombudsman Act 1974* in 1998, giving our office responsibility for making sure that certain agencies deal properly with allegations that their employees have behaved in ways that could be abusive to children.

Our work involves monitoring the way agencies handle these 'reportable' allegations — they may involve sexual offences, sexual misconduct, assault, ill-treatment, neglect and behaviour that causes psychological harm to children. We have a dedicated team that carries out this work.

There are over 7,000 government and non-government agencies that have to comply with this scheme. They vary in size, and range from schools and organisations running child care centres to substitute residential care providers and juvenile justice centres. The people who are covered by the scheme include paid employees, contractors and the thousands of volunteers who support the work of these agencies.

Under the scheme, the heads of the agencies are required to:

- notify us within 30 days of becoming aware of any allegations of this kind of behaviour involving their employees
- investigate those allegations
- take appropriate management action as a result of their investigations and, if necessary, notify the Commission for Children and Young People (CCYP).

We assess the notifications we receive and decide on the level of scrutiny and assistance that we will provide. This depends on the seriousness of the allegations and the experience and ability of the agency to handle the allegations and run the investigation. Some of the larger agencies, such as the Department of Education and Training, have a lot of experience and we tend to closely scrutinise only very serious matters. Other agencies may be handling this kind of matter for the first time. In these cases we may offer to give them detailed assistance to, for example, draw up an investigation plan and be in regular contact to monitor their progress and provide further guidance.

We review the report prepared by the agency after they have completed their investigation. This year in over 20% of matters we also closely monitored or investigated the matter (see figure 58). If we are not satisfied with the way the agency has handled a matter, we may ask them to take further action or provide more information.

Another important part of our work is making sure that agencies have systems in place to handle these kinds of matters. Clear policies and procedures are essential to ensure consistency and minimise the risk of things going wrong.

Agencies with good systems in place are better able to:

- be fair to employees who have been accused of behaving inappropriately
- manage the risk that such employees may pose
- manage the expectations of the children and other parties affected
- fulfil their other statutory and professional obligations.

We regularly use tools such as audits to look at the quality of the systems agencies have in place and suggest improvements.

Notifications handled this year

This year we received 1,815 notifications, up from 1,620 last year — see figure 57. Over 50% of these notifications involved allegations of physical assault, with another 18% involving a sexual offence or sexual misconduct. See figure 60. A breakdown of overall notifications by the alleged victim shows that the majority of victims are male.

Figure 57 - Number of formal notifications received and finalised – five year comparison

This figure shows a comparison of the numbers of formal notifications we have received and finalised over the past five years.

	00/01	01/02	02/03	03/04	04/05
Received	1,379	1,458	2,473	1,620	1,815
Finalised	1,407	1,141	2,211	1,908	1,760

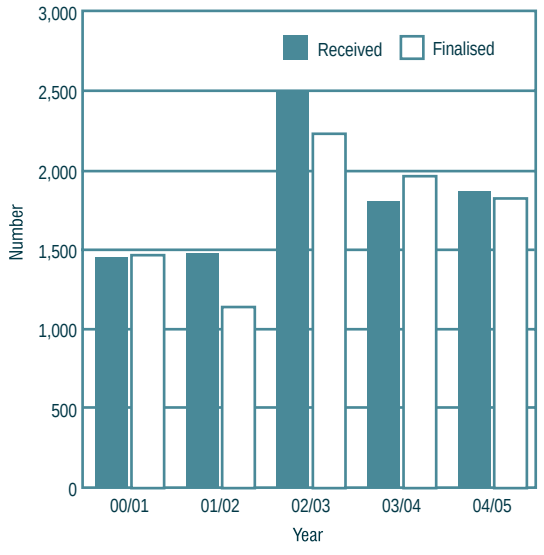


Figure 58 - Action taken on formal child protection notifications finalised in 2004-2005

	Number
Final report assessed	1,252
Agency's investigation monitored	376
Investigated	5
Outside our jurisdiction	127
Total written notifications finalised	**1,760**

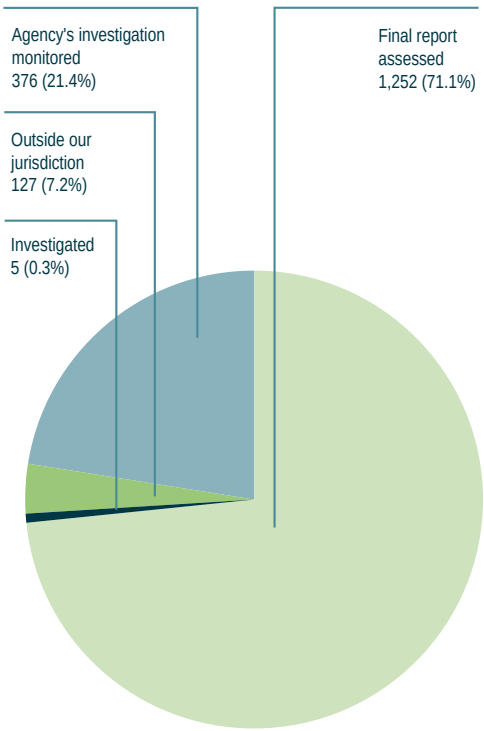
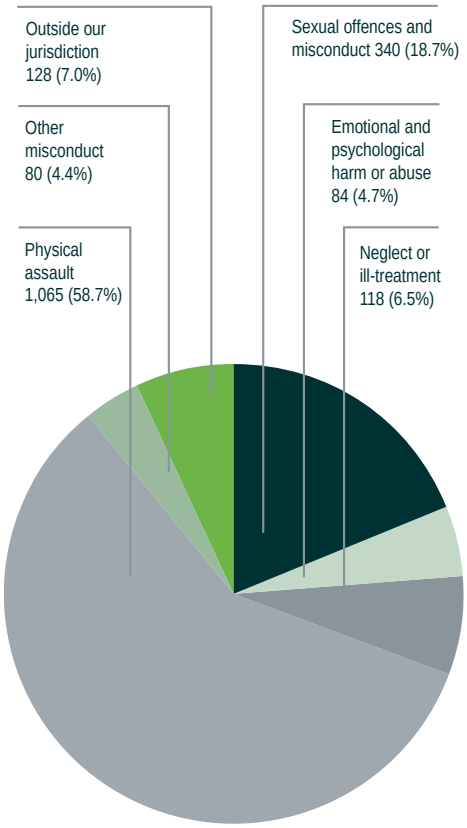


Figure 59 - Who the notifications were about – breakdown of notifications received, by sex of the alleged offender

Issue	Female	Male	Unknown	Total
Sexual offences	31	190	13	234
Sexual misconduct	14	86	6	106
Psychological harm	13	8	2	23
Emotional/psychological abuse	40	20	1	61
Neglect	70	21	3	94
Ill-treatment	12	12	0	24
Physical assault	541	478	46	1,065
Misconduct - that may involve reportable conduct	16	60	4	80
Outside our jurisdiction	38	57	33	128
Total notifications received	**775**	**932**	**108**	**1,815**

Figure 60 - What the notifications were about – breakdown of notifications received, by allegation

Issue	No.	%
Sexual offences	234	12.9%
Sexual misconduct	106	5.8%
Psychological harm	23	1.3%
Emotional/psychological abuse	61	3.4%
Neglect	94	5.2%
Ill-treatment	24	1.3%
Physical assault	1,065	58.7%
Misconduct - that may involve reportable conduct	80	4.4%
Outside our jurisdiction	128	7.0%
Total	**1,815**	**100%**



Child pornography – Operation Auxin

The dramatic increase in notifications about child pornography — 45 this year, up from 6 last year — was a direct result of NSW Police Operation Auxin, a high profile NSW Police operation targeting people who access, produce and publish child pornography. At our request, NSW Police provided us with information about people that United States investigators had identified as having paid to access sites containing child pornography. We liaised closely with the NSW Police child protection and sex crime squad to identify people who were of interest to Strike force Auxin, and who were also in child-related employment. We were also able to seek notifications from agencies employing those people.

'Thank you for your phone call and advice to my wife … My wife tells me you are a delight, which to us is most refreshing, after our neglect by all the other authorities we have contacted.'

CaseStudy73

We liaised closely with the NSW Police child protection and sex crimes squad to find out if any of the people of interest to Strike force Auxin were in child-related employment — and found that 27 of them were.

After clearance from NSW Police, we contacted the agencies that employed these people and requested that they make notifications to us if they hadn't already done so. This meant that we were able to closely monitor the agencies' investigations into the allegations and how they responded to any risks to children that were posed.

DET example 1

In one case we received a notification from DET indicating that police had charged a teacher. Based on the information provided by police, the department decided this employee posed a significant risk to children and he was suspended without pay.

The teacher was later convicted of possessing child pornography and was sentenced to 18 months in custody. After an appeal, he received a two-year good behaviour bond. DET dismissed him, placed him on their 'not to be employed list' and notified the CCYP.

DET example 2

We received another notification from DET about a TAFE teacher in a rural community who was arrested and charged with four counts of possession of child pornography.

Federal police, under Commonwealth child sex tourism legislation, also charged the teacher with four counts of sexual intercourse with children under the age of 16 in Thailand and with inducing children to commit acts of indecency on other children.

The department immediately suspended the teacher and placed him on their 'not to be employed list'. The teacher was instructed not to approach any TAFE college or school and was required to surrender his passport to police.

After a state and federal police investigation, the teacher was convicted of the charges and sentenced to a five-year custodial sentence with a three-year non-parole period. The department notified the CCYP and the teacher will be placed on the child protection register — which means that he must keep NSW Police informed about where he lives, works, and what car he drives — once he is released from prison.

In our oversight of the Strike force Auxin matters, we found that DET handled their investigations well. They liaised closely with the police and conducted thorough risk assessments. Counselling services were provided for employees who were the subject of allegations, and support was also given to students and teachers at the schools involved.

Department of Health example

The Department of Health notified us about one of their handymen who had been charged with possession of child pornography. Based on preliminary advice from the police — which indicated that the employee posed some significant risks to children — the department suspended him from duties.

The police investigation found child pornography on the man's computer. They also uncovered hand-drawn images and novels depicting child pornography, as well as items of children's clothing at his premises (he lived by himself).

The police canvassed the local neighbourhood looking for children who may have had contact with the man. The joint investigative response team and the Department of Community Services also conducted an investigation, including 'risk of harm' assessments for these children.

The man was charged with possession of child pornography and sentenced to nine months in custody. The department dismissed him and sent his name to the CCYP.

How agencies are performing

Department of Education and Training

The Department of Education and Training (DET) is the largest reporter of notifications to us — it is the department responsible for all the public schools in NSW. The quality of their investigations into allegations against employees is of critical importance to making sure that our schools are safe for children.

We continue to be satisfied with the way in which DET handles these matters. Case studies 73 and 74 are examples of matters that they handled well. This year we were sufficiently confident in their ability to manage matters independently that we decided to extend our 'class or kind' determination. This took effect in March 2005 and will mean that we will individually oversee fewer of the matters investigated by DET. Instead, we will make sure that DET has handled matters appropriately by using tools such as audits.

This year we conducted two audits and examined approximately 175 randomly selected matters. We were satisfied that the majority were handled well and we also noted that DET were conducting their own internal audits of quality to make improvements to their systems.

During the past six months DET provided child protection training to student teachers in several universities. They also produced an on-line training package suitable for casual teachers who often find it difficult to access the training provided in schools and TAFE institutes.

We continued our regular liaison meetings with the DET employee performance and conduct unit this year. These meetings are an effective forum for us to directly resolve any particular issues and concerns we have.

Case study 75 is an example of another matter handled by DET this year.

Figure 61 - Number of formal notifications received in 2004 - 2005 – by agency category (two year comparison)

Agency	03/04	04/05
Department of Education and Training	685	799
Catholic systemic and independent schools	155	126
Department of Community Services	207	352
Substitute residential care	177	192
Department of Juvenile Justice	119	74
Child care centres	87	72
NSW Police*	77	97
Non government independent schools	71	66
Councils	48	33
Department of Health	40	59
Other NSW public sector agencies	13	8
Department of Corrective Services	4	3
Department of Ageing, Disability and Home Care	7	22
Department of Sport and Recreation	2	0
Agency outside our jurisdiction	4	1
Other prescribed bodies	1	0
Family day care	0	8
Total	**1,620**	**1,815**

* Note: Notifications that are made by NSW Police are dealt with by our police team in the same way as other allegations of police misconduct. They are therefore not included in the 'Total' number.

CaseStudy74

Special transport is a service that helps approximately 9000 students with disabilities to access school programs. We became concerned about the Department of Education and Training's systems for protecting children using special transport after we received a number of notifications of reportable allegations about unauthorised drivers and escorts taking children to school.

The children using these services are particularly vulnerable, so we decided to investigate how these drivers and escorts were operating.

Our investigation focused on DET's systems for:

- recruiting, screening, training and monitoring their operators, drivers and escorts
- preventing reportable conduct by operators, drivers and escorts
- handling and responding to reportable allegations or convictions
- assessing and allocating transport for children and young people.

We also looked at the use of unauthorised escorts.

We asked the department to provide us with detailed information about their special transport services. We also asked them to explain how some drivers and escorts had been allowed to operate without authorisation, and the steps the department had taken to minimise the risk of this happening again.

After considering the department's response to our concerns, we were satisfied that they had put reasonable systems in place to protect children using these services. We also felt that they had taken appropriate steps to minimise the risk of unauthorised drivers and escorts operating.

However we were concerned about the lack of effective communication between DET's special transport unit and their investigation branch — the employee performance and conduct unit (EPAC). We felt that they needed to have regular communication to ensure that EPAC had all the relevant information required to investigate allegations, and the special transport unit had sufficient information to effectively manage any risks that EPAC identified.

We discontinued our investigation when the department demonstrated that they had promptly addressed our concerns.

CaseStudy75

We received two notifications from DET about a school counsellor. It was alleged that the counsellor had indecently assaulted young female students during individual counselling sessions. We closely monitored DET's handling of these matters.

DET had documented a history of concerns about the counsellor dating back to 1992. The first notification we received concerned the alleged inappropriate touching of a 6-year-old girl in 1999. The department's EPAC investigated the incident and found insufficient evidence to prove the allegations.

However, despite the fact that the allegation could not be proven, they considered that the counsellor posed a significant risk to children and decided to take disciplinary action under clause 14(2) of the Teaching Service Regulation 2001. This clause sets out procedures for dealing with breaches of discipline — it allows the Director General to make a record of the alleged breach of discipline, warn the employee that the conduct is unacceptable, and monitor their conduct for a period of time.

This action required the district guidance officer, the counsellor's line supervisor, and the principals at the schools he attended to monitor his interactions with the children he counselled. This monitoring period ended in December 2004.

In September 2004, EPAC's investigation into the second allegation - that the counsellor indecently assaulted an 8-year-old student in 1997 - was not sustained due to insufficient evidence. No further action was taken as the original monitoring period was still in progress.

We felt that the investigations into the allegations about the counsellor were satisfactory and agreed that there was insufficient evidence to prove the allegations. However, based on the available information, we were concerned that the counsellor posed a high level of risk to children and considered it would have been preferable for him to be placed on alternative duties. The Director of EPAC informed us that the legislation does not allow the department to take this action.

We were concerned that the use of cl. 14(2) as disciplinary action in this case had failed to protect children. We found that there had been poor coordination of the monitoring process and this had meant that:

- the district guidance officer and principals had not received enough information about the conduct they were expected to monitor
- principals were not told about the requirement to monitor the counsellor when he transferred into their school
- supervisors were not given strategies or resources to adequately monitor him — for example it seemed that the counsellor could not be observed at all times and counselling rooms did not always allow visibility
- there was poor documentation of the monitoring process
- there was no analysis or on-going risk assessment of the information provided in supervisor's reports to EPAC.

We are concerned that this form of management response may be inappropriate for employees who have individual contact with children — such as school counsellors, tutors and music teachers — particularly when serious sexual allegations have been made. It can be virtually impossible to monitor employees in these kinds of roles, without having another person in the room at all times or using technology such as close circuit television.

DET has changed some of their procedures to address the concerns we raised and we will be closely monitoring the use of cl. 14(2) in the coming year.

Catholic agencies

The head-of-agency arrangement for all Catholic diocesan agencies, including schools and Centacares, has reverted to the NSW Bishops and the principal officers of certain agencies that were founded by Catholic religious orders — such as independent schools, health services and agencies providing substitute residential care.

In last year's annual report we reported on our concerns about the capacity of the Catholic Commission for Employment Relations (CCER) to fulfil their obligations as the head of agency for Catholic agencies. The CCER had been delegated this responsibility by the NSW Bishops and the leaders of religious orders. We completed three investigations and nine audits of the CCER's systems and found significant deficiencies. As a result, we decided to replace the CCER as head of agency and to consult with representatives of the Catholic Church about how to improve the arrangement.

There are 11 Catholic dioceses in NSW and over 40 designated agencies founded by religious orders. We visited all dioceses twice this year and spoke

separately to the bishops about our concerns and how these could be addressed. This was a significant undertaking as only three dioceses are in the metropolitan area. The other dioceses we visited were in Wollongong, Newcastle, Forbes, Bathurst, Lismore, Canberra, Armidale and Wagga Wagga.

We wrote to the leaders of over 60 religious orders in NSW about the proposed changes, inviting their input. We also clarified if they ran agencies that were within our jurisdiction, and therefore may have an obligation to notify us of reportable allegations.

In November 2004, the NSW Bishops advised us of their willingness to assume head-of-agency responsibilities and asked us to work with their representatives to develop models for diocesan structures. The bishops also invited the Ombudsman to their June 2005 meeting to finalise arrangements and confirm our ongoing support to Catholic agencies.

In our recent visits to the dioceses, we noted the commitment and considerable work undertaken to date by the bishops and their staff in developing sound and coordinated diocesan structures and systems. We were also impressed with the quality and expertise of staff involved in child protection. We hope that the new arrangements will allow for more timely completion of investigations and responses to our requests for information, the provision of accurate information to all parties and a more direct cooperative working relationship between diocesan agencies and our office.

This year we received fewer notifications from Catholic systemic and independent schools than last year. Some of this decrease can be attributed to the use of exemptions under Part 3A of the Ombudsman Act and the class or kind determination. We have issued new class or kind determinations for each NSW Bishop and anticipate being able to extend these determinations in the future.

Independent schools

There are more than 370 non-government independent schools in NSW. Of the 66 notifications we received from these schools during 2004-2005, a third contained allegations of sexual misconduct or a sexual offence.

We have not received any notifications from a significant number of independent schools. We will be exploring this issue next year to make sure it is not because those schools are unaware of their obligation to report these matters to us.

This past year we have found that independent schools that have advised us of reportable allegations have generally investigated and managed them well.

CaseStudy76

Last year we reported on our investigation into an independent school's handling of allegations of sexual assault against a piano teacher who had been charged by police with 30 child sexual offences. The offences were particularly serious – including aggravated sexual assault, aggravated sexual intercourse with a child less than 14 years and aggravated acts of indecency.

The school had decided not to suspend the teacher, or move him to alternative duties that removed him from contact with children, as they believed that this would be contrary to treating the teacher as innocent until proven guilty. However we believe that agencies must take appropriate action to ensure the safety of children. If serious allegations are made against an employee, the person may pose a risk to children that needs to be managed.

Following our investigation, the school accepted our recommendation and stood the teacher down.

The criminal charges against the teacher went to court earlier this year and he was convicted and sentenced to eight years in custody.

We have continued to monitor the school's compliance with the recommendations in our investigation report, and are now satisfied that they have sound child protection policies and procedures in place. All permanent staff at the school have received child protection training and there is also a training plan in place for casual staff.

Department of Community Services

There has been a significant increase in notifications made by the Department of Community Services (DoCS) this year. This appears to be the result of improved awareness of their reporting responsibilities and improved systems for reporting. DoCS has an internal unit called the allegations against employees unit (AAE unit). This year they provided training for DoCS staff who will be responsible for managing these kinds of matters and launched a policy framework for the department's approach to handling reportable allegations.

As in previous years, the majority of allegations notified to us in 2004-2005 were about foster carers.

In the last two years, we reported that we were concerned about the department's delays in notifying us. There has been a steady improvement this year and we received most notifications within 30 days.

We have had regular contact with DoCS throughout the year. We gave the AAE unit feedback on their draft

operating framework and met regularly to discuss specific concerns we identified through our work.

These concerns included:

- the department's response to requests we make for further information to help us assess whether a matter has been properly investigated
- the adequacy of their risk assessments concerning children who are not named as victims in reportable allegations, but who may nevertheless live with or have contact with an employee against whom the allegation was made
- their practice of not telling some employees that their details had been notified to the CCYP.

We will continue working with DoCS to address these issues.

Department of Ageing, Disability and Home Care

The Department of Ageing, Disability and Home Care (DADHC) provides and funds substitute residential care services for children with a disability. They have recently started to roll-out child protection training to help staff better understand their reporting obligations.

They are also in the process of the reviewing their child protection policy. This year we met with them to discuss the review and expect to provide further feedback in the coming year. We also hope to start having regular liaison meetings to discuss current issues and concerns.

Department of Juvenile Justice

This year the Department of Juvenile Justice (DJJ) notified us of 74 matters, compared to 119 last year. We will closely monitor this trend next year and hope that it is an indication that there has been a reduction in the number of incidents involving possible harm to young people.

In last year's annual report we discussed our concerns with DJJ's processes for making decisions about investigation findings. These findings determine whether or not certain information is sent to the CCYP to be used to screen prospective employees for child-related jobs. We tried to resolve our concerns cooperatively with the department, but informal discussions were not successful. As a result, we decided to start a formal investigation. Please see case study 77.

We recently consulted with the Minister for Juvenile Justice about the recommendations we had made concerning the department's systems. They have undertaken to implement a number of our recommendations.

CaseStudy77

We learnt that DJJ had come under some pressure to change their systems for notifying the CCYP of certain information about their employees. We also began to notice a change in the way they were handling reportable allegations and a significant reduction in the number of matters that were being notified to the CCYP. In particular, we found that DJJ was finding many allegations against employees to be 'false' — which meant that those matters did not need to be notified to the CCYP — in circumstances where our view was that the evidence did not support such a finding.

We were concerned that, in keeping information from the CCYP, the department was potentially compromising the employment screening process — and this could put children's safety at risk.

We decided to investigate the department's systems for preventing and responding to reportable allegations, including their compliance with the requirements of the CCYP Act. Our investigation found that DJJ was operating under some misconceptions about their obligations to the CCYP. They have now acknowledged a number of errors in their practices and are in the process of making significant changes.

Child care sector

Significant changes were made to the legislation governing the child care sector this year. See the discussion of legal changes in Appendix H for more details.

As a result of these changes, all licensed childrens services — including all family day care services and mobile and home-based childrens services — now fall within our jurisdiction.

This year we focused on building relationships with key organisations in the child care sector. We particularly wanted to explain our role to those organisations that now have responsibility for notifying our office of reportable allegations. We set up a childrens services forum that meets quarterly to discuss issues of concern to the sector. Through this forum we have provided training and received valuable feedback on our publications and other work.

Providing education, training and guidance to this sector is particularly challenging because it includes a large number of small stand-alone agencies that have a high turnover of staff. It is important that these agencies have systems to make sure that, when allegations are made, they are able to respond consistently and fulfil their statutory obligations.

This year we ran 17 training sessions for agencies in this sector in both metropolitan and regional areas. We also audited the systems of three child care agencies and plan to conduct more next year. For more details, see the section on 'our audit work' later in this chapter.

We hold quarterly forums for agencies providing substitute residential care and childrens services to discuss child protection issues.

Substitute residential care

Substitute residential care agencies generally provide care for children and young people who are highly vulnerable or who may have significant behavioural problems.

Like the child care sector, providing education, training and guidance for this sector is challenging because many of the agencies are small and dispersed.

This year we understand that DoCS have been advising agencies of their reporting obligations. We also contacted all substitute residential care agencies early in the year. Some of these agencies had not yet notified us of any matters, so we have not had an opportunity to provide any of them with one-on-one assistance and guidance on how they might handle such allegations or scrutinise their current systems. During 2004-05, 12 of these agencies notified our office of reportable allegations. We were able to help them handle unfamiliar processes and issues and make sure that most of them handled the allegations satisfactorily.

We also provided training to agencies in this sector and convened a quarterly forum to meet and discuss issues of concern. Attendance at these forums has progressively increased and we plan to continue them next year.

We audited the systems of five substitute residential care agencies this year, and plan to complete another four in 2005. Our audits give us greater insight into the challenges and pressures that staff and children face when they live and work in a substitute residential care environment. They are invaluable in informing the judgments that we make when we assess how well an agency has handled reportable allegations.

This year one of our audits was of an organisation called Meeting Ever Changing Needs. We found their policies and procedures to be very thorough and effective. The organisation is relatively small, demonstrating the fact that the size of an agency does not determine the quality of the systems that they can put in place to handle these kinds of matters.

We found that the standard of agency investigations in this sector has improved over the last year and most investigations were conducted satisfactorily.

Department of Health

This year we received 59 notifications from the Department of Health, up from 40 last year. Of those 19 involved allegations of sexual offences — see case study 78.

Since 2003, area health services have sent their notifications to the department's employment screening and review branch (ESRB) for review before sending them to us. This process was intended to improve communication between area health services, ESRB and our office about child protection matters, and provide support to the area health services in managing them. In 2004 we became concerned that the ESRB was not able to fulfil their coordinating role and, in particular, we noted delays in providing investigation reports to us and delays in notifications being sent to the CCYP. Case study 79 highlights a number of these concerns.

This year we completed an investigation into ESRB's systems. Please see case study 80.

We continue to meet regularly with the ESRB to discuss specific cases and their coordination role. We have also been working with the department to develop a training program aimed at senior executive staff.

CaseStudy78

We learnt through a media article about a registered nurse who had been charged by police with possession of child pornography. At that time, the nurse was still working in a hospital and came into contact with children.

The media article included a statement from the area health service that implied that we had agreed with their risk assessment — that the nurse posed a low risk to children.

We contacted the Department of Health who advised us that that the area health service had not notified the Director General or us of the charges against the nurse. The department took urgent action to fix this. They quickly sent us a formal notification of the matter, including all supporting documentation, and took direct action to suspend the nurse and start their internal investigation.

The investigation found that the area health service's director of workforce planning had failed to perform a range of duties and misled the Director General and the Minister of Health when required to supply information to them. He was subsequently dismissed. We are currently waiting to receive the investigation report into the allegations about the nurse.

CaseStudy79

The Department of Health notified us of allegations that a doctor employed at an area health service had committed an indecent assault. Further allegations about the doctor came to light during police interviews.

In the early stages of the police investigation the doctor was allowed to continue his regular work, under supervision when clinical duties were required. The police later charged him with indecent assault and the area health service decided to stand him down. However he was not eventually convicted of these charges.

During the police investigation it was discovered that the doctor had several aliases and a history in other jurisdictions that raised concerns. In particular:

- police in the United Kingdom had laid charges relating to child sex offences against him (at the time he was using a different name)
- he had been de-registered in Tasmania for misconduct
- New Zealand police had laid charges against him for indecent assault.

The ESRB conducted the internal investigation and, because of what they found, the area health service decided to terminate the doctor's services. However, despite completing their investigation reasonably quickly, we were not given their investigation report for 17 months. Our concerns about this delay formed part of the basis of our investigation into the department — see case study 80 for more details.

We were also concerned that although the department had notified details about the doctor to the CCYP, they did not include any information about his numerous aliases and other false dates of birth. This carried the risk that the doctor may have been able to get another job working with children in the 17 months following his dismissal, or in the future, by assuming another identity.

At our request, the department provided all the information to the CCYP.

CaseStudy80

This year we decided to investigate the ESRB's systems because we had concerns about them. We provided the department with our preliminary findings that:

- the quality of information in notifications sent to us (through the ESRB) about area health services was poor
- there were delays in providing us with information about the status of investigations and considerable further delays in sending us finalised investigation reports
- the ESRB and area health services did not seem to have a clear understanding of their legislative reporting obligations, including their obligations to notify the CCYP of finalised employment proceedings in a timely fashion.

They considered and responded to our concerns. From 1 July 2005 area health services will directly notify matters to us and we will have direct contact with them to ensure that matters are handled appropriately. The ESRB will continue to have an advisory role for area health services. Because the department implemented this change, we decided to discontinue our investigation.

As part of facilitating this change in arrangements, we plan to help the department provide training for area health service staff and give other guidance where required.

Scrutinising systems

One of our key roles is to 'keep under scrutiny' the systems agencies have for protecting children and responding to reportable allegations against their employees. Our aim is to help agencies provide safer environments for children in their care and we undertake a number of activities to try to achieve this.

Our audit work

We regularly review agency systems through an audit tool. This year we conducted 16 comprehensive audits and spent 85 days visiting 21 sites in metropolitan and regional NSW.

Our audits generally involve examining the agency's policies and procedures, and then visiting the agency's premises to observe their operations, inspect files and other documents, talk with the head of the agency and other staff, and speak to children using the service (if they are old enough) or their parents. We usually give the head of the agency some feedback straight away, particularly if issues of concern become clear during our visit.

This work helps us understand how and why organisations do things in a particular way, any unique or peculiar difficulties they may face, and any similarities that they have with other agencies. It enables us to effectively assess how well they have handled particular investigations and the quality and appropriateness of the systems they have in place. We are also better able to identify areas of good practice and share them with similar agencies.

Our visits have also helped us to develop cooperative working relationships with the agencies and key staff. We are able to have more constructive and frank discussions about issues of concern and this, in turn, helps us find solutions that address those concerns in a practical and timely way.

We selectively target agencies for audit. Some may be randomly selected as one of many agencies providing a similar service — for example, a child care centre or agency providing substitute residential care services. Others may be audited if we are concerned that they may not be notifying us of allegations against employees, if we believe that they are not complying with other legislative responsibilities, or if our review of a past investigation raised concerns about their systems.

Several years ago we received a notification from a child care centre that we thought handled the investigation poorly. We gave the private agency running the centre advice at the time and decided to audit their systems sometime in the future to see if they had made any improvements.

The agency operates seven child care centres across Sydney, employing 32 staff. This year we reviewed 30 of their policies and procedures and had some concerns about their quality and effectiveness.

Two of our staff visited two of the child care centres, spending a day at each location. We spoke to the head of the agency and to staff members and examined their records. Although we had hoped to meet with other stakeholders, including parents with children attending the centres, the head of the agency refused to allow this.

Our audit highlighted significant gaps in the agency's policies and procedures. For example, parents were not given any information about how they might report their concerns about a staff member, to whom such a complaint could be made, and how the agency would respond. The agency's policies also contained limited information about their responsibilities under the Ombudsman Act, and no information about the procedures that would be followed if a reportable allegation was made or the rights of the staff member concerned.

We reported our findings to the agency and recommended that they amend, update and create a number of policies, provide more training to staff and give more information to parents. We will be following-up compliance with our recommendations.

Please see case study 83 for another example of our audit work.

Our experience indicates that many small, privately-owned services — such as child care centres and independent substitute residential care agencies — do not have adequate child protection policies and procedures in place. Next year we intend to audit more of these smaller agencies and conduct training and briefings in regional areas so that we can provide general information to a number of agencies at the one forum. We will then limit our site visits to individual agencies to half a day.

We also intend to increase our focus on agencies providing services to Aboriginal people and communities. We want to develop closer relationships with these agencies and increase their understanding of our role and their responsibilities under the legislation.

13. Reform

This section gives details of the work we have done, in addition to our core functions, to contribute to policy reform in NSW. Our 30 years of experience in public administration, complaint-handling and service provision enables us to make constructive contributions to a range of policy discussions, debates and reforms. This year we made a number of submissions relating to proposed new legislation, new guidelines, inquiries into issues, and reviews into Acts and systems.

Submissions

In 2004–2005 we made submissions to:

- the review of the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998* in response to a consultation paper
- the review of the *Protected Disclosures Act 1994* by a parliamentary committee
- the review of the *Independent Commission Against Corruption Act 1988*
- the ministerial review of the *Crimes (Administration of Sentences) Act 1999*
- DoCS' review of the NSW interagency guidelines for child protection intervention
- the NSW Office of the Children's Guardian on the proposed *Children and Young Persons (Care and Protection — Child Employment) Regulation*
- the federal Department of Education, Science and Training on their issues paper 'Rationalising responsibility for higher education in Australia'
- the select committee inquiry into juvenile offenders
- the review of the way the *Telecommunications (Interception) Act 1979 (Cth)* regulates access to communications obtained through an interception device
- the review of the Uniform Evidence Acts by the Australian, NSW and Victorian Law Reform Commissions about client legal privilege
- the review of the *Police Act 1990* by the Minister for Police.

In November 2004, the Ombudsman gave evidence before StaySafe, the Parliamentary Joint Standing Committee on Road Safety, about the role of our office in relation to police pursuits. The Committee was conducting an inquiry into road safety administration in NSW. We also made a written submission to the inquiry. For more details, please see Chapter 3: Police.

Comments and feedback

During the year we provided comments and feedback to a number of agencies on policy documents and guidelines that they were developing. For example, we provided comments and feedback to:

- the Department of Education and Training on their 'Guidelines for mentoring and support of students'
- DoCS on their draft 'Allegations against employees operating framework'
- Scots College on their 'Child protection policy senior school'
- the Department of Juvenile Justice on their draft guidelines for handling misconduct and reportable conduct under the child protection notification scheme.

A customer service framework

In our 2000-2001 and 2003-2004 annual reports, we reported on our proposal to the government that all the elements of good customer service should be brought together into a comprehensive customer service framework for the NSW public sector. We suggested that this framework should include a statement of ethical principles, a new code of conduct and a conflict of interests policy, and be supported by training.

The Premier's Department supported this overall proposal and have done considerable work towards establishing such a framework. It will be web-based and accessed through the Premier's Department website as a special purpose sub-site. A working group called the 'Integrity in government coordination group' has developed policies for consideration by the government.

Code of conduct

One of the documents being developed as part of the customer service framework is a model code of conduct for staff of NSW state agencies.

Every other state and territory in Australia has recognised that the most effective way to enforce ethical frameworks is to incorporate them into legislation. In NSW it has been considered appropriate for the local government and Parliamentary codes of conduct to have a legislative basis, but not the proposed code of conduct for the staff of state agencies. We believe that this is regrettable. By leaving the code largely unenforceable, Parliament and the government have lost the opportunity to demonstrate strong support for high ethical standards in the public sector. Also, the code will only apply to the 20-25% of NSW public officials employed under the *Public Sector Employment and Management Act 2002*.

Monitoring agency investigations

In 2004-2005 we closely monitored 376 agency investigations — this is 21% of the notifications finalised.

We decided to scrutinise these matters more closely because of:

- the nature and seriousness of the allegations
- the vulnerability of the alleged victim, or
- our concerns about the agency's ability to respond to the matter in a timely and appropriate way.

Sometimes the agency's inability to handle a matter without closer scrutiny and guidance does not become evident until some time after we have received a notification. For example, there may be an unreasonable delay in the agency finalising the investigation and no explanation for this delay.

The majority of investigations we monitored this year involved allegations of sexual assault or sexual misconduct. We also monitored all of the Operation Auxin child pornography matters referred to in case study 73.

Some other matters we monitored included:

- An allegation that a foster carer drank alcohol with a 16-year-old girl in his care and sexually assaulted her while she was asleep — he has been deregistered.
- An allegation that a foster carer sexually fondled the genitals of his 8-year-old daughter and told her not to tell anyone — he has been deregistered.
- An allegation that an administration officer with an agency providing substitute residential care for children was charged with the possession of child pornography. The employee pleaded guilty at court, was convicted and allowed to resign. The CCYP was notified of the result.
- An allegation that a teacher used a hidden camera to film students undressing. The teacher was allowed to resign and the CCYP was notified of the result.
- An allegation that a foster carer provided inappropriate food for a toddler against the advice of professionals (including a pediatrician), left the child in soiled nappies for long periods, neglected the child's health to such an extent that the child needed to be admitted to hospital, and may have extinguished a cigarette on the child's hand. He was deregistered and the CCYP was notified of the result.

An important reminder we give agencies is about their responsibility to notify the CCYP of completed employment proceedings. In the above examples, each employee was either dismissed or allowed to resign and their details were notified to the CCYP as category 1 matters. This means that if those people apply for other child-related employment in the future, the details of these allegations will be considered during the employment screening process that determines their overall risk rating.

Notifications to the Commission for Children and Young People (CCYP)

Another way we 'keep under scrutiny' agency systems for preventing and responding to reportable allegations is to monitor their compliance with a range of child protection legislation – including the *Commission for Children and Young People Act 1998* (CCYP Act).

The CCYP Act requires all employers of people in child-related work — including foster carers and ministers of religion or other members of religious organisations in child-related positions — to screen prospective employees via a working with children check. The aim of this process is to reduce the likelihood that people who pose a threat to children will be employed in jobs where they work with children.

To facilitate this process, employers are required by law to notify the CCYP of 'all relevant employment proceedings'. This includes reportable conduct that has not been sustained following an agency's investigation, but where there is some evidence that the conduct occurred — even if this is not conclusive.

This helps to ensure that the screening process can identify patterns of conduct involving particular people, even if individual allegations have not been proven. It also recognises that sometimes allegations may be true but not able to be conclusively proven.

When we audit agency systems, one thing we check for is whether they have a system for notifying the CCYP of relevant information. We also check a monthly schedule provided by the CCYP that outlines matters that have been notified to them as well as matters where agencies have requested the withdrawal of notifications previously made to the CCYP.

If it is unclear why an agency has requested a withdrawal, we ask them to explain. If a notification is withdrawn, this indicates that the agency has reviewed or changed their finding about an allegation that has previously been investigated. It is important that we scrutinise these decisions carefully.

Sometimes we notice that an agency has notified the CCYP of a matter, but not notified us. We would therefore not have had an opportunity to scrutinise the way that agency handled the matter. If this occurs,

we ask the agency for a formal notification and report on the matter and remind them of their reporting obligations. This way we are still able to assess the way they handled it.

Case studies 77, 79, 81 and 82 involved matters that needed to be notified to the CCYP.

Case study 79 highlights the risks when employees have been the subject of allegations outside NSW or are known by other names or aliases. It also highlights the problems caused by agency delays in completing investigations and, in particular, making late notifications to the CCYP.

If serious matters are not promptly notified — or are otherwise not known to the CCYP — it is possible that high-risk employees may pass through employment screening processes and obtain child-related employment.

CaseStudy81

DoCS notified us of serious allegations concerning a man who had been taking care of a fourteen-year-old boy in a foster-carer capacity.

The man was living with his wife and her three children, and took in the boy and his brother at their request. They had been removed from their natural parents because of domestic violence.

It was alleged that the man and the boy had developed an unhealthy relationship. The boy was almost totally emotionally dependent on him which gave him the opportunity to exploit the boy in a sexual way.

In particular the wife told their neighbour that that she had seen her husband getting in and out of the boy's bed wearing only his underpants, and the neighbour saw the man in his darkened garage touching the boy in a sexual way.

DoCS investigated the allegations and found evidence to substantiate both these allegations, as well as evidence that the man had given the boy massages while dressed only in his underpants. DoCS decided the boy was at risk of harm as the man's actions seemed consistent with perpetrator 'grooming' behaviour. As a result, the boy and his brother were removed from the home.

However DoCS later told us that they had reviewed this matter and realised that the man had taken the child into his care at the child's request — not through any formal arrangement approved by DoCS. They therefore did not consider the man to be a 'foster carer' employed by them. This meant, in their view, that the matter was outside our jurisdiction and they were under no obligation to notify the CCYP of the outcome of their investigation.

We were concerned as we believed that the man posed a significant risk to children and the matter ought to be notified to the CCYP.

Although the man had not been authorised by DoCS before the children were removed, he had consulted with them about the children's care and had also sought their approval for a number of decisions affecting the children. In our opinion, DoCS had effectively engaged him to provide services to these children and therefore he was their employee. DoCS accepted our view and subsequently notified this matter to the CCYP.

Procedural fairness to employees

When conducting investigations, agencies must provide procedural fairness to employees about whom allegations have been made.

They need to tell the employee concerned of any allegations against them and give them the opportunity to put their side of the story. The investigator and decision-makers must not have a personal interest in the outcome and must act only on the basis of relevant evidence. Failure to take any of these steps may give the employee a right to challenge the agency's decisions in the Industrial Relations Commission or in court. The employee may also complain to us or their union.

When we scrutinise the way an agency has handled a reportable allegation, we look to see whether they have given the employee assistance, support and information about the nature of the allegations, and whether the employee had an adequate opportunity to respond. We also check if the management response to the investigation finding was appropriate. Case studies 83 and 84 are examples of matters where we had some concerns about the way the agency managed the employee concerned.

Case study 85 is an example of a matter where the agency's failure to provide procedural fairness led the employee to challenge their management response in the Industrial Relations Commission. This case highlights the risks that agencies take if they rely too heavily on external investigations when deciding on the management action they should take. We advise agencies that they must conduct their own investigation and reach an independent finding. They must make sure that their investigation is comprehensive and fair to their employee, and the evidence supports any disciplinary action taken. Figure 62 outlines the different roles and responsibilities of employers, DoCS and NSW Police.

Figure 62: The obligations of agencies when a reportable allegation is made

	Employer	DoCS	NSW Police
Role	**Risk assessment and management action**	**Child protection**	**Criminality**
Responsibilities and decisions made	• Decides the risk posed by the employee in his or her current role. • Takes any management action needed to ensure the safety of children. • Provides procedural fairness to the employee. • Liaises closely with DoCS and the police to ensure a coordinated approach and obtain information to help make a proper risk assessment and decide on appropriate management action. • Responsible for reporting to CCYP.	• Decides whether it will investigate an allegation after assessing the perceived risk of harm the alleged offender poses to children. • May take a more active role in managing the case if the matter is more serious. • May not interview the employee. • Not responsible for reporting to CCYP about employees of other agencies.	• Decides whether the case has a criminal element that warrants investigation or further action. • In more serious cases, may take a more active role in managing the case — the employer may be asked not to investigate until police action is completed. • The police investigation may lead to charges and prosecution. • Not responsible for workplace risk assessments. • Not responsible for reporting to CCYP about employees of other agencies.

CaseStudy82

An agency providing substitute residential care to children notified us of an allegation involving a foster carer and a 15-year-old girl in his care. It was alleged that the man had got into bed with the girl twice and tried unsuccessfully to touch her breasts.

We monitored the agency's investigation which found that the allegations were not sustained due to insufficient evidence. We were satisfied with the investigation and the finding, but were concerned that the man may nevertheless pose a risk to children. The agency agreed to reassess him. We also told them they were required to notify the carer's details to the CCYP.

We then received a complaint from a relative of a 16-year-old girl who had previously been placed with the same carer. We contacted the agency and received a notification of further allegations that he had hugged the girl against her wishes and lay on a bed next to her.

Our assessment of the investigation documents identified a possible disclosure of sexual assault by the man against a third child. We made inquiries of the agency and then received notification of an alleged indecent assault against the man's 16-year-old granddaughter.

We told the agency that we would monitor their investigations into the new allegations and confirmed that there were no children currently placed with the carer.

The agency interviewed the man's granddaughter and her mother. According to the agency, both mother and daughter had requested that the carer not be told about the allegation and, as the girl was not in their care, the agency decided to 'respect her wishes' and not investigate the allegation further.

We disagreed and told the agency that they were required — in all but exceptional circumstances — to investigate reportable allegations against employees, whether or not the alleged victim was in their care. We also pointed out that, during their interviews, both the granddaughter and her mother raised further concerns about the carer's conduct towards foster children. In particular, the mother repeated allegations — from a person she named — that the man used to 'flash himself' at his foster children and touch them inappropriately.

The agency decided not to interview the person named by the mother as they did not consider they had sufficient authority to do so. They felt that to do so would be 'intrusive'. They also reasoned that the need to identify risks to young people was outweighed by the need to make sure they did not unnecessarily spread suspicion about the carer.

We expressed our concerns with their reasoning. The agency ultimately agreed to conduct the interview and, after further investigation, they found the allegations made by the second and third girls were sustained.

We advised them to notify the CCYP of these findings. They did so and sometime afterwards we were advised that the man had been deregistered as an approved carer.

CaseStudy83

A youth worker in a substitute residential care agency was stood down, pending investigation, after he was alleged to have pushed and punched a 14-year-old boy.

In previous discussions with the agency, we learnt that they had a 'blanket' policy of standing down employees who were subject to any allegation of reportable conduct. The agency also had a policy of dismissing employees if allegations were sustained following an investigation.

The investigation found that the allegation against the youth worker was proven. However it also became clear that the assault took place after the young person subjected the youth worker to several hours of abusive behaviour, that included verbal threats and hitting the worker in the genital area. The agency contacted us and we discussed the possibilities of disciplinary action other than dismissal.

We looked more closely at the agency's systems through an audit process. Their policy of standing down employees, if applied inflexibly, risked punishing workers unfairly. We explained that each situation is unique and the policy should enable decisions to be made by on a case-by-case basis. The agency has since reviewed their policy about disciplinary action.

They decided that the youth worker could return to work, taking into consideration a range of factors including his previous work performance, his contributions to the work of the agency and the young people using the service, an assessment of any future risk that he posed to other young people using the service, and the context in which the assault took place.

The agency supported the worker in coming back to work. They provided him with counselling, put him in a different group home and closely supervised his work.

CaseStudy84

The Department of Juvenile Justice (DJJ) notified us of serious allegations against a female youth officer. It was alleged that the officer was providing smuggled goods — including drugs — to detainees.

The department investigated and found all of the allegations were sustained. We had a number of concerns about their investigation. Firstly, it appeared to us that the evidence was not strong enough to support their finding. Secondly, we were concerned that they did not follow up relevant lines of inquiry that were raised by the youth officer.

We wrote to DJJ outlining our concerns and requested that they review their findings. They refused to review the findings, arguing that the Director General did not have the power to do so unless 'new evidence' was received or the employee concerned appealed.

We disagreed with their reasoning and decided to investigate. We confirmed our initial view that the evidence did not support the findings against the youth officer and formally recommended that the department review the matter. One of our arguments was that the restrictions on the Director General's power did not prevent him from reconsidering such a matter when he was presented with a different interpretation of the evidence from our office — and with evidence that the matter had not been properly investigated in the first place.

DJJ recently advised us that they intend to implement all of our recommendations and that, after the review, they changed the sustained findings against the youth officer to 'not sustained – insufficient evidence'.

CaseStudy85

A child care centre notified us of an allegation that a female member of staff had hit a 4-year-old boy across the face. The agency investigated the allegation and found that there was insufficient evidence to prove that the assault took place. They advised us of their finding, 'not sustained – insufficient evidence' and we thought this seemed appropriate.

As the result of another employee complaining about the outcome of the investigation, an external investigator reviewed the matter and found that the worker had physically harmed the young boy.

The agency then changed their finding to 'sustained' and dismissed the employee, without first giving the employee a chance to respond to their proposal to change the finding and the basis for that change.

The employee lodged an application for unfair dismissal in the Industrial Relations Commission. In its judgement the Commission was critical that the matter was sustained prior to re-interviewing the employee and deemed this to be a breach of procedural fairness towards her.

Sharat Arora
Librarian

I am Sharat Arora. Two years ago I joined this office as a librarian.

Earlier I worked for twenty years as senior librarian at the University of Wollongong and six years at the University of Western Sydney, at Campbelltown and Penrith campuses.

I have worked with various automated library systems for processing and retrieving library collections including preparing reading lists for teaching staff, helping students in training and making them aware about the usefulness of library collection, through library orientation.

The library at the Ombudsman's office is a departmental library with specialised collection in specific areas of the office's jurisdiction.

Half of the library collection contains law material. In this respect my background as law librarian has been helping me immensely in retrieving law material. It is very satisfying when I organise material for staff, especially research staff who use the information for writing reports.

It is a great honour to work at a place where apart from the excellent working atmosphere, your efforts and contribution are appreciated.

Financial Statements

GPO BOX 12
SYDNEY NSW 2001

INDEPENDENT AUDIT REPORT

Ombudsman's Office

To Members of the New South Wales Parliament

Audit Opinion

In my opinion, the financial report of the Ombudsman's Office:

(a) presents fairly the *Ombudsman's Office* financial position as at *30 June 2005* and its financial performance and cash flows for the year ended on that date, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and

(b) complies with section 45E of the *Public Finance and Audit Act 1983* (the Act).

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

Ombudsman's Role

The financial report is the responsibility of the *Ombudsman*. It consists of the statement of financial position, the statement of financial performance, the statement of cash flows, the program statement - expenses and revenues, the summary of compliance with financial directives and the accompanying notes.

The Auditor's Role and the Audit Scope

As required by the Act, I carried out an independent audit to enable me to express an opinion on the financial report. My audit provides *reasonable assurance* to members of the New South Wales Parliament that the financial report is free of *material* misstatement.

My audit accorded with Australian Auditing and Assurance Standards and statutory requirements, and I:

- evaluated the accounting policies and significant accounting estimates used by the *Ombudsman* in preparing the financial report, and
- examined a sample of the evidence that supports the amounts and other disclosures in the financial report.

An audit does not guarantee that every amount and disclosure in the financial report is error free. The terms 'reasonable assurance' and 'material' recognise that an audit does not examine all evidence and transactions. However, the audit procedures used should identify errors or omissions significant enough to adversely affect decisions made by users of the financial report or indicate that the Ombudsman had not fulfilled his reporting obligations.

My opinion does not provide assurance:

- about the future viability of the *Ombudsman's Office*,
- that the *Ombudsman's Office* has carried out its activities effectively, efficiently and economically,
- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

Audit Independence

The Audit Office complies with all applicable independence requirements of Australian professional ethical pronouncements. The Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- 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 are not compromised in their role by the possibility of losing clients or income.

R J Sendt

RJ SENDT
Auditor-General

SYDNEY
16 September 2005

NSW Ombudsman

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STATEMENT BY THE OMBUDSMAN

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

(a) the accompanying financial statements have been prepared in accordance with the provisions of the *Public Finance and Audit Act 1983*, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit Regulation 2000 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 2005, and transactions for the year then ended;

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

Bruce Barbour
Ombudsman

CELEBRATING 30 YEARS OF SERVICE 1975~2005

Statement of Financial Performance
For the Year Ended 30 June 2005

	Notes	Actual 2005 $'000	Budget 2005 $'000	Actual 2004 $'000
Expenses				
Operating expenses				
Employee related	2(a)	14,535	14,264	14,929
Other operating expenses	2(b)	3,594	3,442	4,091
Maintenance		118	144	142
Depreciation and amortisation	2(c)	874	852	847
Total expenses		**19,121**	**18,702**	**20,009**
Less:				
Retained revenue				
Sale of goods and services	3(a)	14	54	9
Bank interest	3(b)	30	30	60
Grants and contributions	3(c)	67	50	48
Other revenue	3(d)	136	-	59
Total retained revenue		**247**	**134**	**176**
Loss on disposal of non-current assets	4	**(17)**	-	**(1)**
Net cost of services	18	**18,891**	**18,568**	**19,834**
Government contributions				
Recurrent appropriation	5(a)	16,548	16,217	16,695
Capital appropriation	5(b)	143	67	447
Acceptance by the Crown Entity of employee benefits and other liabilities	6	1,757	1,395	2,040
Total Government contributions		**18,448**	**17,679**	**19,182**
DEFICIT FOR THE YEAR FROM ORDINARY ACTIVITIES		**(443)**	**(889)**	**(652)**
DEFICIT FOR THE YEAR		**(443)**	**(889)**	**(652)**
NON-OWNER TRANSACTION CHANGES IN EQUITY		-	-	-
TOTAL REVENUES, EXPENSES AND VALUATION ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY		-	-	-
TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH OWNERS AS OWNERS	16	**(443)**	**(889)**	**(652)**

The accompanying notes form part of these statements.

Statement of Financial Position
As at 30 June 2005

	Notes	Actual 2005 $'000	Budget 2005 $'000	Actual 2004 $'000
ASSETS				
Current assets				
Cash	8	539	433	954
Receivables	10	212	147	152
Other	11	333	384	384
Total current assets		**1,084**	**964**	**1,490**
Non-current assets				
Plant and equipment	12	1,945	1,908	2,693
Total non-current assets		**1,945**	**1,908**	**2,693**
Total assets		**3,029**	**2,872**	**4,183**
LIABILITIES				
Current liabilities				
Payables	13	290	353	701
Provisions	14	1,013	1,053	1,048
Other	15	86	272	266
Total current liabilities		**1,389**	**1,678**	**2,015**
Non-current liabilities				
Provisions	14	222	273	273
Other	15	112	61	146
Total non-current liabilities		**334**	**334**	**419**
Total liabilities		**1,723**	**2,012**	**2,434**
Net assets		**1,306**	**860**	**1,749**
EQUITY				
Accumulated funds	16	1,306	860	1,749
Total equity		**1,306**	**860**	**1,749**

The accompanying notes form part of these statements.

Statement of Cash Flows
For the Year Ended 30 June 2005

	Notes	Actual 2005 $'000	Budget 2005 $'000	Actual 2004 $'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(14,093)	(14,042)	(13,300)
Other		(4,250)	(4,124)	(5,252)
Total payments		**(18,343)**	**(18,166)**	**(18,552)**
Receipts				
Sale of goods and services		108	54	68
Interest received		45	35	52
Other		519	571	593
Total receipts		**672**	**660**	**713**
Cash flows from Government				
Recurrent appropriation		16,548	16,217	16,695
Capital appropriation		143	67	447
Cash reimbursements from the Crown Entity		821	768	761
Cash transfers to the Consolidated Fund		(113)	-	113
Net cash flows from Government	18	**17,399**	**17,052**	**18,016**
NET CASH FLOWS FROM OPERATING ACTIVITIES		**(272)**	**(454)**	**177**
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchases of leasehold improvements, plant and equipment and infrastructure systems	12	(143)	(67)	(447)
NET CASH FLOWS FROM INVESTING ACTIVITIES		**(143)**	**(67)**	**(447)**
NET DECREASE IN CASH		**(415)**	**(521)**	**(270)**
Opening cash and cash equivalents		954	929	1,224
CLOSING CASH AND CASH EQUIVALENTS	8	**539**	**408**	**954**

The accompanying notes form part of these statements.

Ombudsman's Office
Program Statement — Expenses and Revenues for the Year Ended 30 June 2005

	Program 1*		Program 2*		Program 3*		Program 4*		Not Attributable		Total	
Agency's expenses and revenues	**2005**	**2004**	**2005**	**2004**	**2005**	**2004**	**2005**	**2004**	**2005**	**2004**	**2005**	**2004**
	$'000	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**	**$'000**
Expenses												
Operating expenses												
Employee related	4,413	4,761	3,478	3,493	2,460	2,516	4,184	4,159	-	-	14,535	14,929
Other operating expenses	1,097	1,278	864	939	531	652	1,102	1,222	-	-	3,594	4,091
Maintenance	38	47	29	36	19	24	32	35	-	-	118	142
Depreciation and amortisation	281	281	216	215	143	144	234	207	-	-	874	847
Total expenses	**5,829**	**6,367**	**4,587**	**4,683**	**3,153**	**3,336**	**5,552**	**5,623**	-	-	**19,121**	**20,009**
Retained revenue												
Sale of goods and services	(5)	(3)	(3)	(2)	(2)	(2)	(4)	(2)	-	-	(14)	(9)
Investment income	(10)	(20)	(7)	(15)	(5)	(10)	(8)	(15)	-	-	(30)	(60)
Grants and contributions	-	-	(67)	(48)	-	-	-	-	-	-	(67)	(48)
Other revenue	(13)	-	(82)	(39)	(6)	-	(35)	(20)	-	-	(136)	(59)
Total retained revenue	**(28)**	**(23)**	**(159)**	**(104)**	**(13)**	**(12)**	**(47)**	**(37)**	-	-	**(247)**	**(176)**
Loss on disposal of non-current assets	-	-	-	-	-	-	-	-	17	1	17	1
Net cost of services	**5,801**	**6,344**	**4,428**	**4,579**	**3,140**	**3,324**	**5,505**	**5,586**	**17**	**1**	**18,891**	**19,834**
Government contributions**	-	-	-	-	-	-	-	-	**(18,448)**	**(19,182)**	**(18,448)**	**(19,182)**
NET EXPENDITURE/ (REVENUE) FOR THE YEAR	**5,801**	**6,344**	**4,428**	**4,579**	**3,140**	**3,324**	**5,505**	**5,586**	**(18,431)**	**(19,181)**	**443**	**652**

* The name and purpose of each program is summarised in Note 7.

** Appropriations are made on an agency basis and not to individual programs. Consequently, government contributions must be included in the 'Not Attributable' column.

Summary of Compliance with Financial Directives

	2005				2004			
	RECURRENT APP'N	EXPENDITURE / NET CLAIM ON CONSOLIDATED FUND	CAPITAL APP'N	EXPENDITURE / NET CLAIM ON CONSOLIDATED FUND	RECURRENT APP'N	EXPENDITURE / NET CLAIM ON CONSOLIDATED FUND	CAPITAL APP'N	EXPENDITURE / NET CLAIM ON CONSOLIDATED FUND
	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000
ORIGINAL BUDGET APPROPRIATION/ EXPENDITURE								
* Appropriation Act	16,217	16,217	67	67	16,212	16,099	447	447
* Additional appropriations	-	-	-	-	-	-	-	-
* s 21A PF&AA - special appropriation	-	-	-	-	-	-	-	-
* s 24 PF&AA - transfers of functions between departments	-	-	-	-	165	165	-	-
* s 26 PF&AA - Commonwealth specific purpose payments	-	-	-	-	-	-	-	-
	16,217	**16,217**	**67**	**67**	**16,377**	**16,264**	**447**	**447**
OTHER APPROPRIATIONS/ EXPENDITURE								
* Treasurer's advance	331	331	76	76	431	431	-	-
* Section 22 - expenditure for certain works and services	-	-	-	-	-	-	-	-
* Transfers to/from another agency (s25 of the Appropriation Act)	-	-	-	-	-	-	-	-
	331	**331**	**76**	**76**	**431**	**431**	-	-
Total appropriations/expenditure/ net claim on Consolidated Fund	**16,548**	**16,548**	**143**	**143**	**16,808**	**16,695**	**447**	**447**
Amount drawn down against appropriation		**16,548**		**143**		**16,808**		**447**
Liability to Consolidated Fund		-		-		**113**		-

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

The liability to Consolidated Fund represents the difference between the 'Amount drawdown against appropriation' and the 'Total expenditure/net claim on Consolidated Fund'.

Ombudsman's Office
Notes to the Financial Statements
For the Year Ended 30 June 2005

1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting entity

The role of the Ombudsman's Office (Office) is to make sure that public and private sector agencies and employees within jurisdiction fulfil their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

The Office is a separate reporting entity. There are no other entities under its control.

The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

(b) Basis of accounting

The Office's financial statements are a general purpose financial report, which has been prepared on an accrual basis and in accordance with:

* applicable Australian Accounting Standards
* other authoritative pronouncements of the Australian Accounting Standards Board (AASB)
* Urgent Issues Group (UIG) Consensus Views
* the requirements of the Public Finance and Audit Act 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 under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, legislative provisions have prevailed.

In the absence of a specific Accounting Standard, other authoritative pronouncements of the AASB or UIG Consensus View, the hierarchy of other pronouncements as outlined in AAS 6 *Accounting Policies* is considered.

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

The accounting policies adopted are consistent with those of the previous year.

(c) Revenue recognition

Revenue is recognised when the Office has control of the good or right to receive, it is probable that the economic benefits will flow to the Office and the amount of revenue can be measured reliably. Additional comments regarding accounting policies for the recognition of revenue are discussed below.

(i) Parliamentary appropriations and contributions from other bodies

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as revenue when the Office obtains control over the asset comprising the appropriations and contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to the above 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.

In 2003-2004, the Office had a liability of $113,000 on the supplementation for the legislative reviews, which was due to the delay in the commencement of the Acts to be reviewed. This liability is disclosed in Note 15 as part of other current liabilities. It was extinguished in 2004-2005.

(ii) Sale of goods and services

Revenue from the sale of goods and services comprises revenue from the provision of products or services i.e. user charges such as the sale of publications and conducting training courses. User charges are recognised as revenue when the Office obtains control over the assets that result from them.

(iii) Interest revenue

Interest is recognised as it is accrued.

(d) Employee benefits and other provisions

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

Liabilities for salaries and wages (including non-monetary benefits) and annual leave are recognised and measured in respect of employees' services up to the reporting date based on the amounts expected to be paid when the liability is settled.

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.

(ii) Long service leave and superannuation

The Office's liabilities for long service leave and superannuation are assumed by the Crown Entity. The Office accounts for the liability as having been extinguished resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of Employee Entitlements and Other Liabilities'.

AASB 1028 *Employee Benefits* requires that employee benefit liabilities, such as long service leave, that are expected to be settled more than 12 months after the reporting date, must be measured as the present value of the estimated future cash outflows to be made by the employer in respect of services provided by employees up to the reporting date. This calculation must take into account future increases in remuneration rates as they will increase the amount the employer is required to pay to settle the liability.

AASB 1028 also states that on-costs i.e. costs that are consequential to the employment of employees, but which are not employee benefits, are recognised as liabilities and expenses when the employee benefits to which they relate are recognised and are accordingly measured as the present value of the estimated cash outflows.

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

(e) Insurance

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund Manager based on past experience.

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

Revenues, expenses and assets are recognised net of amount of GST, except where:

* the amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the acquisition of an asset or as part of an item of expense
* receivables and payables are stated with the amounts of GST included.

(g) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisition of assets controlled by the Office. Cost is determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition. Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction. Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value at the acquisition date. The discount rate used is the incremental borrowing rate being the rate at which a similar borrowing could be obtained.

(h) Plant and equipment

As a general rule, Treasurer's Direction 460.04 (1), (2) and (3), NSW Treasury Circular NSWTC 00/13 and NSW Treasury Policy and Guidelines Paper TPP00-3 suggest that any item (other than computer and IT related items) costing or valued over $5,000 (excluding GST) and having a useful life of more than 2 years should be recorded as a non-current asset. For computer and IT related items the applicable monetary value is $1,000 (excluding GST).

(i) Revaluation of physical non-current assets

Physical non-current assets are valued in accordance with the 'Accounting Policy - Valuation of Physical Non-Current Assets at Fair Value' (TPP 03-02). This policy adopts fair value in accordance with AASB 1041 *Revaluation of Non-Current Assets* from financial years beginning on or after the 1 July 2002. There is no substantive difference between the fair value valuation methodology and the previous valuation methodology adopted in the NSW public sector.

The assets of the Office are short-lived and their cost approximates their fair value. The Office is a not-for-profit entity.

(j) Depreciation/amortisation of non-current physical assets

Depreciation/amortisation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Office.

Depreciation/amortisation rates used are:

Computer software - prior to 1 July 2003	33.33%
Computer software - from 1 July 2003	20%
Computer hardware - prior to 1 July 2005	33.33%
Computer hardware - from 1 July 2005	25%
Office equipment	20%
Furniture & fittings	10%
Leasehold improvements	Life of lease contract

(k) Maintenance and repairs

The costs of maintenance are expensed as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

(l) Leased assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee most of 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 Financial Performance in the periods in which they are incurred. Lease incentives received on entering non-cancellable operating leases are recognised as a lease liability. This liability is reduced on a straight line basis over the lease term.

The Office has no finance leases.

(m) Receivables

Receivables are recognised and carried at cost, based on the original invoice amount less (where necessary) a provision for any uncollectible debts. An estimate for doubtful debts is made when collection of the full amount is no longer probable. Bad debts are written off as incurred.

(n) Other assets

Other assets including cash and prepayments are recognised on a cost basis.

(o) Payables

Payables represent liabilities for goods and services provided to the Office as well as other amounts including interest. Interest is accrued over the period it becomes due.

(p) Budgeted amounts

The budgeted amounts in the Statements of Financial Performance and Cash Flows are generally based on the amounts disclosed in the NSW Budget Papers with any adjustments for the effects of additional appropriations, s21A, s24 and/or s26 of the *Public Finance and Audit Act 1983*. However, in the Statement of Financial Position, the amounts vary from the Budget Papers, as the opening balances of the budget amounts are actuals carried forward from the closing balances on the previous year's audited financial statements.

(s) Comparative figures

Comparative figures are, where appropriate, reclassified so as to be comparable with the figures presented in the current financial year.

(t) Rounding of amounts

Amounts in the financial statements have been rounded to the nearest thousand dollars.

	2005 $'000	2004 $'000
2 EXPENSES		
(a) Employee related expenses		
Salaries and wages (including recreation leave)	11,981	11,986
Superannuation	1,113	1,026
Long service leave	577	953
Workers' compensation insurance	51	123
Payroll tax and fringe benefit tax	729	716
Payroll tax on superannuation	67	61
Payroll tax on long service leave	17	64
	14,535	**14,929**
(b) Other operating expenses		
Auditors remuneration - audit or review of the financial reports	25	14
Operating lease rental expenses - minimum lease payments	1,684	1,569
IT leasing - minimum lease payments	243	252
Insurance	21	22
Fees	485	555
Telephones	173	165
Stores	101	248
Training	78	151
Printing	134	377
Travel	391	387
Books, periodicals & subscriptions	49	41
Advertising	31	72
Energy	34	46
Motor vehicle	32	29
Postal and courier	54	83
Other	59	80
	3,594	**4,091**
(c) Depreciation and amortisation expense		
Plant and equipment		
Depreciation	757	730
Amortisation	117	117
	874	**847**
3 REVENUES		
(a) Sale of goods and services		
Sale of publications	14	9
	14	**9**

	2005 $'000	2004 $'000
(b) Bank interest		
Interest	30	60
	30	**60**
(c) Grants and contributions		
Review of the *Children*	67	48
(Criminal Proceedings Act)	**67**	**48**
(d) Other revenue		
Workshops and conferences	94	59
Other	42	-
	136	**59**
4 LOSS ON DISPOSAL OF NON-CURRENT ASSETS		
Plant and equipment		
Proceeds from disposal	-	-
Written down value of assets disposed	17	1
Net loss on disposal of plant and equipment	**(17)**	**(1)**
5 APPROPRIATIONS		
(a) Recurrent appropriation		
Total recurrent drawdowns from Treasury (per Summary of Compliance)	16,548	16,808
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	(113)
	16,548	**16,695**
Comprising: Recurrent appropriations (per Statement of Financial Performance)	16,548	16,695
	16,548	**16,695**
(b) Capital appropriation		
Total capital drawdowns from Treasury (per Summary of Compliance)	143	447
	143	**447**
Comprising: Capital appropriations (per Statement of Financial Performance)	143	447
	143	**447**
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	1,113	1,026
Long service leave	577	953
Payroll tax	67	61
	1,757	**2,040**

7 PROGRAMS/ACTIVITIES OF THE AGENCY

(a) Program 1: Resolution of complaints about police

Objectives:

Oversight and scrutinise the handling of complaints about the conduct of police. Promote fairness, integrity and practical practical reforms in the NSW Police.

(b) Program 2: Resolution of local government, public authority and prison complaints and review of Freedom of information complaints

Objectives:

Resolve complaints and protected disclosures about the administrative conduct of public authorities and local councils. Promote fairness, integrity and practical reforms in New South Wales public administration.

(c) Program 3: Resolution of child protection related complaints

Objectives:

Scrutiny of complaint handling systems and monitoring of the handling of notifications of alleged child abuse.

(d) Program 4: Resolution of complaints about and the oversight of the provision of community services

Objectives:

Provide for independent monitoring of community services and programs, keep under scrutiny complaint handling systems and provide for and encourage the resolution of complaints. Review the deaths of certain children and people with a disability and formulate recommendations for the prevention or reduction of deaths of children in care, children at risk of death due to abuse or neglect, children in detention and correctional centres or disabled people in residential care.

8 CURRENT ASSETS - CASH

	2005 $'000	2004 $'000
Cash at bank and on hand	539	954
	539	**954**

For the purposes of the Statement of Cash Flows, cash includes cash on hand and at bank.

Cash assets recognised in the Statement of Financial Position are reconciled to cash at the end of the financial year as shown in the Statement of Cash Flows as follows:

Cash (per Statement of Financial Position)	539	954
Closing cash and cash equivalents (per Statement of Cash Flows)	**539**	**954**

9 RESTRICTED ASSETS - CASH

	2005 $'000	2004 $'000
Department of Juvenile Justice	48	115
Liability to Consolidated Fund	-	113
	48	**228**

The Ombudsman received funding of $200,585 in the form of an advance payment from the Department of Juvenile Justice to cover the costs of the Ombudsman's review of the operation and effect of s19 of the *Children (Criminal Proceedings) Act* for the financial years to June 30, 2005. At year end, $48,000 was unspent. The project will be completed in 2005 - 2006.

10 CURRENT ASSETS - RECEIVABLES

Transfer of leave	27	3
Workshops	3	2
Sale of goods and services	-	1
Bank interest	15	30
GST receivable	64	115
Salaries and wages	102	-
Other	1	1
	212	**152**

Management considers all amounts to be collectible and as such, no provision for doubtful debts has been established.

11 CURRENT ASSETS - OTHER

Prepayments

Salaries and wages	7	3
Maintenance	104	70
Prepaid rent	144	145
Subscription/membership	18	18
Training	7	8
Motor vehicle	2	1
Employee assistance program	5	-
IT leasing	41	43
Insurance	-	91
Cleaning	4	-
Travel	1	-
Other	-	5
	333	**384**

	2005 $'000	2004 $'000

12 NON-CURRENT ASSETS - PLANT AND EQUIPMENT

Plant and equipment		
At cost	5,028	5,115
Less accumulated depreciation	(3,083)	(2,422)
	1,945	**2,693**
Reconciliations		
Reconciliations of the carrying amounts of plant and equipment at the beginning and end of the current and previous financial years are set out below:		
Carrying amount at start of year	2,693	3,094
Additions	143	447
Disposals	(17)	(1)
Depreciation/amortisation expense	(874)	(847)
Carrying amount at end of year	**1,945**	**2,693**

13 CURRENT LIABILITIES - PAYABLES

Accrued salaries, wages and on-costs	135	538
Creditors	155	163
	290	**701**

14 CURRENT/NON-CURRENT LIABILITIES - PROVISIONS

Current employee benefits and related on-costs		
Recreation leave	792	798
Annual leave loading	136	157
Payroll tax on recreation leave	55	73
Workers' compensation on recreation and long service leave	5	-
Payroll tax on long service leave	16	-
Other on-costs on recreation and long service leave	9	20
	1,013	**1,048**
Non-current employee benefits and related on-costs		
Payroll tax on recreation and long service leave	143	137
Other on-costs on recreation and long service leave	79	136
	222	**273**

	2005 $'000	2004 $'000
Aggregate employee benefits and related on-costs		
Provisions - current	1,013	1,048
Provisions - non-current	222	273
Accrued salaries, wages and on-costs (Note 13)	135	538
	1,370	**1,859**

15 CURRENT/ NON-CURRENT LIABILITIES - OTHER

Current		
Liability to Consolidated Fund	-	113
Department of Juvenile Justice advance payment review of s19 of the Children (Criminal Proceedings) Act	48	115
Prepaid income	4	4
Lease incentive	34	34
	86	**266**
Non-current		
Lease incentive	112	146
	112	**146**

16 CHANGES IN EQUITY

	Accumulated Funds		Total Equity	
	2005 $'000	2004 $'000	2005 $'000	2004 $'000
Balance at the beginning of the financial year	1,749	2,401	1,749	2,401
Changes in equity - transactions other than with owners as owners	-	-	-	-
Deficit for the financial year	(443)	(652)	(443)	(652)
Balance at the end of the financial year	**1,306**	**1,749**	**1,306**	**1,749**

17 COMMITMENTS FOR EXPENDITURE

	2005 $'000	2004 $'000
Operating lease commitments		
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	1,941	2,064
Later than one year and not later than five years	5,885	7,354
Later than five years	-	450
Total (including GST)	**7,826**	**9,868**

The property lease is a non-cancellable lease with a 10 year term, with rent payable monthly in advance. An option exists to renew the lease at the end of the 10 year term for an additional term of five years. The total operating lease commitments of $7,826,000 include GST input tax credits of $711,000 that are expected to be recoverable from the Australian Taxation Office.

	2005 $'000	2004 $'000

18 RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET COST OF SERVICES

Net cash flows from operating activities	(272)	177
Cash flows from Government/Appropriations	(17,399)	(18,016)
Acceptance by the Crown Entity of employee benefits and other liabilities	(936)	(1,279)
Depreciation and amortisation	(874)	(847)
Decrease/(increase) in provisions	86	(165)
Increase/(decrease) in prepayments and other assets	(51)	112
Decrease/(increase) in creditors	411	120
Increase/(decrease) in receivables	60	(14)
Decrease/(increase) in other liabilities	101	79
Net gain/(loss) on disposal of non-current assets	(17)	(1)
Net cost of services	**(18,891)**	**(19,834)**

19 BUDGET REVIEW

Net cost of services

There was a variation of $323,000 between the budgeted net cost of services and actual. This was primarily due to additional funds of $331,000 being provided to undertake new legislative reviews and to cover a portion of the public sector pay increases.

Assets and liabilities

Current assets were higher than budget by $120,000 due to an increase in receivables and cash assets. Current liabilities were lower than budget mainly due to an increase in provisions.

Cash flows

Cash flows from operating activities are higher than budget by $182,000 primarily due to increase in salaries across the public sector. Cash flows from investment activities are $76,000 higher than budget through higher investment income and workshop charges.

20 FINANCIAL INSTRUMENTS

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

All trade debtors are recognised as amounts receivable at balance date. Collectibility of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are to be written off. A provision for doubtful debts is only raised when some doubt as to collection exists. The credit risk is the carrying amount. No interest is earned on trade debtors. The carrying amount approximates net fair value. Sales are made on 14-day terms.

Other assets

All other assets are current and they are mainly represented by prepayments of maintenance and rent. The credit risk is the carrying amount. There is no interest earned on prepayments.

Bank overdraft

The Office does not have any bank overdraft facility.

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 Directions 219.01 allows the relevant Minister to award interest to late payment. The Office did not pay any penalty interest during the year.

21 IMPACT OF ADOPTING AUSTRALIAN EQUIVALENT TO IFRS

The Office will apply the Australian equivalents to International Financial Reporting Standards (AEIFRS) from the reporting period beginning 1 July 2005.

The Manager, Personnel and Accounts, has been assigned the responsibility of oversighting the transition to AEIFRS. The Senior Accounting Officer monitors the latest developments and reports to the Manager.

To date, the following has been completed:

* The data needs and system requirements were reviewed during the year but no modification to the system is warranted
* The final Opening Balance Sheet as at 1 July 2004 prepared under AEIFRS (in parallel with existing Australian Generally Accepted Accounting Principles (AGAAP)) has been finalised and submitted to the NSW Treasury and The Audit Office of NSW
* All NSW Treasury 'likely indicative mandates' have been reviewed but no significant financial impacts were identified.

However, under the new AASB 138 *Intangible Assets*, some software will be reclassified as 'Intangibles' instead of plant and equipment. This is the only area where changes to our accounting policies are likely to occur. The financial impacts of this change are disclosed.

	(AGAAP) 1 July 2004 $'000	(AEIFRS) 1 July 2004 $'000
Non-current assets		
Plant and equipment	2,693	1,212
Intangibles	-	1,481
Total	**2,693**	**2,693**

To ensure consistency at the whole of government level, NSW Treasury has advised agencies of options it is likely to mandate for the NSW Public Sector.

As at 30 June 2005, the Office does not anticipate any material financial impacts on its equity and cash flows. The actual effects of the transition may differ from the estimated figures below because of pending changes to the AEIFRS, including the UIG Interpretations and/or emerging accepted practice in their interpretation and application. The Office's accounting policies may also be affected by a proposed standard to harmonise accounting standards with Government Finance Statistics (GFS). However, the impact is uncertain because it depends on when this standard is finalised and whether it can be adopted in 2005 - 2006.

(a) Reconciliation of key aggregates

Reconciliation of equity under existing Standards (AGAAP) to equity under AEIFRS:

	30 June 2005 $'000	1 July 2004 $'000
Total equity under AGAAP	1,306	1,749
Adjustment	-	-
Total equity under AEIFRS	**1,306**	**1,749**

Reconciliation of surplus / (deficit) under AGAAP to surplus / (deficit) under AEIFRS:

	30 June 2005 $'000
Surplus / (deficit) under AGAAP	(443)
Adjustment	-
Surplus / (deficit) under AEIFRS	**(443)**

Based on the above, the net cost of service should remain the same if AEIFRS were applied in 2004 - 2005.

(b) Grant recognition for not-for profit entities

The Office will apply the requirements in AASB 1004 *Contributions* regarding contributions of assets (including grants) and forgiveness of liabilities. There are no differences in the recognition requirements between the new AASB 1004 and the current AASB 1004. However, the new AASB 1004 may be amended by proposals in Exposure Draft (ED) 125 *Financial Reporting by Local Governments*. If the ED 125 approach is applied, revenue and / or expenses recognition will not occur until either the Office had supplied the related goods and / or services (where grants are in-substance agreements for the provision of goods and services) or until conditions are satisfied. ED 125 may therefore delay revenue recognition compared with AASB 1004, where grants are recognised when controlled. However, at this stage, the timing and dollar impact of these amendments is uncertain.

Appendices

Contents

A: Police complaints profile

Figure 63 - Outcomes of written complaints about police officers finalised, categorised by allegation

Each individual complaint that we receive may contain a number of allegations about a single incident. For example, a person arrested may complain to us about unreasonable arrest, assault and failure to return property. In the 4,367 complaints we finalised this year, 9,058 allegations were made. This figure lists these in categories and shows the action that was taken in relation to each allegation.

Category	Declined	Management outcomes following investigation of complaint (including adverse findings)	No management outcome (including no adverse finding)	Conciliated/other	Total
Criminal Conduct					
Conspiracy/cover up	52	26	187	1	266
Drug offences	40	10	102	0	152
Theft	16	8	106	0	130
Consorting	20	13	95	0	128
Bribery/extortion	14	2	45	0	61
Perjury	21	6	33	0	60
Fraud	9	13	32	0	54
Sexual assault	4	2	34	0	40
Dangerous/culpable driving	5	3	6	0	14
Murder/manslaughter	3	0	6	0	9
Telephone tapping	1	0	1	0	2
Other	27	33	101	0	161
Total	**212**	**116**	**748**	**1**	**1,077**
Assault					
Physical/mental injury	78	32	321	2	433
No physical/mental injury	90	14	196	23	323
Total	**168**	**46**	**517**	**25**	**756**
Investigator/prosecution misconduct					
Faulty investigation/prosecution	300	190	316	56	862
Fabrication	27	1	44	0	72
Failure to prosecute	26	20	38	4	88
Dispute traffic infringement notice	53	0	4	3	60
Unjust prosecution (non-traffic)	15	0	10	0	25
Supress evidence	3	4	11	1	19
Forced confession	1	0	1	0	2
Total	**425**	**215**	**424**	**64**	**1,128**
Stop/search/seize					
Unreasonable arrest/detention	69	9	121	14	213
Unnecessary force/damage	7	3	37	3	50
Unjust search/entry	22	4	73	14	113
Strip search	2	1	19	0	22
Faulty search warrant	1	0	10	0	11
Total	**101**	**17**	**260**	**31**	**409**
Abuse/rudeness					
Traffic rudeness	53	6	29	12	100
Racist	7	2	25	6	40
Other social prejudice	4	1	3	2	10
Other	151	37	137	43	368
Total	**215**	**46**	**194**	**63**	**518**

Category	Declined	Management outcomes following investigation of complaint (including adverse findings)	No management outcome (including no adverse finding)	Conciliated/other	Total
Administrative wrong conduct					
Deficient management	17	65	53	3	138
Deficient investigation	11	46	20	19	96
Delay in correspondence	8	1	5	0	14
Summons/warrant/order	5	0	4	0	9
Cell/premises conditions	0	0	4	1	5
Child abuse related	1	0	0	0	1
Whistleblower	1	0	0	0	1
Other	36	26	28	7	97
Total	**79**	**138**	**114**	**30**	**361**
Breach of rights					
Unreasonable treatment	121	13	149	49	332
Failure to provide/delay	59	16	111	16	202
Failure to return property	39	10	25	8	82
Total	**219**	**39**	**285**	**73**	**616**
Inadvertent wrong treatment					
Property damage	6	0	25	3	34
Administrative matter arising	5	3	7	3	18
Total	**11**	**3**	**32**	**6**	**52**
Information					
Inappropriate disclosure of confidential information	43	37	174	11	265
Providing false information	47	86	92	5	230
Inappropriate accessing of information	13	52	65	3	133
Failure to notify or give information	31	44	67	12	154
Total	**134**	**219**	**398**	**31**	**782**
Other misconduct					
Breach of police rules or regulations	240	578	388	18	1,224
Threats/harassment	202	44	346	76	668
Failure to take action	330	76	233	59	698
Misuse of office	26	37	130	5	198
Traffic/parking	24	49	56	11	140
Faulty policing	10	3	19	2	34
Failure to identify as police officer or wear number	11	3	19	5	38
Sexual harassment	2	19	26	0	47
Drink on duty	0	8	8	1	17
Other	110	59	102	24	295
Total	**955**	**876**	**1,327**	**201**	**3,359**
Summary of allegations					
Total	**2,368**	**1,715**	**4,299**	**525**	**9,058**

B: All public sector agencies — summary table of action taken

KEY

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 | Premature — second tier review referral | 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

Figure 64 - Action taken on formal complaints about all public sector agencies (except NSW Police, DoCS and DADHC and those relating to child protection notifications) finalised in 2004 – 2005 - summary table

This figure shows the action we took on each of the written complaints that we finalised this year about public sector agencies, broken down into agency groups. See Appendices C, D, E, and F for a further breakdown into specific agencies in those groups.

Complaint about	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Other public sector agencies	767	78	278	32	153	64	8	2	0	1	1	1	1	1,386
Local government	417	109	168	9	87	36	3	0	0	1	0	0	3	833
Corrections	118	109	130	10	210	28	1	4	0	2	0	0	1	613
Freedom of information	27	17	56	5	61	9	0	0	0	1	2	0	4	182
Total	**1,329**	**313**	**632**	**56**	**511**	**137**	**12**	**6**	**0**	**5**	**3**	**1**	**9**	**3,014**

C: General complaints about the public sector

KEY

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 | Premature — second tier review referral | 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

Figure 65 - Action taken on general formal complaints about the public sector finalised in 2004-2005

This figure shows the action we took on each of the written complaints about agencies in our 'other public sector agencies' group finalised this year.

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Amaroo Local Aboriginal Land Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ambulance Service of NSW	5	0	1	0	1	0	0	0	0	0	0	0	0	7
Anti-Discrimination Board	2	0	2	0	0	0	0	0	0	0	0	0	0	4
Art Gallery of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Attorney Generals Department	13	0	2	0	1	0	0	0	0	0	0	0	0	16
Board of Surveying and Spatial Information of NSW (BOSSI)	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cabinet Office	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Central Coast Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Central Sydney Area Health Service	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Charles Sturt University	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Community Relations Commission	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Country Energy	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Deniliquin Aboriginal Land Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Dental Board of New South Wales	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Department of Aboriginal Affairs	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Commerce	28	2	15	2	8	2	0	0	0	0	0	0	0	57
Department of Education and Training	50	3	20	1	8	2	1	0	0	0	1	0	0	86
Department of Energy, Utilities and Sustainability	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Department of Environment and Conservation	10	2	3	0	1	0	0	0	0	0	0	0	0	16
Department of Gaming and Racing	3	0	0	1	0	1	0	0	0	0	0	0	0	5
Department of Health	11	0	2	0	3	0	0	0	0	0	0	0	0	16
Department of Housing	40	8	32	0	15	10	1	0	0	0	0	0	0	106
Department of Infrastructure, Planning and Natural Resources	8	4	6	1	2	2	0	0	0	0	0	0	0	23
Department of Lands	30	1	8	0	2	1	0	0	0	0	0	1	0	43
Department of Local Government	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Department of Primary Industries	5	2	2	2	0	0	1	0	0	0	0	0	0	12
Department of Sport and Recreation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Director of Public Prosecutions	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Election Funding Authority of New South Wales	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Energy Australia	8	0	0	1	0	0	0	0	0	0	0	0	0	9
Environment Protection Authority	1	1	2	0	0	0	0	0	0	0	0	0	0	4
Eraring Energy	1	0	0	0	0	0	0	0	0	0	0	0	0	1
First State Superannuation Trustee Corporation	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Greater Southern Area Health Service	4	0	0	0	0	0	0	0	0	0	0	0	0	4
Greater Western Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Health Care Complaints Commission	4	0	5	2	0	0	0	0	0	0	0	0	0	11
Heritage Council of New South Wales	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Heritage Office, NSW	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Home Purchase Assistance Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Housing Appeals Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Hunter and New England Area Health Service	7	0	0	0	0	0	0	0	0	0	0	0	0	7
Hunter Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Hunter Water Corporation Limited	3	0	0	0	0	1	0	0	0	0	0	0	0	4
Independent Commission Against Corruption	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Independent Transport Safety and Reliability Regulator	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Infringement Processing Bureau	81	14	34	0	25	7	1	0	0	0	0	0	0	162
Integral Energy	4	0	0	0	0	0	0	0	0	0	0	0	0	4
Landcom (NSW Land and Housing Corporation)	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Legal Aid Commission of New South Wales	9	0	0	0	2	1	0	0	0	0	0	0	0	12
Liquor Administration Board	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Local Aboriginal Land Council (unnamed)	2	0	0	0	0	1	0	0	0	0	0	0	0	3
Local Land Boards	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Lord Howe Island Board	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Macquarie Generation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Macquarie University	1	0	0	1	0	0	1	0	0	0	0	0	0	3
Mid North Coast Area Health Service	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Mid Western Area Health Service	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Ministry for the Arts	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry for Police	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry of Transport	10	1	5	0	1	2	1	0	0	0	0	0	0	20
Motor Accidents Authority	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Motor Vehicle Repair Industry Authority	2	0	0	0	0	0	0	0	0	0	0	0	0	2
National Parks and Wildlife Service	4	2	2	1	1	0	0	0	0	0	0	0	1	11
New England Area Health Service	4	0	0	0	0	0	0	0	0	0	0	0	0	4
North Coast Area Health Service	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Northern Rivers Area Health Service	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Northern Sydney and Central Coast Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Northern Sydney Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Aboriginal Land Council	0	0	0	0	1	1	0	0	0	0	0	0	0	2

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
NSW Crime Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Fire Brigades	1	0	0	1	0	0	0	0	0	0	0	0	0	2
NSW Lotteries	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Maritime Authority	8	0	5	0	0	0	0	0	0	0	0	0	0	13
NSW Medical Board	3	0	0	0	0	0	0	0	0	0	0	0	0	3
NSW Treasury	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Office of Community Housing	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	11	0	7	0	3	0	0	0	0	0	0	0	0	21
Office of Public Guardian	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Office of State Revenue	37	0	9	0	3	5	0	0	0	0	0	0	0	54
Physiotherapists Registration Board	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Pillar Administration	3	0	3	0	0	1	0	0	0	0	0	0	0	7
Port Kembla Port Corporation	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Privacy NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Railcorp	45	3	16	7	9	3	1	2	0	0	0	0	0	86
Registrar of Aboriginal Land Rights Act	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Registry of Births, Deaths and Marriages	5	0	2	0	6	2	0	0	0	0	0	0	0	15
Rental Bond Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	57	7	16	2	14	7	0	0	0	0	0	0	0	103
Rural Assistance Authority	0	0	3	0	0	0	0	0	0	0	0	0	0	3
Rural Fire Service	4	1	2	0	2	0	0	0	0	1	0	0	0	10
Rural Lands Protection Board	0	0	1	0	1	0	0	0	0	0	0	0	0	2
South Eastern Sydney and Illawarra Area Health Service	4	0	0	0	0	0	0	0	0	0	0	0	0	4
South Eastern Sydney Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
South Western Area Health Service	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Southern Area Health Service	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Southern Cross University	4	0	1	0	1	1	0	0	0	0	0	0	0	7
Southern Sydney Area Health Service	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Authorities Superannuation Trustee Corporation	0	1	0	0	0	0	0	0	0	0	0	0	0	1
State Debt Recovery Office	33	12	34	1	16	1	0	0	0	0	0	0	0	97
State Electoral Office	0	0	3	0	0	2	0	0	0	0	0	0	0	5
State Emergency Service	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Library of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Transit Authority of NSW	5	2	0	0	0	0	0	0	0	0	0	0	0	7
Sydney Ports Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney South West Area Health Service	8	0	1	0	1	0	0	0	0	0	0	0	0	10
Sydney Water Corporation	2	2	0	1	1	3	0	0	0	0	0	0	0	9
Sydney West Area Health Service	2	1	1	0	0	0	0	0	0	0	0	0	0	4
TAFE	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Tow Truck Industry Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
University of New England	1	1	1	1	0	0	0	0	0	0	0	0	0	4
University of New South Wales	4	1	1	0	0	1	0	0	0	0	0	0	0	7
University of Newcastle	4	0	1	0	0	0	0	0	0	0	0	0	0	5
University of Sydney	5	1	3	1	2	0	1	0	0	0	0	0	0	13

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
University of Western Sydney	5	1	2	1	1	0	0	0	0	0	0	0	0	10
University of Wollongong	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Valuer General	86	0	2	1	2	0	0	0	0	0	0	0	0	91
Veterinary Surgeons Investigating Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Waste Services NSW	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	2	0	0	1	0	1	0	0	0	0	0	0	0	4
WorkCover Authority	9	2	5	2	2	0	0	0	0	0	0	0	0	20
Workers Compensation (Dust Diseases) Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Total	**767**	**78**	**278**	**32**	**153**	**64**	**8**	**2**	**0**	**1**	**1**	**1**	**1**	**1,386**

D: Local government

KEY

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 | Premature — second tier review referral | 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

Figure 66 - Action taken on formal complaints finalised in 2004-2005 about local government

This figure 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				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Albury City Council	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Armidale Dumaresq Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ashfield Municipal Council	2	3	0	0	0	0	0	0	0	0	0	0	0	5
Auburn Council	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Ballina Shire Council	2	1	1	0	1	0	0	0	0	0	0	0	0	5
Bankstown City Council	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Bathurst Regional Council	1	2	1	0	0	0	0	0	0	0	0	0	0	4
Baulkham Hills Shire Council	6	0	5	0	1	0	0	0	0	0	0	0	0	12
Bega Valley Council	4	0	0	0	2	0	0	0	0	0	0	0	0	6
Bellingen Shire Council	2	1	1	0	0	0	0	0	0	0	0	0	0	4
Blayney (Abattoir) County Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Bogan Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Bombala Council	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Boorowa Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Botany Council	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Burwood Council	6	0	0	0	4	0	0	0	0	0	0	0	0	10
Byron Shire Council	3	0	3	0	0	0	0	0	0	0	0	0	0	6
Cabonne Council	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Camden Council	2	0	2	0	0	0	0	0	0	0	0	0	0	4
Campbelltown City Council	1	0	1	0	2	1	0	0	0	0	0	0	0	5
Canada Bay Council	7	0	3	0	2	0	0	0	0	0	0	0	0	12
Canterbury City Council	1	2	5	0	2	0	0	0	0	0	0	0	0	10
Central Darling Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Cessnock City Council	1	1	2	0	2	0	0	0	0	0	0	0	0	6
City of Blacktown Council	2	1	1	0	0	0	0	0	0	0	0	0	0	4
Clarence Valley Council	3	4	1	0	2	0	0	0	0	0	0	0	0	10
Coffs Harbour City Council	2	1	3	0	0	0	0	0	0	0	0	0	0	6
Coolamon Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Cooma-Monaro Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Cootamundra Shire Council	0	1	2	0	0	0	0	0	0	0	0	0	0	3
Corowa Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Council of the City of Blue Mountains	8	3	2	0	0	1	0	0	0	0	0	0	0	14
Council of the City of Broken Hill	0	2	1	0	0	0	0	0	0	0	0	0	0	3
Council of the City of Lithgow	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Cowra Shire Council	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Dubbo City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Council	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Dungog Shire Council	3	1	3	0	0	1	0	0	0	0	0	0	0	8
Eurobodalla Council	5	1	1	0	0	0	0	0	0	0	0	0	0	7
Fairfield City Council	5	0	2	1	1	1	0	0	0	0	0	0	0	10
Forbes Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Glen Innes Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Severn Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Gloucester Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Goldenfields Water County Council	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Gosford City Council	25	4	13	2	6	4	0	0	0	0	0	0	0	54
Goulburn Mulwaree Shire Council	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Great Lakes Council	3	1	1	0	0	1	0	0	0	0	0	0	0	6
Greater Hume Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Greater Queanbeyan City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Greater Taree City Council	2	2	2	0	1	1	0	0	0	0	0	0	0	8
Griffith City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gunnedah Shire Council	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Gwydir Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Harden Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Hastings Council	9	2	3	0	2	0	0	0	0	0	0	0	0	16
Hawkesbury City Council	4	1	1	0	0	0	0	0	0	0	0	0	0	6
Holroyd City Council	3	0	1	0	1	2	0	0	0	0	0	0	0	7
Hunters Hill Municipal Council	3	1	1	0	0	0	0	0	0	0	0	0	0	5
Hurstville City Council	3	0	1	0	1	0	0	0	0	0	0	0	0	5
Inverell Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Junee Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Kempsey Shire Council	7	2	3	0	0	0	0	0	0	0	0	0	0	12
Kogarah Municipal Council	4	0	0	0	2	0	0	0	0	0	0	0	0	6
Ku-ring-gai Municipal Council	4	2	3	0	2	0	0	0	0	0	0	0	0	11
Kyogle Council	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Lachlan Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Lake Macquarie City Council	5	1	6	1	4	1	0	0	0	0	0	0	0	18
Lane Cove Municipal Council	2	1	1	0	0	0	0	0	0	1	0	0	0	5
Leichhardt Municipal Council	2	1	2	0	1	0	0	0	0	0	0	0	0	6
Lismore City Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Liverpool City Council	5	1	0	0	2	1	0	0	0	0	0	0	0	9
Lockhart Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Maitland City Council	1	1	0	0	2	0	0	0	0	0	0	0	0	4
Manly Council	5	1	3	0	0	1	0	0	0	0	0	0	0	10
Marrickville Council	3	1	1	0	0	0	0	0	0	0	0	0	0	5
Mid-Western County Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Mid-Western Regional Council	2	0	2	0	2	0	0	0	0	0	0	0	0	6
Midcoast Water	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Moree Plains Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Mosman Municipal Council	7	5	0	0	0	0	0	0	0	0	0	0	1	13
Murrumbidgee Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Muswellbrook Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Nambucca Shire Council	1	1	1	0	0	0	0	0	0	0	0	0	0	3
Narrabri Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Newcastle City Council	8	0	4	0	2	1	0	0	0	0	0	0	0	15
North Coast Water	1	0	0	0	0	0	0	0	0	0	0	0	0	1
North Sydney Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Orange City Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Palerang Council	3	1	0	0	3	0	0	0	0	0	0	0	0	7
Parkes Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Council	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Parramatta City Council	6	1	3	0	2	0	0	0	0	0	0	0	0	12
Penrith City Council	5	1	0	0	1	0	0	0	0	0	0	0	0	7
Pittwater Council	2	4	4	0	0	1	0	0	0	0	0	0	0	11
Port Stephens Shire Council	8	4	4	0	3	0	0	0	0	0	0	0	0	19
Principal Certifying Authority	1	1	0	0	1	1	0	0	0	0	0	0	0	4
Randwick City Council	5	1	1	0	1	1	0	0	0	0	0	0	0	9
Richmond Valley Council	2	0	2	0	1	0	0	0	0	0	0	0	0	5
Riverina Water County Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Rockdale Municipal Council	13	6	3	0	0	1	0	0	0	0	0	0	0	23
Ryde City Council	4	3	2	0	0	0	0	0	0	0	0	0	0	9
Shellharbour City Council	1	0	0	1	0	0	0	0	0	0	0	0	0	2
Shoalhaven City Council	5	1	2	1	1	0	0	0	0	0	0	0	2	12
Singleton Shire Council	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Snowy River Shire Council	3	0	1	0	0	1	0	0	0	0	0	0	0	5
Strathfield Municipal Council	3	0	1	1	0	0	0	0	0	0	0	0	0	5
Sutherland Shire Council	10	4	8	0	6	2	0	0	0	0	0	0	0	30
Sydney City Council	13	4	1	0	3	4	0	0	0	0	0	0	0	25
Tamworth Regional Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Tenterfield Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
The Council of the Municipality of Kiama	2	0	0	0	3	0	0	0	0	0	0	0	0	5
The Council of the Shire of Hornsby	18	3	4	0	1	0	0	0	0	0	0	0	0	26
Tumbarumba Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Tumut Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Tweed Shire Council	4	1	1	0	1	0	0	0	0	0	0	0	0	7
Upper Hunter County Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Upper Hunter Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Upper Lachlan Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Urana Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	3	0	0	0	1	0	0	0	0	0	0	0	4
Warringah Council	8	0	2	0	0	1	1	0	0	0	0	0	0	12
Waverley Council	6	0	4	0	0	0	0	0	0	0	0	0	0	10
Weddin Shire Council	1	1	0	0	0	1	0	0	0	0	0	0	0	3
Wentworth Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Willoughby City Council	1	0	0	0	2	0	0	0	0	0	0	0	0	3
Wingecarribee Shire Council	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Wollondilly Shire Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Wollongong City Council	25	5	4	0	2	0	0	0	0	0	0	0	0	36
Woollahra Municipal Council	5	3	0	1	2	0	0	0	0	0	0	0	0	11
Wyong Shire Council	26	2	2	0	1	2	0	0	0	0	0	0	0	33
Young Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Council not named	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Total	**417**	**109**	**168**	**9**	**87**	**36**	**3**	**0**	**0**	**1**	**0**	**0**	**3**	**833**

E: Corrections

KEY

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 | Premature — second tier review referral | 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

Figure 67 - Action taken on formal complaints finalised in 2004 - 2005 about corrections

This figure shows the action we took on each of the written complaints finalised this year about corrections.

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Department of Corrective Services and centres	97	92	99	9	178	22	0	4	0	0	0	0	0	501
GEO Australia	2	9	14	0	20	2	1	0	0	2	0	0	1	51
Justice Health	13	2	14	1	8	2	0	0	0	0	0	0	0	40
Department of Juvenile Justice and centres	6	6	3	0	4	2	0	0	0	0	0	0	0	21
Total	**118**	**109**	**130**	**10**	**210**	**28**	**1**	**4**	**0**	**2**	**0**	**0**	**1**	**613**

Figure 68 - Number of formal and informal matters received in 2004-2005 about correctional centres, DCS and GEO – by institution

Institution	Formal	Informal	Total
Bathurst Correctional Centre	35	123	158
Berrima Correctional Centre	8	40	48
Broken Hill Correctional Centre	0	2	2
Cessnock Correctional Centre	9	51	60
Cooma Correctional Centre	7	45	52
Court Escort/Security Unit	12	26	38
Department of Corrective Services head office	103	719	822
Dillwynia Correctional Centre	1	37	38
Drug Detector Dog Unit	1	1	2
Emu Plains Correctional Centre	4	16	20
Glen Innes Correctional Centre	2	4	6
Goulburn Correctional Centre	50	208	258
Goulburn X Wing	0	2	2
Grafton Correctional Centre	8	64	72
Grafton Correctional Centre C Unit	1	2	3
Ivanhoe "Warakirri" Correctional Centre	0	1	1
John Morony Correctional Centre	13	83	96
Junee Correctional Centre	52	142	194
Kariong Juvenile Correctional Centre (from 20/12/04-30/6/05)	5	32	37
Kirkconnell Correctional Centre	12	60	72
Lithgow Correctional Centre	20	76	96
Long Bay Hospital	15	44	59
Malabar Special Programs Centre	36	99	135
Mannus Correctional Centre	4	8	12
Metropolitan Medical Transient Centre	9	41	50
Metropolitan Remand Reception Centre	37	224	261
Mid North Coast Correctional Centre	40	181	221
Mulawa Correctional Centre	11	132	143
Norma Parker Correctional Centre	1	0	1
Oberon Correctional Centre	1	3	4
Parklea Correctional Centre	20	108	128
Parole Board	1	5	6
Parramatta Correctional Centre	11	53	64
Parramatta Transitional Centre	1	24	25
Periodic Detention Centres	2	7	9
Probation and Parole Service	3	12	15
Silverwater Correctional Centre	10	65	75
Special Care Unit Long Bay	0	1	1
Special Purpose Prison Long Bay	6	8	14
St Heliers Correctional Centre	3	16	19
Tamworth Correctional Centre	2	12	14
The GEO Group Australia Pty Ltd	5	72	77
Yetta Dhinnakkal (Brewarrina) Correctional Centre	0	3	3
Total	**561**	**2,852**	**3,413**

Figure 69 - Number of formal and informal matters received in 2004-2005 about juvenile justice centres and DJJ – by institution

Institution	Formal	Informal	Total
Department of Juvenile Justice - Head Office	8	53	61
Acmena Juvenile Justice Centre	1	10	11
Cobham Juvenile Justice Centre	1	6	7
Frank Baxter Juvenile Justice Centre	1	61	62
Kariong Juvenile Justice Centre (from 1/7/04-19/12/04)	4	34	38
Keelong Juvenile Justice Centre	0	10	10
Orana Juvenile Justice Centre	1	5	6
Reiby Juvenile Justice Centre	1	14	15
Riverina Juvenile Justice	1	10	11
Yasmar Juvenile Justice Centre	1	13	14
Total	**19**	**216**	**235**

F: Freedom of information

KEY

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 | Premature — second tier review referral | 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

Figure 70 - Action taken on formal complaints finalised in 2004-2005 about FOI

This figure 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				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Attorney Generals Department	1	1	1	0	2	0	0	0	0	0	0	0	0	5
Australian Museum	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Bathurst Regional Council	2	0	1	0	0	1	0	0	0	0	0	0	0	4
Bombala Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Casino Control Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Sydney Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1
City of Blacktown Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Aboriginal Affairs	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Commerce	1	0	1	0	2	0	0	0	0	1	0	0	0	5
Department of Community Services	0	0	1	0	1	1	0	0	0	0	0	0	0	3
Department of Corrective Services	0	0	2	0	2	0	0	0	0	0	0	0	0	4
Department of Education and Training	0	1	3	1	1	0	0	0	0	0	0	0	0	6
Department of Gaming and Racing	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Department of Health	1	0	0	1	1	0	0	0	0	0	0	0	0	3
Department of Infrastructure, Planning and Natural Resources	0	0	3	0	4	0	0	0	0	0	0	0	0	7
Department of Lands	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Primary Industries	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Sport and Recreation	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Dungog Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Energy Australia	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Fairfield City Council	0	0	1	1	0	1	0	0	0	0	0	0	0	3
Gosford City Council	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Greater Murray Health Service	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Gunnedah Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Health Care Complaints Commission	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Justice Health	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Kempsey Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Legal Aid Commission of New South Wales	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Local Aboriginal Land Council (unnamed)	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Maitland City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry of Transport	0	0	1	0	0	0	0	0	0	0	0	0	0	1
New South Wales Fire Brigades	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Northern Rivers Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1

Agency	Assessment only	Preliminary or informal investigation								Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
NSW Department of Environment and Conservation	0	0	0	0	1	0	0	0	0	0	0	0	1	2
NSW Maritime Authority	1	0	0	0	3	0	0	0	0	0	0	0	0	4
NSW Police Service	3	10	16	0	12	2	0	0	0	0	1	0	0	44
NSW Treasury	0	1	1	0	1	0	0	0	0	0	0	0	0	3
Office of State Revenue	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Office of the Board of Studies	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Office of the Director of Public Prosecutions	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Penrith City Council	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Pillar Administration	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Pittwater Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Premier's Department	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Public Trustee	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Railcorp	3	0	1	1	1	0	0	0	0	0	0	0	0	6
Roads and Traffic Authority	4	1	12	0	2	1	0	0	0	0	0	0	0	20
Rockdale Municipal Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
South Eastern Sydney and Illawarra Area Health Service	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Transit Authority of NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Strathfield Municipal Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Sutherland Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney Catchment Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Sydney City Council	1	0	0	0	2	0	0	0	0	0	0	0	1	4
Sydney Water Corporation	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Transport Infrastructure Development Corporation	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Tweed Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
University of New South Wales	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of Sydney	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of Western Sydney	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Veterinary Surgeons Investigating Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Waverley Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	0	1	0	0	1	0	0	0	0	0	0	0	0	2
WorkCover Authority	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Wyong Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Total	**27**	**17**	**56**	**5**	**61**	**9**	**0**	**0**	**0**	**1**	**2**	**0**	**4**	**182**

G: FOI annual reporting requirements

The following information is provided in accordance with our annual reporting requirements under the *Freedom of Information Act 1989* (FOI Act), the Freedom of Information Regulation 2005 and Appendix B of the NSW Ombudsman 'FOI Procedure Manual'. Under s. 9 and Schedule 2 to the FOI Act, the Ombudsman is exempt from the operation of the Act in relation to its complaint-handling, investigative and reporting functions. We therefore rarely make a determination under the Act, as most applications we receive, which was the case in all but three applications this year, relate to these functions.

Clause 10(1)(a) and (2) of the Regulation and Appendix B of the NSW FOI Procedure Manual

Section A: Numbers of new FOI requests

We received nine new FOI applications in the 2004–2005 year. None from 2003–2004 were brought forward into 2004–2005. All applications were processed and completed.

	FOI requests	Personal	Other	Total
A1	New (including transferred in)	7	2	9
A2	Brought forward	0	0	0
A3	Total to be processed	7	2	9
A4	Completed	7	2	9
A5	Transferred out	0	0	0
A6	Withdrawn	0	0	0
A7	Total processed	7	2	9
A8	Unfinished (carried forward)	0	0	0

Section B: What happened to completed requests?

Six of the completed applications were for documents which related to the Ombudsman's complaint handling, investigative and reporting functions. In all these matters an explanation of s. 9 and our inclusion in Schedule 2 to the FOI Act was provided. In the first of the three other applications, access was provided to all requested documents in our possession except those exempt from the operation of the FOI Act under s. 43A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. In the second, access was provided to all requested documents except those exempt under s. 9 and Schedule 2 to the FOI Act. In the third, access was provided to all requested documents except those exempt under clause 6 of Schedule 1 to the FOI Act.

	FOI requests	Personal	Other
B1	Granted in full	0	0
B2	Granted in part	1	2
B3	Refused	6	0
B4	Deferred	0	0
B5	Completed*	7	2

*The figures on the line B5 should be the same as the corresponding ones on A4. All but three of these applications related to functions of the office which are excluded from the operation of the FOI Act.

Section C: Ministerial certificates

No ministerial certificates were issued in relation to FOI applications to the Ombudsman this year.

	Ministerial certificates	No.
C1	Ministerial certificates issued	0

Section D: Formal consultations

We received one request requiring a formal consultation.

	Request requiring formal consultations	No.
D1	Number of requests requiring formal consultation(s)	1

Section E: Amendment of personal records

We received no requests for the amendment of personal records.

	Ministerial certificates	No.
E1	Result of amendment—agreed	0
E2	Result of amendment—refused	0
E3	Total	0

Section F: Notation of personal records

We received no requests for notations this year.

	Requests for notation	No.
F1	Number of requests for notation	0

Section G: FOI requests granted in part or refused

We made nine decisions to grant access in part or to restrict access.

	Basis for disallowing or restricting access	Personal	Other
G1	s 19 (application incomplete, wrongly directed)	0	0
G2	s 22 (deposit not paid)	0	0
G3	s 25(1)(a1)(diversion of resources)	0	0
G4	s 25(1)(a) (exempt)	7	1
G5	s 25(1)(b), (c), (d) (otherwise available)	0	0
G6	s 28(1)(b) (documents not held)	0	1
G7	s 24(2)—deemed refused, over 21 days	0	0
G8	s 31(4) (released to Medical Practitioner)	0	0
G9	Total	7	2

Section H: Costs and fees of requests processed during the period

We received five application fees of $30 and one of $40. The $40 fee was sent with the sole internal review application. Two of the $30 cheques were returned to the applicants.

	Request requiring formal consultations	Assessed costs	FOI fees received
H1	All completed requests	$130	$190

Section I: Discounts allowed

No discounts applied to the applications.

	Type of discount allowed	Personal	Other
I1	Public interest	0	0
I2	Financial hardship–Pensioner/Child	0	0
I3	Financial hardship–Non profit organisation	0	0
I4	Totals	0	0
I5	Significant correction of personal records	0	0

Section J: Days to process

Eight applications were dealt with within 21 days. One application was dealt with within 35 days as it required external consultation under s. 32 of the FOI Act.

	Days to process	Personal	Other
J1	0–21 days	7	1
J2	22–35 days	0	1
J3	Over 35 days	0	0
J4	Totals	7	2

Section K: Processing time

All applications were processed within ten hours.

	Processing hours	Personal	Other
K1	0-10 hours	7	2
K2	11-20 hours	0	0
K3	21-40 hours	0	0
K4	Over 40 hours	0	0
K5	Totals	7	2

Section L1: Reviews and appeals

One application proceeded to internal review. Under section 52(5)(d) of the FOI Act we cannot review our own determinations. No applications proceeded to the Administrative Decisions Tribunal (ADT).

	Reviews and appeals finalised	No.
L1	Internal reviews finalised	1
L2	Ombudsman reviews finalised	0
L3	ADT appeals finalised	0

Section L2: Details of internal review results

		Personal		Other	
	Grounds on which internal review requested	Upheld	Varied	Upheld	Varied
L4	Access refused	1	0	0	0
L5	Deferred	0	0	0	0
L6	Exempt matter	0	0	0	0
L7	Unreasonable charges	0	0	0	0
L8	Charge unreasonably incurred	0	0	0	0
L9	Amendment refused	0	0	0	0
L10	Totals	1	0	0	0

Clause 10(1)(b) and (3) of the Regulation

Dealing with the above matters took very little time and did not impact to a significant degree on our activities during the year. The preparation of our 'Statement of affairs' and 'Summary of affairs' also does not take much time and again could not be said to have impacted to any significant degree on our activities. In terms of clause 9(3)(c), (d) and (e), no major issues arose during the year in connection with our compliance with FOI requirements, and given that there could be no inquiries by us of our own determinations and there were no appeals of our decisions made to ADT, there is no information to give as specified at (d) and (e) of Clause 9.

H: Mandatory annual reporting requirements

Under the *Annual Reports (Departments) Act 1985*, the *Annual Reports (Departments) Regulation 2000* and various Treasury circulars, our office is required to include in this report information on the following topics. All references to sections are to sections in the Annual Reports (Departments) Act and all references to clauses are to clauses in the Annual Reports (Departments) Regulation, except where stated otherwise. TC means Treasury Circular. PC means Premier's Circular.

Legislative provision	Topic	Comment
s 11A	Letter of submission	see page 2
s 16(5)	Particulars of extensions of time	no extension applied for
s 11 Sch 1 to the *Annual Reports (Departments) Regulation 2000* TC 01/12	Charter	see page 4, 8 and this Appendix (Legislation administered)
	Aims and objectives	see page 4
	Access	see the back cover
	Management and structure: • names of principal officers, appropriate qualifications • organisational chart indicating functional responsibilities	see page 8, 9 and this Appendix (Significant committees)
	Summary review of operations	see pages 4-5, 10-11
	Funds granted to non-government community organisations	We did not grant any funds of this sort
	Legal change	see this Appendix
	Economic or other factors	see pages 19-24
	Management and activities	see pages 19-39
	Major works in progress	There were no such works
	Research and development	see pages 59-60 and 121
	Human resources	see page 17 and this Appendix
	Consultants	We used no consultants this year
	Equal Employment Opportunity	see this Appendix
	Disability plans	see page 37
	Land disposal	We do not own and did not dispose of any land or property
	Promotion	see this Appendix (Overseas visits) and Appendix J: Publications
	Consumer response	see pages 29-31
	Guarantee of service	see page 4
	Payment of accounts	see this Appendix
	Time for payment of accounts	see this Appendix
	Risk management and insurance activities	see page 21 and this Appendix (Occupational Health and Safety)
	Controlled entities	We have no controlled entities
	Ethnic affairs priorities statement and any agreement with the CRC	see page 34
	NSW Government Action Plan for Women	see page 35
	Occupational health and safety	see this Appendix
	Waste	see this Appendix (Environmental issues)
s 9(1)	Financial statements	see page 157
cl 4	Identification of audited financial statements	see pages 161-172
cl 6	Unaudited financial information to be distinguished by note	not applicable

Legislative provision	Topic	Comment
cl 5 TC 00/16	Major assets	see this Appendix
	Copy of any amendments made to the Code of conduct	No amendments in 2004-2005
	Particulars of any matter arising since 1 July 2005 that could have a significant effect on our operations or a section of the community we serve	not applicable
	Total external costs incurred in the production of the report	$25,599 (including $15,140 to print 850 copies)
	Is the report available in non-printed formats	Yes
	Is the report available on the internet	Yes, at www.ombo.nsw.gov.au
cl 7, 8; TC 00/24; PC 92/4	Executive positions	see this Appendix
Freedom of Information Act 1989	Statistical and other information about our compliance with the Freedom of Information Act	see Appendix G
Privacy and Personal Information Protection Act 1998	Privacy management plan	We have a privacy management plan as required by the Privacy and Personal Information Protection Act. This year we had one request for an internal review under Part 5 of that Act. We found that there was no breach of the Act.
PM 91-3	Evaluation of programs worth at least 10% of expenses and the results	This year we undertook a comprehensive review of all our programs. See page 20
PM 94-28	Departures from *Subordinate Legislation Act 1989*	This year we did not depart from the requirements of the Subordinate Legislation Act. See this Appendix (Legal changes) for more details about the regulations with which we had some involvement this year.
PM 98-35	Energy management	see this Appendix (Environmental issues)
PM 00-12	Electronic service delivery	We have implemented an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically. We provide an online complaints form, an online publications order form and a range of information brochures on our website.
TC 99/6	Credit card certification	The Ombudsman certifies that credit card use in the office has met best practice guidelines in accordance with Premiers memoranda and Treasury directions.
s 42(8) Ombudsman Act 1974	Must distinguish between complaints made directly to our office and those referred to us	There were three complaints referred to us from other agencies.

Legislation administered by our office

Ombudsman Act 1974

Community Services (Complaints, Reviews and Monitoring) Act 1993

Enabling legislation for each NSW university, as amended by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*

Freedom of Information Act 1989

Police Act 1990 (formerly the *Police Service Act 1990*)

Protected Disclosures Act 1994

Witness Protection Act 1995

Law Enforcement (Controlled Operations) Act 1997

Telecommunications (Interception)(NSW) Act 1987

Child Protection (Offenders Registration) Act 2000

Children and Young Persons (Care and Protection) Act 1998

Children (Criminal Proceedings) Act 1987 – as amended by the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*

Crimes (Administration of Sentences) Amendment Act 2002

Crimes (Forensic Procedures) Act 2000

Crimes Legislation Amendment Act 2002 (Schedule 10)

Firearms Act 1996

Health Records and Information Privacy Act 2002

Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001

Law Enforcement (Powers and Responsibilities) Act 2002

Police Powers (Drug Detection Dogs) Act 2001

Police Powers (Drug Detection in Border Areas Trial) Act 2003

Police Powers (Drug Premises) Act 2001

Summary Offences Amendment (Places of Detention) Act 2002

Significant committees

Internal committees

A number of significant committees exist within our office including (in alphabetical order):

Committee name	Committee members
Aboriginal Complaints Unit Steering Committee	Steve Kinmond, Anne Barwick, Jennifer Owen, Katharine Ovenden, Julianna Demetrius, Gary Dawson, Terry Chenery, Sheila O'Donovan
Community Liaison/Projects Group	Anne Barwick, Jennifer Owen, Anne Radford, Sheila O'Donovan, Eileen Graham, Kate Jonas, Julianna Demetrius, Lisa Du, Carolyn Campbell-McLean, Betsy Coombes
Information Management Steering Committee	Greg Andrews, Teresa Sulikowski, Katharine Ovenden, Vincent Riordan, Anita Whittaker, Jennifer Owen, Gary Dawson, Ruth Barlow
Joint Consultative Committee	Chris Wheeler, Vince Blatch, Terry Chenery, Anne Radford, Eileen Graham, Kathryn McKenzie, Wayne Kosh, Anita Whittaker
Reviewable Disability Deaths Advisory Committee and Reviewable Child Deaths Advisory Committee	(Office representatives only – see Chapter 7: Community services for details of external membership) Bruce Barbour - Chair, Steve Kinmond - Deputy Chair
Security Committee	Chris Wheeler, Anita Whittaker, Teresa Sulikowski, Chetan Trivedi, Vincent Riorden
Team Managers	Anita Whittaker, Anne Radford, Julianna Demetrius, Gary Dawson, Katharine Ovenden, Ruth Barlow, Jennifer Owen
Youth Issues Group **Established in 2004 to identify youth issues and improve coordination within the office of dealing with young people and their complaints*	Trisha Bayler, Natasha McPherson, Kirsteen Banwell, Katerina Paneras, Mary McCleary, Elizabeth Humphreys, Sanya Silver, Tania Martin, Justine Simpkins, Emily Minter, Michelle Chung
Youth Liaison Steering Committee **Established in 2004 to provide executive direction to the youth liaison officer to address identified youth issues*	Steve Kinmond, Simon Cohen, Julianna Demetrius, Mandy Loundar, Gary Dawson, Anne Radford, Lisa Du, Ruth Barlow

External committees

Our staff are members of the following significant inter-departmental committees:

Staff member	Committee name
Ombudsman – Bruce Barbour	Regional Vice President for the Australasian and Pacific Ombudsman Regional group; Director on the Board of the International Ombudsman Institute; Institute of Criminology Advisory Committee; Ombudsman Network Group
Deputy Ombudsman – Chris Wheeler	Protected Disclosures Act Implementation Steering Committee; Ombudsman Network Group; Integrity in Government Co-ordination Group; Public Sector Liaison Group
Deputy Ombudsman (Community Services) – Steve Kinmond	Police Aboriginal Strategic Advisory Council (PASAC)
Assistant Ombudsman (General) – Greg Andrews	Community Services Panel Churchill Fellowships
Assistant Ombudsman (Children and Young People) – Anne Barwick	Ombudsman Child Protection Forum; Child Protection and Sex Crimes Squad Advisory Council
Assistant Ombudsman (Police) – Simon Cohen	Internal Witness Advisory Council
SIO – Jennifer Agius	NSW Aboriginal Land Council Corruption Prevention Overview Committee
SIO – Geoff Briot	Corruption Prevention Network
IO – Tamaris Cameron	Network of Government Agencies - Gay, Lesbian, Bisexual and Transgender Issues
IO – Terry Chenery	Sydney Aboriginal and Torres Strait Islander Interagency; PASAC
Project Manager, Executive – Selena Choo	Protected Disclosures Act Implementation Steering Committee

Staff member	Committee name
Team Manager – Julianna Demetrius	PASAC; Youth Justice Coalition
SIO – Judith Grant	Child Protection Learning & Development Forum
Team Leader, Reviewable Child Deaths – Sarah Harris	Multiple Sibling Deaths Working Group
SIO – Kate Jonas	Child Protection Learning & Development Forum
Youth Liaison Officer – Mandy Loundar	NESB Youth Issues Network
IO – Joanne Scott	Sydney Aboriginal and Torres Strait Islander Interagency; PASAC
SIO – Kate Jonas	Child Protection Learning & Development Forum

IO = investigation officer SIO = senior investigation officer

Legal changes

Expansion of our child protection jurisdiction

As we foreshadowed in our 2003-2004 annual report, the following legislation relating to licensing and supervision of children's services commenced on 30 September 2004:

- Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*
- Item 23 of Schedule 2 to the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*
- The *Children (Care and Protection) Repeal Regulation 2004* — this regulation repealed the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* and the *Family Day Care and Home Based Child Care Services Regulation 1996*
- The *Children's Services Regulation 2004.*

These changes mean that children's services are governed entirely by the *Children and Young Persons (Care and Protection) Act 1998* and the regulation made under that Act. As a result, our jurisdiction has extended to all family day care services and to mobile and home based children's services. Previously, our jurisdiction only covered child-care centres, residential child-care centres and family day care services that operated under the supervision of public sector agencies such as local government bodies. These changes have removed inconsistency in our child protection jurisdiction and have ensured that our responsibility to oversee the investigation of allegations of reportable conduct extends to employees of all types of children's services.

Ombudsman Regulation 2005

The *Ombudsman Regulation 2005* repealed and replaced the 1999 regulation on 1 July 2005. The new regulation specifies that the 'head of agency' for each diocesan agency is the relevant Catholic Bishop, and the 'head of agency' for agencies auspiced by Catholic religious organisations is the person best fitting the statutory requirements for the position. Under the 1999 regulation the Executive Director of the Catholic Commission for Employment Relations was the 'head of agency'. Before the new legislation was drafted, the Ombudsman consulted with Catholic Bishops and leaders of Catholic organisations.

Community Services (Complaints, Reviews and Monitoring) Regulation 2004

The *Community Services (Complaints, Reviews and Monitoring) Regulation 2004* repealed and replaced the 1999 regulation on 25 August 2004. The new regulation introduced minor changes including clarification of some of the previous provisions and changes to transitional provisions. However in substance the provisions remain similar to those in the 1999 regulation. The Ombudsman was involved in extensive consultation leading up to the making of the new regulation. We circulated a proposed draft and an impact statement to 46 agencies and organisations, including government departments, peak bodies and advocacy groups. We received 10 submissions in relation to the proposed new regulation, some of which were incorporated into the new regulation.

Health Records and Information Privacy Act 2002

The *Health Records and Information Privacy Act 2002* commenced on 1 September 2004. The Act creates a framework to protect the privacy of information about people's health. The Act covers all public and private sector organisations in NSW that provide a health service. It also covers all public and large private sector organisations that collect, hold or use health information.

The Ombudsman and many service providers under our scrutiny are now subject to new obligations under the Act relating to collecting, holding and using information about people's health. These obligations are in addition to existing obligations relating to privacy and confidentiality of this kind of information.

Minor changes to child protection legislation

The *Children's Services Regulation 2004* was amended by the *Children's Services Amendment (ADT Review) Regulation 2004* on 17 December 2004. Family day carers who are removed or suspended from the register for the service at the decision of a licensee of that service now may appeal to the ADT. Our power to deal with complaints about these decisions remains unchanged, however this amendment means that carers in such situations may now also appeal to the ADT.

Major assets

Figure 71 - Major assets

Description	03/04	Acquisition	Disposal	04/05
File servers (mini computer)	6	0	0	6
Hubs	7	0	5	2
Personal computers	35	4	12	27
Printers	3	10	2	11
Photocopiers	5	1	1	5
Telephone systems	2	0	1	1

Human resources

(a) Any exceptional movement in wages, salaries or allowances

A 4% salary increase was paid to staff covered by the Crown Employees (Public Sector Conditions of Employment) Award 2002 from 2 July 2004.

(b) Personnel policies and practices

Our staff are employed under the provisions of the *Public Sector Management and Employment Act 2002*. This Act, associated regulations and the Crown Employees (Public Service Conditions of Employment) Award 2002 set the working conditions of public servants including our staff. Accordingly, we have little scope to set working conditions and entitlements for staff. The Public Employment Office (PEO), a division of the Premier's Department, is the employer for this purpose and negotiates conditions and entitlements with the relevant union.

This year we finalised our working at home policy, revised our conflict of interests policy and developed a draft policy on salary packaging for non-SES staff, which will be finalised in the next reporting year. We also reviewed and made significant improvements to our electronic flexsheet, the tool staff use for recording their attendance. Improvements include automating a number of functions, incorporating prompts and validation - all of which reduces the risk of mistakes. Staff were briefed about the new flexsheet before it was introduced.

Purpose 4 of our new Statement of Corporate Purpose requires a comprehensive review of all of our personnel related policies and systems to ensure that they support the achievement of our corporate plan. This will be the priority for personnel staff in 2005-2006.

(c) Industrial relations policies and practices

We have a Joint Consultative Committee (JCC) that meets regularly to discuss how we might adopt and implement policies negotiated by the PEO and the relevant union and, if necessary, develop local policies.

The JCC consulted on policy development and review, which included the Working at Home Policy and the Conflict of Interests Policy. In addition, the JCC discussed and contributed to the review of our corporate plan/statement of corporate purpose and the planning and conducting of the climate survey, details of which can be found in Chapter 1: Corporate governance.

Equal employment opportunity

We are committed to the principles of EEO and have a program that includes policies on performance management, grievance-handling, ensuring a harassment-free workplace and reasonable adjustment. Our staff come from a variety of backgrounds and experience. Figures 74 and 75 show the gender and EEO target groups of staff by salary level and employment basis - permanent, temporary, full-time or part-time.

The NSW government has established targets for the employment of people from various EEO groups. Measurement against these targets is a good indication of how effective our EEO program has been. Figure 72 compares our performance to government targets.

The following report on our EEO activities is based on the EEO outcomes framework. It shows our achievements this year and our priorities for next year.

EEO Outcome	Achievements 2004-2005	Priorities 2005-2006
1. A sound information base	We had a 100% response rate to our EEO survey - this gave us a sound information base for EEO planning and decision making. We also identified that the representation of the EEO groups 'People with a disability' should be increased. We conducted a climate survey.	We will analyse EEO statistical data to use for planning and policy review and development purposes. We will analyse the results of the climate survey and where necessary review policies or practices.
2. Ensuring staff views are heard	We promoted the joint consultative committee as the forum for staff to raise and discuss issues, and included staff in our business planning activities. We conducted a climate survey.	We will continue to promote the joint consultative committee as the forum for discussing issues and developing policy and continue to consult staff about business planning activities and equity issues. We will analyse the results of the climate survey and where necessary review policies or practices.
3. EEO outcomes included in agency planning	We finalised a comprehensive review of the corporate plan, developing a Statement of Corporate Purpose and Team Business Plans. EEO is included in Purpose 4 of the Statement of Corporate Purpose. EEO outcomes are also included in performance agreements and work plans.	We will further develop our EEO program, in line with the strategies outlined in Purpose 4 of the Statement of Corporate Purpose.
4. Fair policies and procedures	We finalised our co-lateral flexible working hours agreement providing staff with a more flexible working hours scheme, finalised our working at home policy, made flexible work options such as part time work, working at home and job sharing available to staff, and promoted the role of spokeswoman.	We will continue to offer flexible work options to staff, continue to promote a consultative work environment and provide opportunities for staff to participate in staff development and training activities.
5. Needs-based program for EEO groups	We elected a new spokeswoman. We also provided equitable access to training and development opportunities for EEO groups, provided student placements and work experience opportunities to EEO groups, and supported the successful application by an EEO group member for a scholarship to undertake a professional development course.	We will continue to provide student placements and work experience opportunities. We will employ a trainee. We will provide developmental opportunities to EEO groups. We will provide training for the new spokeswoman.
6. Managers and staff informed, trained and accountable for EEO	We included EEO accountabilities in position descriptions and performance agreements for senior staff, made our EEO policies available to all staff and promoted EEO through our induction program. We commenced a review of our EEO program, however this was put on hold pending the finalisation of the Statement of Corporate Purpose.	We will review our EEO policy and program in line with the requirements of the statement of Corporate Purpose. We will make our EEO policy and program accessible We will include EEO accountabilities in all work plans of supervisors and other staff as appropriate.

EEO Outcome	Achievements 2004-2005	Priorities 2005-2006
7. A workplace culture displaying fair practices and behaviours	We have a comprehensive code of conduct that sets out acceptable behaviours. We advise staff of their rights and obligations at induction. We promote a harassment-free workplace. We negotiated personnel policies through the JCC ensuring that staff views are heard and considered.	We will review our grievance policy and harassment prevention policy and conduct information sessions for managers and supervisors about their supervisory responsibilities, particularly relating to EEO and the implementation of office policies.
8. Improved employment access and participation by EEO groups	In 2004-2005 we improved the representation of people whose first language spoken was not English, maintained the level of representation of people with a disability and improved the representation of women.	In 2005-2006 we will develop strategies to attract more applications from EEO groups and try to improve the representation of Aboriginal and Torres Strait Island people.
9. A diverse and skilled workforce	In 2004-2005 we improved our representation of Aboriginal and Torres Strait Islander people and people whose language first spoken was not English. The representation of people with a disability reduced by 2%. The representation of women also declined, however the overall representation of women is 22% higher than the government target.	In 2005-2006 we will identify strategies that will help us improve the representation of EEO groups, and improve our performance against the government benchmarks, particularly in relation to the employment of people with a disability requiring adjustment.

Figure 72 - Performance Indicator: Trends in the Representation of EEO Groups

EEO Group		Ombudsman			
Representation	Government target	01/02	02/03	03/04	04/05
Women	50%	67%	72%	73%	72%
Aboriginal & Torres Strait Islander people	2%	3%	2%	1.5%	2.1%
People whose language first spoken as a child was not English	20%	16%	16%	17%	18%
People with a disability	12%	7%	8%	8%	6%
People with a disability requiring work related adjustment	7%	1.5%	3%	2.5%	2.1%

Figure 73 - Performance Indicator: Trends in the distribution of EEO Groups

EEO Group	Benchmark or Target	Ombudsman			
		01/02	02/03	03/04	04/05
Women	100	90	86	89	88
Aboriginal & Torres Strait Islander people	100	n/a	n/a	n/a	n/a
People whose language first spoken as a child was not English	100	79	83	84	83
People with a disability	100	n/a	n/a	n/a	n/a
People with a disability requiring work-related adjustment	100	n/a	n/a	n/a	n/a

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

Figure 74 - Percentage of total staff by level

LEVEL	TOTAL STAFF (Number)	Subgroup as percent of total staff at each level			Subgroup as estimated percent of total staff at each level				
		Respondents	Men	Women	Aboriginal & Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with a disability	People with a disability requiring work-related adjustment
< $31,352	-	-	-	-	-	-	-	-	-
$31,352 - $41,177	8	100%	-	100%	-	75%	50%	13%	12.5%
$41,178 - $46,035	11	100%	27%	73%	-	64%	55%	9%	-
$46,036 - $58,253	38	100%	11%	89%	5.3%	21%	18%	3%	-
$58,254 - $75,331	92	100%	29%	71%	2.2%	24%	17%	7%	3.3%
$75,332 - $94,165	31	100%	42%	58%	-	6%	3%	3%	-
> $94,165 (non SES)	2	100%	50%	50%	-	-	-	50%	-
> $94,165 (SES)	5	100%	80%	20%	-	-	-	20%	-
TOTAL	**187**	**100%**	**28%**	**72%**	**2.1%**	**24%**	**18%**	**6%**	**2.1%**

Figure 75 - Percentage of total staff by employment basis

EMPLOYMENT BASIS	TOTAL STAFF (Number)	Subgroup as % of total staff in each category			Subgroup as estimated percent of total staff in each employment category				
		Respondents	Men	Women	Aboriginal & Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with a disability	People with a disability requiring work-related adjustment
Permanent Full-time	118	100%	31%	69%	1.7%	25%	19%	3%	0.8%
Permanent Part-time	35	100%	9%	91%	-	20%	14%	9%	8.6%
Temporary Full-time	23	100%	30%	70%	8.7%	35%	17%	13%	-
Temporary Part-time	5	100%	-	100%	-	20%	40%	-	-
Contract - SES	5	100%	80%	20%	-	-	-	20%	-
Contract - Non SES	1	100%	100%	-	-	-	-	100%	-
TOTAL	**187**	**100%**	**28%**	**72%**	**2.1%**	**24%**	**18%**	**6%**	**2.1%**

Overseas visits

During the year, the Ombudsman visited the following destinations:

- Quebec City, Canada, in September 2004, to attend the quadrenniel conference of the International Ombudsman Institute and the annual meeting of the Board of Directors
- Mexico City, Mexico, in March 2005, to attend a special meeting of the Board of Directors of the International Ombudsman Institute (at personal expense).

During the year, the Assistant Ombudsman (General) visited Avarua, Cook Islands, Apia, Samoa and Suva, Fiji, in December 2004, to identify the needs of the Samoan, Fijian and Cook Islands Ombudsman offices as part of the South West Pacific Ombudsman Institutional Strengthening Project.

The Ombudsman and the Assistant Ombudsman (General) both visited Wellington, New Zealand, in February 2005, to attend the planning forum for South West Pacific Ombudsman Institutional Strengthening Project and the 22nd Australasian and Pacific Ombudsman conference.

Payment of accounts

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. However, in certain circumstances this is not possible as we can dispute a invoice or not receive it in sufficient time to pay within the stated terms. Accordingly, we have set a performance target of paying accounts within the vendors credit terms 98% of the time, During 2004-2005 we paid 99.17% of our accounts on time. This is a significant improvement in our performance from the previous year.

We had $113,291 worth of accounts on hand at 30 June 2005. Please see figure 76.

We have not had to pay any penalty interest on outstanding accounts.

Figure 76 - Aged analysis of accounts on hand at the end of each quarter

	September 2004	December 2004	March 2005	June 2005
Current (ie within due date)	$83,550	$105,372	$109,365	$113,291
Less than 30 days overdue	$3,081	$4,933	$553	0
Between 30 days and 60 days overdue	0	$363	$862	0
Between 60 days and 90 days overdue	0	0	0	0
More than 90 days overdue	0	0	0	0
Total accounts on hand	**$86,631**	**$110,668**	**$110,780**	**$113,291**

Time for payment of accounts

Figure 77 - Performance Indicator: Accounts paid on time

Quarter	Target	% paid on time	Amount paid on time	Total amount paid
September 2004	98%	98.34%	$1,256,455.16	$1,277,619.36
December 2004	98%	99.75%	$1,132,361.04	$1,135,236.58
March 2005	98%	98.57%	$1,125,918.56	$1,142,205.06
June 2005	98%	100.00%	$1,577,798.35	$1,577,805.64
Total	**98%**	**99.17%**	**$5,092,533.11**	**$5,132,866.64**

Occupational Health and Safety

This year we held an election for an OH&S representative, who keeps under review the measures taken by the office to ensure the health, safety and welfare of staff. The OH&S representative was formally trained in July 2005. Personnel staff will be working with the OH&S representative to develop an OH&S program for 2005-2006.

We provided a comprehensive training program for wardens to ensure they were equipped to handle emergency situations, held emergency evacuation drills, reviewed the provision of first aid services and trained staff for this role.

Staff trained in safety audits conducted workplace inspections, including ergonomic assessments of workstations and general hazard identification. We reviewed the use and effectiveness of the 'workpace' software we introduced the previous year. This software monitors the use of computers and alerts staff when breaks are required. Staff generally found the program useful and we have continued using it.

We provide an employee assistance program (EAP) including a free 24-hour counselling service for staff and their families. Information sessions about the EAP were conducted during the year.

As a proactive measure, we commenced a series of formal debriefs for staff in our Child Death and Disability Deaths teams. These debriefs, which are facilitated by a trained psychologist from our EAP provider, are to help staff deal with the confronting information that they deal with in their jobs. These briefings are held quarterly.

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

- Hepatitis vaccinations — staff who visit correctional centres are vaccinated against Hepatitis A and B.
- Eye examinations — our staff spend a lot of time using computers and this can lead to eyestrain, so we organise an eye examination for all staff every two years so that any potential problems can be detected.
- Flu shots — we organised flu shots for staff to prevent high levels of absenteeism during the flu season. About 50% of staff participated in the program.

We participate in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. Our strategies for minimising our workers compensation claims include workplace inspections and providing a counselling service. This year 11 workers compensation claims were reported to the insurer.

Environmental issues

Our agency, like all agencies, has an impact on the environment. Our work leads to the generation of emissions and the production of waste, and we use resources such as electricity and water. We have a number of programs in place to monitor, and try to reduce, this impact including energy management and waste reduction programs.

The owners of our building have also achieved significant results in water conservation, energy savings and reducing CO_2 emissions.

Energy management

Our Energy Management Plan outlines our strategies for improving energy consumption. These strategies include the purchasing of energy efficient equipment, the purchase of a green power and educating staff about the policy. Our energy consumption is mainly electricity and fuel in our cars.

We have established performance targets (see figures 78 and 79) and report on implementation of our energy management program to the Department of Energy, Utilities and Sustainability.

Petrol consumption

See figure 78 for information about our petrol consumption. During 2004–05 we used less petrol as we travelled fewer kilometres. The MJ/distance travelled increased this year, due to larger vehicles (station wagons) being used, which are less fuel efficient.

Figure 78 - Performance Indicator: Petrol Consumption

	95/96	02/03	03/04	04/05
Petrol (L)	4,296	5,330	6,277	5,326
Total GJ	147	182	215	182
Total Cost ($)	3,098	4,303	5,066	5,199
Distance travelled (km)	53,018	65,190	101,538	54,738
MJ/Distance travelled (km)/annum	2.77	2.8	2.11	3.33

Electricity consumption

See figure 79 for information about our electricity consumption. We used less electricity compared to the last two years, as measured against all indicators. We have shown substantial improvement in our performance over time and compare favourable with the M^2/per person indicator against the benchmark figure that was set in 1995-96.

Figure 79 - Performance Indicator: Energy consumption

	95/96	02/03	03/04	04/05
Electricity (kWh)	133,630	352,703	335,024	304,716
Kilowatts converted to gigajoules	481.07	1,270	1,206	1,097
Total cost ($)	16,254	38,489	39,211	37,627
Occupancy (people)	69.7	186	180	187
Area (M^2)	1,438	3,133	3,133	3,133
MJ/occupancy (people)/annum	6,872	6,938	6,700	5,866
MJ/Area (M^2)/annum	335	405	385	350
M^2/person	20.54	17.12	17.41	16.75

Future direction

Next year we intend to review all our environmental programs, following the comprehensive review of our corporate plan. We will continue our strategy to make staff aware of the environmental issues.

Greenhouse performance

ABGR rating

On 30 March 2004 the Premier announced a new initiative to measure and improve the greenhouse performance of Government office buildings and tenancies. Under the new policy all agencies were required obtain an accredited ABGR rating by the 31

December 2004 and achieve a 4 star or better rating by 1 July 2006.

We were pleased to receive a rating of 3½ stars, which reinforced our commitment to environmental programs. We will be working towards attaining a 4 star rating by July 2006.

Other environmental programs

Waste reduction

We have a waste reduction and purchasing strategic plan which focuses on waste reduction and avoidance as well as increasing the purchase of recycled content products.

Reducing generation of waste

We promote email as the preferred internal communication tool. We also provided duplex trays for all the printers and instructed staff on double-sided copying. We purchased 90 toner cartridges and used 48 during the reporting year, recycling all of them.

Resource recovery

We recycled approximately 1 tonne of paper. We also recycled glass, plastic and aluminium.

The use of recycled material

We use 100% recycled content copy paper and our letterhead and envelopes are printed on recycled content paper. Approximately 95% of our printed material is printed on either recycled, acid free or chlorine free paper. We purchase recycled content product when feasible and cost effective.

Water usage reduction

The building owners have implemented a water saving strategy throughout the building.

Executive positions

Chief and senior executive service

Our office has six senior positions - the Ombudsman, two Deputy Ombudsman and three Assistant Ombudsman. A woman currently holds one of those positions. There was no change in the number of senior positions during the reporting year. Please see figure 80 for details of the levels of our senior positions.

Figure 80 - Chief and Senior Executive Service

	2004	2005
SES Level 4	2	2
SES Level 2	3	3
CEO*	1	1
Total	**6**	**6**

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

Executive remuneration

In its annual determination, the Statutory and Other Officers Remuneration Tribunal awarded increases to our statutory officers. The Deputy Ombudsman and our three Assistant Ombudsman were awarded a 4% increase effective 1 October 2004. The Ombudsman's remuneration increased by 4%

Figure 81 details the Ombudsman's remuneration which includes salary, superannuation and annual leave loading.

Figure 81 - Executive remuneration

Position	Ombudsman
Occupant	Bruce Barbour
Total remuneration package	$360,218
$ Value of remuneration paid as a performance payment	Nil
Criteria used for determining total performance payment	-

I: Revenue and expenses — three year comparisons

Figure 82 - Revenue from other sources - three year comparison

	02/03	03/04	04/05
Grants	$748,000	$48,000	$67,000
Publication sales	$7,000	$9,000	$14,000
Bank interest	$41,000	$60,000	$30,000
Other revenue including workshops	$53,000	$59,000	$136,000

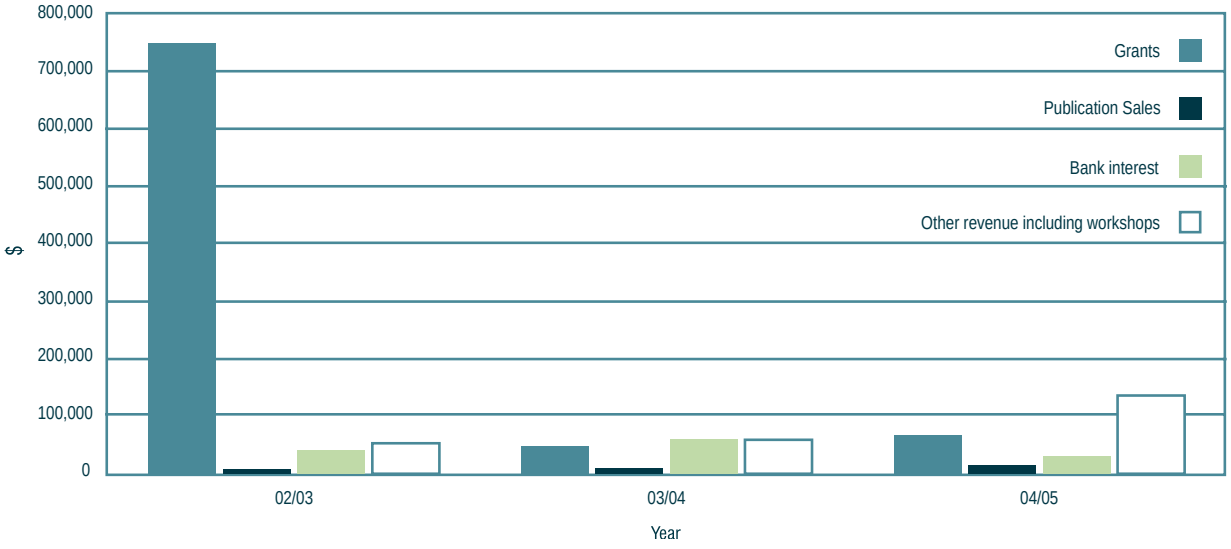
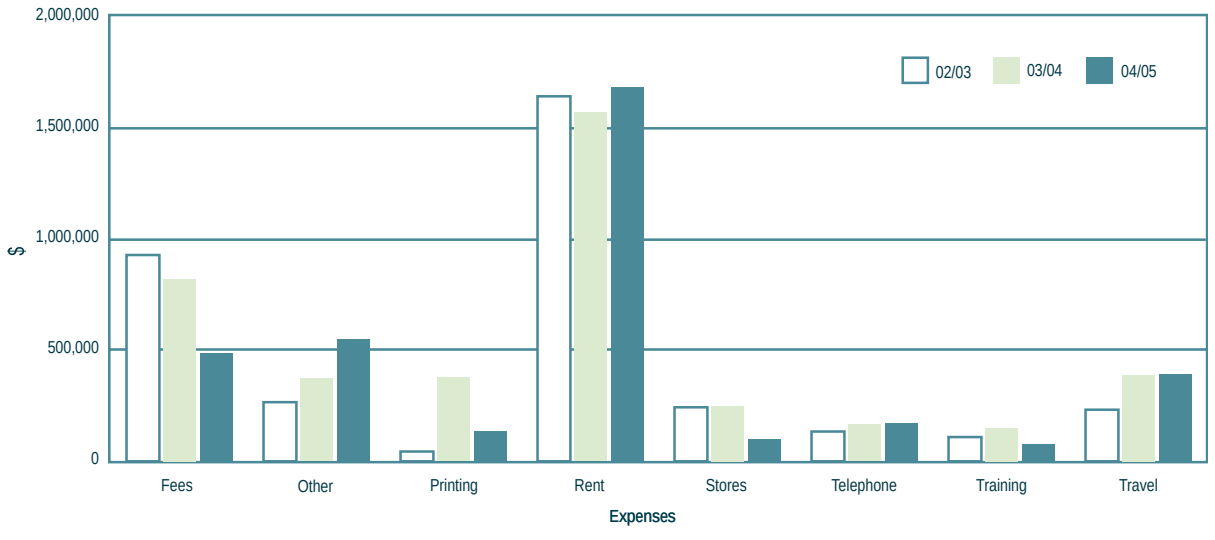


Figure 83 - Expenses - three year comparison

	02/03	03/04	04/05
Fees	$928,000	$821,000	$485,000
Other	$266,000	$373,000	$548,000
Printing	$44,000	$377,000	$134,000
Rent	$1,642,000	$1,569,000	$1,684,000
Stores	$243,000	$248,000	$101,000
Telephone	$134,000	$165,000	$173,000
Training	$109,000	$151,000	$78,000
Travel	$232,000	$387,000	$391,000



J: Publications list

The following is a list of reports to Parliament and other publications issued between 1 July 2004 and 30 June 2005. For a more detailed list or to obtain a copy of these reports, contact us or visit our web site at www.ombo.nsw.gov.au. All listed publications are available at the website in Acrobat PDF.

Reports to Parliament

2005

Review of the *Police Powers (Drug Premises) Act 2001*

Special report to Parliament: Working with local Aboriginal communities: Audit of the implementation of the NSW Police *Aboriginal Strategic Direction (2003 – 2006*)

2004

Report to Parliament: The Forensic DNA Sampling of Indictable Offenders under Part 7 of the *Crimes (Forensic Procedures) Act 2000*

Special report to Parliament: Improving outcomes for children at risk of harm - a case study

Discussion papers

2005

Complaint handling in NSW Universities

Review of the Child Protection Register Report

Review of the *Crimes (Administration of Sentences) Amendment Act 2002* and the *Summary Offences Amendment (Places of Detention) Act 2002*

Annual reports

2004

Audit of Freedom of Information (FOI) Annual Reporting 2003 – 2004

Law Enforcement (Controlled Operations) Act 1997 Annual Report 2003 – 2004

NSW Ombudsman Annual Report 2003 – 2004

Official Community Visitors Annual Report 2003 – 2004

Reviewable Deaths Annual Report 2003 – 2004 and summary sheet

Fact sheets

2005

Advice for people working with youth: Young people with complaints about police

Public sector agencies fact sheets A – Z:

- Knowledge of wrong conduct
- Legal advice
- Maladministration
- Natural Justice/ Procedural Fairness
- Public interest
- Quality costumer service
- Reasons for decisions

Reports not yet tabled

These reports have been provided to the relevant Minister but have not yet been tabled. They are not available at the website.

2005

Review of the *Child Protection (Offenders Registration) Act 2000*

Review of the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*

Review of the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*

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Vincent Riordan
Vincent Scott
Violeta Brdaroska
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Yvon Piga
Zaldy Bautista

L: Glossary

AAT	Administrative Appeals Tribunal
ADT	Administrative Decisions Tribunal
AIS	Association of Independent Schools
CCER	Catholic Commission for Employment Relations
CCYP	Commission for Children and Young People
CS-CRAMA	*Community Services (Complaints, Reviews and Monitoring) Act 1993*
DADHC	Department of Ageing, Disability and Home Care
DCS	Department of Corrective Services
DET	Department of Education and Training
DJJ	Department of Juvenile Justice
DoCS	Department of Community Services
EAPS	Ethnic affairs priority statement
EEO	Equal employment opportunity
EWON	Energy and Water Ombudsman (NSW)
FOI	freedom of information
HACC	home and community care
ICAC	Independent Commission Against Corruption
IOI	International Ombudsman Institute
LG Act	*Local Government Act 1993*
MRC	migrant resource centre
MRRC	Metropolitan reception and remand centre
OOHC	out-of-home care
PADP	program of appliances for disabled people
PIC	Police Integrity Commission
PJC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
PPIP Act	*Privacy and Personal Information Act 1998*
SAAP	supported accommodation assistance program
YLO	youth liaison officer

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Complaining to the Ombudsman

Anyone can make a complaint to the Ombudsman. If you do not want to complain yourself, you can ask anyone — a relative, friend, advocate, lawyer, your local member of parliament — to complain for you.

How do I make a complaint?

Start by complaining to the agency involved. If you need advice, you can phone us. If you are unhappy with the way an agency 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.

What should I include with my complaint?

Briefly explain your concerns in your own words. Include enough information for us to assess your complaint to determine the most appropriate response. Describe what happened, who was involved, when and where the events took place. Also tell us what action you have taken and what outcome you would be satisfied with. Include copies of all relevant correspondence between you and the agency concerned.

What happens to my complaint?

A senior investigator will assess your complaint. We may phone the agency concerned to make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the agency's response, we may investigate.

We do not have the resources to investigate every complaint, so priority is given to serious matters, especially if it is an issue that is likely to affect other people. If 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 NSW Police for resolution or investigation. They will contact you about any action that they have taken as a result of your complaint. We oversee how they deal with your complaint but will not contact you directly.

What happens in an investigation?

The first step is to require the agency to comment on your complaint and explain their actions. Generally, we will tell you what the agency has said and what we think. Some matters are resolved at this stage and the investigation is discontinued. If the investigation continues, it can take several months until a formal report is issued. We will tell you what is likely to happen.

If we find your complaint is justified, the findings are reported to the agency concerned and the relevant minister. You will be told by us or the agency of the findings. In a report, the Ombudsman may make recommendations. We cannot force an agency to comply with our recommendations, however, most usually do. If they do not, the Ombudsman can make a special report to Parliament.

What if I am unhappy with the Ombudsman's actions?

If you are unhappy with our decision you can ask for it to be reviewed. However, a decision will only be reviewed once. All reviews are conducted by a senior staff member and by someone other than the staff member originally assigned your complaint. To request a review, contact 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.

Selena Choo, Project Manager and Lisa Formby, Desktop Publishing Officer

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.

Many thanks to everyone who contributed to this year's annual report.

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Janice McLeod, Plain English editing
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IndexAT, proofreading

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City of Sydney Council p 6.

Alice Tai (Hong Kong Ombudsman) p 25.

Photography by Woolf p 26.

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We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

Hours of business
9am–5am Monday to Friday
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