

THIRD GENERAL MEETING

REPORT OF THE JOINT COMMITTEE ON THE OFFICE OF THE OMBUDSMAN



PARLIAMENT OF NEW SOUTH WALES

DECEMBER 1995

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*REPORT OF
THE JOINT COMMITTEE
ON THE
OFFICE OF THE OMBUDSMAN*

**THIRD GENERAL MEETING
WITH THE
NEW SOUTH WALES OMBUDSMAN**

9 October 1995

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TABLE OF CONTENTS

COMMITTEE MEMBERSHIP	4
FUNCTIONS OF THE COMMITTEE	5
CHAIRMAN'S FOREWORD	8
INTRODUCTION	9

QUESTIONS ON NOTICE

1. FUNDS AND RESOURCES	10
2. ISSUES ARISING FROM PREVIOUS INQUIRIES	
2.1 Access and Awareness Inquiry	14
3. NEW LEGISLATION	
3.1 Protected Disclosures Act	16
4. OMBUDSMAN'S GUIDELINES	20
5. OMBUDSMAN'S REPORT TO PARLIAMENT	
5.1 Race Relations & Our Police (Jan 1995)	23
5.2 Freedom of Information - the way ahead (Jan 1995)	25
5.3 Raymond Denning withdrawal from the Witness Protection Scheme (Jan 1995)	29
5.4 Police Internal Investigations - poor quality police investigations into complaints of police misconduct (Jan 1995)	31
5.5 Police Conciliation - towards progress (Dec 1994)	33

QUESTIONS WITHOUT NOTICE

Public Meeting 9/10/95 - Transcript of Evidence	34
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APPENDICES

Appendix 1 Minutes

Appendix 2 Annexures supplied by the Ombudsman in "Answers to Questions on Notice"

A - Implementation status - Recommendations in Joint Committee's Report into the adequacy of funds and resources available to the Ombudsman

B - Funding Submissions

C - Ombudsman's draft access and awareness plan

D - Protected Disclosures

Appendix 3 Ombudsman's Answers to Questions on Notice taken during the General Meeting on 9 October, 1995 (letter dated 19/10/95)

COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY

Mr B.J. Gaudry, MP- Chairman
Mr J. Anderson, MP
Mr A.R.G. Fraser, MP
Mr J.S.P. Kinross, MP
Mr P G Lynch, MP
Ms R.P. Meagher, MP
Ms C. Moore, MP
Mr A.P. Stewart, MP



LEGISLATIVE COUNCIL

The Hon S.B. Mutch, MLC
The Hon E.B. Nile, MLC
The Hon P.J. Staunton, MLC - Vice Chairman



SECRETARIAT

Ms H. Minnican, Project Officer
Ms R. Miller, Clerk to the Committee
Ms N. O'Connor, Assistant Committee Officer



Committee on the Office of the Ombudsman (Left to Right)
Bryce Gaudry MP (Chairman), James Anderson MP, Andrew Fraser MP, Jeremy Kinross MP, Paul Lynch MP, Reba Meagher MP, Clover Moore MP, Anthony Stewart MP, The Hon Stephen Mutch MLC, The Hon Elaine Nile MLC, and The Hon Patricia Staunton MLC.

Third General Meeting - 9 October 1995

FUNCTIONS OF THE COMMITTEE

The Committee on the Office of the Ombudsman is constituted under Part 4A of the Ombudsman Act 1974. The functions of the Committee, which are set out in section 31B (1), are as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

The Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or

-
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.

The Statutory Appointments (Parliamentary Veto) Amendment act, assented to on 19 May 1992, amended the Ombudsman Act 1974 by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. Section 31BA of the Ombudsman Act provides:

- "(1) The Minister is to refer a proposal to appoint a person as Ombudsman or director of Public Prosecutions to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
- (a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act; and
- (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the Director of Public Prosecutions Act 1986."

Under section 6A of the Ombudsman Act:

- "6A(1) A person is not be appointed as Ombudsman until:
- (a) a proposal that the person be appointed has been referred to the Joint Committee under section 31BA; and
- (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the

Committee notifies the Minister that it has decided not to veto the proposed appointment.

- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 31BA, "appointment" includes re-appointment.

Any evidence taken by the Committee in exercising these powers must be taken in private and treated confidentially (s.31H(1)). No public disclosure is permitted about whether or not the Joint Committee or any of its members has vetoed, or intends to veto, the appointment of an applicant (s.31H(1B) and (1C)).

CHAIRMAN'S FOREWORD

Although this was the Joint Committee's third General Meeting, it was the first formal occasion the present Committee has had to discuss publicly the major issues facing the Office of the Ombudsman.

In view of the staff changes at the Ombudsman's Office within the last twelve months, including the appointment of a new Ombudsman, Ms Irene Moss, and the changes in the membership of the Committee, the General Meeting was a new experience for most of the participants.


It proved a useful mechanism for the Committee in undertaking its monitoring and review functions and highlighted the work undertaken by the Ombudsman's Office.

The General Meeting enabled the Committee to become familiar with recent developments in the Ombudsman's jurisdiction and the operations of the Office.

Advice from the Ombudsman and her staff indicated that the Office had endeavoured to implement fully the recommendations contained in previous Committee reports. However, due to a combination of factors, in particular budget constraints, this had not always been possible.

The General Meeting provided a valuable opportunity for the Committee to examine the reasons why some of the recommendations had not been implemented. Discussions largely focussed on the areas perceived by the Ombudsman as critical to the current operation of the Office, namely, resources and police complaints.

I would like to thank the Ombudsman, Deputy Ombudsman, Assistant Ombudsmen, members of the Committee and the Committee Secretariat for their input and cooperation.



Bryce Gaudry MP
Chairman

INTRODUCTION

This Report details the proceedings of the Joint Committee's Third General Meeting with the Ombudsman, held on 9 October, 1995.

In accordance with previous practice, "Questions on Notice" were forwarded to the Ombudsman by the Committee and the Ombudsman provided written answers which were distributed prior to the General Meeting. During the General Meeting the Ombudsman and the Office's other statutory officers were asked supplementary questions by Members of the Joint Committee.

The following collation provides a general discussion between the Ombudsman and the Joint Committee on key issues facing the Office. The two most pressing issues, identified by the Ombudsman in her opening address, were police complaints and the resources question. These issues formed the basis for most of the discussion. Other topics dealt with included: new legislation affecting the Office, issues arising from inquiries, and previous reports to Parliament by the Ombudsman.

The report is divided into two sections. The first section contains the Committee's questions on notice and the Ombudsman's answers. The second section is comprised of the transcript of evidence taken during the General Meeting on 9 October, 1995. The meeting was held in public and the discussion was wide-ranging. A table of contents has been supplied for the transcript as a guide to the range of topics dealt with during the meeting.

1. FUNDS AND RESOURCES

QUESTIONS ON NOTICE

The Ombudsman has advised the Joint Committee that one of the most pressing issues for the Office is that of funding. The Joint Committee understands that the efficiency measures and other recommendations contained in its Funds and Resources Report have been largely implemented by the Office.

- 1. What is the current position in relation to each of the recommendations contained in the Joint Committee's report on the Inquiry into the Adequacy of the Funds and Resources Available to the Ombudsman (September 1992)?**

Answer See Annexure A

- 2. To what extent do you consider that the measures adopted in response to the Committee's report improved efficiency in the management and operation of the Office?**

Answer

The measures adopted in response to the Committee's report have improved the efficiency of the Office. The measures adopted include:

- the restructure of the Office into specialised teams with separate allocation of funds has resulted in improved accountability. Specialisation has enabled staff to better focus on their complaint load without the need to prioritise conflicting demands from a range of areas and managers.
- the review of policies and procedures and the updating of the police and general manuals has streamlined complaint processing, enabling staff to finalise matters more quickly and more effectively. In particular demonstrated improvements have been made in the following areas:
 - overall, the number of complaints finalised has increased;
 - processing time for the majority of complaints has improved, for example:
 - in the year 1992/93, prior to the Office restructure, 72% of preliminary investigations of complaints about government departments, local government and prison matters were processed in less than 60 days, with the average turnaround time being 62 days;

-
- the restructure was fully operational for half of the 1993/94 financial year, during which 82% of these preliminary investigations were processed in less than 60 days and the average turnaround time dropped to 51 days; and
 - further efficiencies were gained during 1994/95, with 90% processed in less than 60 days, with the average turnaround time dropping to 41 days.

3. Have any other measures been taken by the Office since the inquiry and management review to achieve further efficiencies?

Answer

The Police Team was further specialised in June, 1995 by the creation of a customer service unit which focuses on preliminary inquiries, conciliations and declines enabling more senior investigative staff to concentrate their efforts on assessments of police investigations.

In addition, the Ombudsman reviewed the structure and responsibilities of the Administration Area during 1993/94. This review was initiated as the restructure of the investigation area - including the delegation of authority for administrative and financial matters - had an impact on the work flows and responsibilities of the Administration staff. External consultants were engaged to conduct the review and report to the Ombudsman.

The recommendations of the consultants included the deletion of 4 positions and the creation of 3 new positions with different duties and responsibilities. The change in structure resulted in a saving of approximately \$60,000 in salaries which was transferred to the investigation teams

In previous advice to the Committee, the Ombudsman has stated that “complaint levels in the last 10 years, (since 1985) have increased 64% yet no additional recurrent funding has been provided to enable the Office to deal with this increase”.

4. What is the current budget allocation for the Office?

Answer

The 1995/96 recurrent allocation is \$4,542,000. This represents an increase of \$114,000 over the 1994/95 allocation. In real terms however, this increase only covers the effect of inflation etc and will not assist the Office in any significant way, particularly as:

- staff of the Office, along with all public servants, were awarded a 3% pay increase effective 14 July, 1995 with the cost of this being met from the additional funding; and
- there have been general increases in the price of goods, for example a 30% increase in the cost of paper.

5. What submissions have been made to Treasury for additional funding and what was the outcome of these requests?

Answer

The Ombudsman sought additional funding in both the 1994/95 and 1995/96 forward estimates to Treasury, however no additional funds were provided. Details of the requests are:

Financial Year	additional funding sought for	amount
94/95	<ul style="list-style-type: none">• general enhancement to budget as result of increased powers in police complaints system and an increase in complaint levels (NB - the model developed by KPMG Peat Marwick was used as the basis of this request)	\$383,000
1995/96	<ul style="list-style-type: none">• Access and awareness• Police complaints system• Alternate dispute resolution and quality service• Protected disclosures• Freedom of Information	\$795,000 \$341,000 \$199,000 \$74,000 \$179,000

Copies are enclosed as **Annexure B**.

6. If any additional funds have been granted what will the Office be able to achieve with these resources?

Answer

No additional funding has been granted. Please note however, that the Office has received escalation increases to its funding base to cover general increases in inflation and any movements in salaries due to national wage decisions or other increases applicable to the public sector.

7. If additional funds were not granted what are the implications for the Office?

Answer

The basis of the requests for additional funds were:

- to fully implement the recommendations of the Joint Parliamentary Committee;
- to deal with increasing complaint loads; and
- to implement new government initiatives such as protected disclosure legislation;

The implications of not receiving any additional money, in real terms, are:

- the Office is not able to implement many of the recommendations of the JPC Inquiry into Access and Awareness (see **Annexure C** for further details).
- the new powers given to the Office in 1993 in relation to police complaints have not been fully utilised, for example the Office does not have the resources to undertake direct investigations, etc.
- any new initiative, such as protected disclosures, has had to be funded from within the existing budget allocation, diverting our limited resources from other functions of the Office.

2. ISSUES ARISING FROM PREVIOUS INQUIRIES

QUESTIONS ON NOTICE

Access and Awareness Inquiry - In response to the Committee's report on the Access and Awareness Inquiry the Ombudsman's Office drafted a three-year Access and Awareness Plan.

8. **What are the Office's current intentions in relation to the implementation of this plan?**

Answer

The Office is re-examining the Access and Awareness Plan in response to the government's decision not to provide extra funding for the plan and the government's requirement that the office reduce advertising expenditure by 25 per cent. A number of the plan's initiatives which did not require additional resources have already been implemented. Those activities which require additional resources are in the process of either being postponed indefinitely or modified so that they may be undertaken within the office's existing resources. See **Annexure C**.

9. **To what extent has the draft Access and Awareness Plan been modified because of the funding and resource difficulties previously discussed?**

Answer

At this stage the plan has not yet been modified, however, it is envisaged that because of funding and resource difficulties it will be substantially changed. Since the Committee

held its access and awareness hearings, complaints to the Ombudsman have increased by more than 1,200, while in real terms the recurrent budget has remained static. The Office's funding is such that we cannot sustain the level of access and awareness activities currently undertaken, let alone implement new ones. For example the Ombudsman has had to reduce the number of country outreach visits planned for 1995/96. The savings from scaling down these outreach activities will be allocated to dealing with the rising numbers of complaints to the Office.

Heightening public awareness of the Office creates problems because the Office is not effectively resourced to deal with the current level of complaints it receives.

10. What elements of the draft Access and Awareness Plan could be implemented by the Office from within its current budget allocation?

Answer

The elements of the draft plan which can be implemented within the Office's current resources are identified in **Annexure C**.

11. Was enhancement sought and obtained for the funding of the Office's access and awareness strategies?

Answer

Enhancement was sought for the funding of the draft plan's implementation. No additional funding was received and, in fact, under the government's requirement of a 25 per cent cut in the Office's advertising expenditure, we will need to significantly reduce our current level of spending on access and awareness.

12. Has the Office been able to engage a full-time Aboriginal liaison officer and dedicate a Youth liaison officer?

Answer

The Office has engaged an Aboriginal Liaison Officer full time. We do not have the resources to dedicate a youth liaison officer.

3. NEW LEGISLATION

QUESTIONS ON NOTICE

Protected Disclosures Act - This legislation, which commenced on 1 March 1995, provides a role for the Ombudsman's Office as one of bodies under the Act to which disclosures may be made. The Ombudsman's Office also functions as an advisory body to public authorities and officials establishing procedures to deal with protected disclosures and potential "whistle-blowers".

13. What officers have been involved in the provision of advice and the preparation of written guidelines?

Answer

The Deputy Ombudsman, Chris Wheeler, has been primarily involved in the provision of advice to public authorities and public officials concerning the Protected Disclosures Act and has also been the author of the Office's guidelines on Protected Disclosures, a copy of which is attached as **Annexure D**.

A copy of these guidelines is to be sent to all persons who have purchased a copy of the *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials*. The guidelines also to be produced as a separate booklet (with a copy of the Act attached) entitled *Ombudsman's Guidelines to the Protected Disclosures Act*.

14. Have the written guidelines been finalised?

Answer

The guidelines have recently been finalised and are currently being printed.

15. Will the Office's advisory role be ongoing or is it envisaged that this role will be reduced as authorities and officials become more familiar with the new legislation?

Answer

The Office has agreed to be the central advisory body in relation to the Protected Disclosures Act. This decision was made, primarily on the basis of assumption that protected disclosures are more likely to concern the broadly defined "maladministration" than "corrupt conduct" or "serious and substantial waste of public money." Further, the Office already has an extensive advisory service for persons wishing to complain about the conduct of public authorities and public officials.

In discussions concerning the operation of the Act, it was agreed in principle by the Office of Public Management, Audit Office and ICAC that the Office would be appropriately staffed to provide this advisory service. It was on this basis that an enhancement proposal was submitted. That this proposal was supported by the Office of Public Management.

Given the complexity of the Act (and the turnover in the public sector), it is unlikely that the Office's advisory role in relation to the legislation will decline in the foreseeable future.

16. What is the estimated impact of this additional function upon the resources of the Office?

Answer

The impact of this additional function upon the resources of the Office is hard to measure. The full impact of the Act has not been felt as it is still reasonably new, and little understood. It is also difficult to isolate increased workload due to persons making disclosures that they would not otherwise have made in the absence of the Act. However, where it is possible to identify such disclosures, the work involved is, or is likely to be, considerable.

The effect of the new legislation on the work of the Office can, in general terms, be summarised as follows:

- (a) provision of advice to potential "whistleblowers", and to public authorities who are: attempting to deal with disclosures that have been made; setting up internal reporting systems; or providing advice on the Act to their staff or management;
- (b) the assessment of complaints, and other information received in the Office to determine whether the requirements of the Protected Disclosures Act have been met;
- (c) dealing with extra complaints that may have not been made in the absence of the Act; and
- (d) carrying out investigations of complaints which appear to be Protected Disclosures without identifying the complainant, unless those circumstances specified in section 22 of the Act apply (which is a different procedure to that implemented in relation to most other complaints where the complainant is usually identified).

Taken together, the above matters will have a significant impact upon the resources of the Office. It is, however, difficult to quantify in monetary terms the extent of the impact.

At present, in the absence of any enhancement to assist the Office to handle this new function, primary responsibility for the function has fallen on the Deputy Ombudsman and the Investigation Officers responsible for investigating the protected disclosures that have so far been accepted for formal investigation.

17. What to date has been the response to the Protected Disclosures Act in terms of extra complaints?

Answer

It is difficult to answer this question precisely as difficulties have been experienced in identifying whether the Protected Disclosures Act applies to various complaints or other disclosures. This has been a particular problem in relation to police internal complaints.

We are attempting to fully comply with the requirements of the legislation, but cannot be certain as the provisions of the Act are particularly confusing. There has been a considerable exchange of correspondence between this Office and the Crown Solicitor and Solicitor General for the purpose of clarifying the implications of the Act to the work of this Office.

Given this ongoing correspondence, and our evolving understanding of what matters actually constitute protected disclosures, it has not been possible to quantify how many complaints made to this Office constitute protected disclosures. However, we can say that the Office has commenced formal investigations into at least 5 matters which it believes to be protected disclosures. There is considerable work involved in investigating these complaints, including formal hearings under section 19 of the Ombudsman Act in one case.

18. What liaison has there been between the Ombudsman, ICAC and Auditor-General?

Answer

There has been considerable liaison between the 3 investigating authorities in relation to the implementation of this Act.

The 3 bodies have jointly prepared, published and launched a booklet entitled *Internal Reporting Systems* which provides advice to public authorities about the Act and the setting up of internal reporting systems which comply with the requirements of section

14(2) of the Act. Further, the 3 bodies liaised with the former OPM in the production of a brochure on the Act which was circulated widely throughout the public sector.

There has also been liaison between the 3 bodies during the preparation of this Office's guidelines on the Act.

Finally, there has also been ongoing liaison between these bodies in relation to which body is the most appropriate one to take action on certain protected disclosures.

4. OMBUDSMAN'S GUIDELINES

QUESTIONS ON NOTICE

A recent initiative used by the Ombudsman's Office to help control increasing complaint numbers is the preparation of various guidelines for public authorities and officials, including: *Complaint Handling Guidelines, FOI Policies and Guidelines, Good Conduct and Administrative Practice: Guidelines for Councils, and Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials.*

19. What were the Office's aims in producing these guidelines?

Answer

The primary aim of the guidelines produced by the Office is prevention. It is of course better to prevent problems from occurring through guidance and education, than to respond once a problem has occurred. This fits well with the charter or mission of the Office to improve public administration.

One aim of the guidelines is therefore to provide clear guidance to public authorities and public officials on the conduct and administrative practices that the Ombudsman (and other relevant agencies) have determined to be acceptable and appropriate. As noted in the guidelines for public authorities and officials, one aim is to help prevent the occurrence of administrative and conduct problems, and therefore reduce the number of complaints to the Ombudsman concerning public administration related issues.

Another aim is to provide feedback to public authorities and public officials arising out of the work and experience of the Ombudsman over the past 20 years.

A further benefit is that the guidelines help to ensure that a consistent approach is adopted by staff of the Office in the assessment of complaints.

Finally, given that the Office has no control over the level of funds which it is allocated to perform its functions, one of the few constructive ways available to the Office to control its workload is to focus on low cost prevention work, such as the development and distribution of guidelines.

20. Has the Office received feedback from departments and councils on the guidelines and, if so, what was the nature of the feedback?

Answer

Copies of the guidelines are generally sent out with a questionnaire and a reply paid envelope seeking feedback from the persons who obtain and use the documents. Responses to date have been uniformly positive, and in some cases quite effusive. Verbal feedback has also been very positive.

21. Is there any way in which the Office would be able to measure or estimate the long-term impact of these guidelines upon complaint levels?

Answer

It is probably not possible to measure, or even estimate with any reasonable degree of accuracy, the long-term impact of our guidelines upon complaint levels.

While it is clear that various factors affect complaint levels, to date it has not been possible to identify all significant factors or the specific effects of each. However, it may be possible to review the nature of complaints to the Office over time, as well as any trends in numbers of complaints.

While it is difficult to establish any nexus between the guidelines and complaint levels, on the basis of our experience we believe that the guidelines will have a significant positive affect upon complaint levels over time.

22. What resources are used in the preparation, review and updating of these publications and which staff are involved in this process?

Answer

The *Ombudsman's Guidelines for Effective Complaint Management* were originally prepared by the Assistant Ombudsman (General), Greg Andrews, and recently updated by him for republication as a second edition. The costs of publishing this second edition are being born by the Premier's Department.

The *Ombudsman's FOI Policies and Guidelines* were prepared by the Deputy Ombudsman and the two FOI Investigation Officers of the Office. While the guidelines are informally reviewed in the light of ongoing work in assessing FOI complaints, it is not proposed to comprehensively review the document until at least the middle of 1996.

Public Relations staff were involved in the design, publication and distribution of the various Guidelines.

The *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* were prepared by the Deputy Ombudsman. These guidelines have recently been significantly revised and expanded by the Deputy Ombudsman, in liaison with representatives of the ICAC, Department of Local Government and the Local Government and Shires Associations. This second edition is currently being printed and copies will be forwarded to all persons and organisations who purchased a copy of the first edition. It is proposed that the Office will prepare a series of case notes arising out its ongoing work, copies of which will be forwarded to all persons and organisations that have purchased copies of the guidelines for inclusion in their folders.

The *Ombudsman's Good Conduct and Administrative Practices: Guidelines for Public Authorities and Officials* were prepared by the Deputy Ombudsman. During the preparation of these guidelines there was extensive liaison with representatives of the ICAC, Office of the Council on the Cost of Government, Auditor-General, Archives Office and other relevant bodies. It is not proposed to comprehensively review these guidelines until at least mid 1996.

23. Have any other guidelines been proposed?

Answer

The following guidelines are currently being printed:

- (a) *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* - 2nd edition; and
- (b) *Ombudsman's Guidelines to the Protected Disclosures Act*.

Preliminary consideration is being given to the possibility of preparing of the following guidelines:

- (a) good conduct and administrative practice: guidelines for police officers; and
- (b) guidelines for redress of justified complaints.

5. OMBUDSMAN'S REPORTS TO PARLIAMENT

QUESTIONS ON NOTICE

The following questions relate to several reports to Parliament by the former Ombudsman which the Committee has not had an opportunity to discuss in a General Meeting forum.

Race Relations & Our Police (Jan. 1995) - In this report the former Ombudsman expressed dissatisfaction with the level of priority and attention given by the Police Service to Aboriginal and ethnic community issues. The report made recommendations to establish procedures which would:

- enable the Police Service to “change in an acceptable time frame to more closely resemble and better service the needs of the broad community, including the Aboriginal and ethnic communities and other minorities, through changes in operation procedures, training and appropriate affirmative action programs”.
- achieve ongoing, objective, independent external review of the Police Service’s progress towards this goal through comprehensive monitoring, annual reporting and auditing.

Areas targeted in the recommendations were: operations, recruitment, education and training. The report also proposed that an annual external audit of the Police Service’s achievements in this area should be undertaken by an independent agency and a report made to Parliament.

24. **Has the Police Service accepted the recommendations contained in this report and has the Office been advised of progress made towards the implementation of the recommendations?**

Answer

- The Race Relations Report lists a variety of recommendations which cover the areas of Operations, Recruitment, Education and Training. A further recommendation was made in relation to an audit of the above recommendations.
- The Commissioner established a committee to review the recommendations (and recommendations arising from other reports). The committee has completed its report and it is currently under consideration by the Police Service.

-
- The Ombudsman again intends to raise issues relating to the Race Relations Report in a report on a complaint by Senior Sergeant Jurotte, an Aboriginal police officer. The Jurotte Report will highlight a number of issues made in the Race Relations Report. The Ombudsman intends to use the Jurotte case as an example of the need to attend to broader issues canvassed in the Race Relations Report.
 - Furthermore, the Assistant Ombudsman (Police) will be pursuing the principles of the Race Relations Report, as it relates to the Aboriginal community, in a meeting with the Minister for Police on 6 October 1995.

25. What is the current position in relation to the proposal for an external audit?

Answer

Within its resource constraints this Office is not able to be the external audit body to oversee the implementation of the recommendations contained in the Race Relations Report. An enhancement was sought to perform this function which met with no success.

Since the submission of the Race Relations Report this Office has undertaken a number of initiatives as an ongoing commitment to the issues raised by that report:

- The Ombudsman has continued to investigate complaints from Aboriginal people.
- The Assistant Ombudsman (Police) and the Aboriginal Liaison Officer met in April 1995 with all of the operational Regional Commanders of the Police Service and outlined the commitment of the Ombudsman to improved policing methods for Aboriginal members of the NSW community. An outcome to this meeting was a commitment from the members present to the endeavours of this Office for improved consultation and more effective complaint resolution amongst the Aboriginal community.
- Representatives of the Ombudsman visited Moree, Walgett and other centres of the north west of New South Wales in May 1995. Observations made at that time were that there is a lack of co-ordination and direction by senior Police staff to provide guidance to Police officers at the patrol level.
- In July 1995, representatives of the Ombudsman visited Cowra and Wellington in order to evaluate certain complaints and to assess policing practices. This visit was intended to specifically deal with complaints

from the Aboriginal communities in those centres. Observations made during that visit confirmed a variation in the standard to which Police have been applying the principles as set out in the Race Relations Report.

- In September 1995 the Assistant Ombudsman (Police) and the Aboriginal Liaison Officer visited far-west and south west NSW in order to evaluate certain complaints and to review changes to policing practices. This visit confirmed lack of positive contact and consultation between local police and Aboriginal communities. Agreements were made in principle at Wilcannia between Police and the Aboriginal community to address these issues. These agreements which are currently being produced in writing by the Ombudsman will be followed up to ensure attempts are made to implement them.
- The Assistant Ombudsman (Police) is to meet on 6 October 1995 with the Minister for Police to discuss the Police Service Aboriginal Strategic Plan. At this meeting key interest groups in Aboriginal affairs will be represented.

Freedom of Information - the way ahead (Jan. 1995)

This report called for a comprehensive review of the FOI Act including the establishment of a Joint Parliamentary Committee on FOI and an Information Commissioner. It was proposed that the Ombudsman or Deputy Ombudsman should be appointed to the position of Information Commissioner. According to the report, other issues requiring examination were: the fees and charges structure; exempt matters; a public interest test; consultation with third parties and delays.

26. Does the Ombudsman consider that the Information Commissioner proposal would overcome those problems with the existing mechanisms for external review outlined in the report?

Answer

The problems with the existing mechanisms for external review are outlined in the report in the following terms:

“... it is, in my opinion, beyond argument that the current external review mechanisms are not appropriate:

-
- (1) *the District Court is far too expensive (witness the small number of appeals determined by the Court in the last five years);*
 - (2) *the Ombudsman:*
 - (a) *can only “review conduct” and not make binding determinations;*
 - (b) *cannot review determinations by Ministers; and*
 - (c) *is bound by stringent secrecy provisions and therefore unable to publish decisions for the guidance of agencies, legal advisers and the general public (although special reports under the Ombudsman Act and annual reports under the FOI Act can go some way towards redressing this problem).”*

In the six years since the commencement of the FOI Act, the District Court has made less than ten FOI determinations in exercising its external review jurisdiction under the FOI Act. In the same period the Ombudsman has dealt with several hundred FOI complaints under its external review jurisdiction.

The primary reasons why the Ombudsman is the preferred avenue of external review are that the District Court is costly and its procedures are far from user friendly. On the other hand, a complaint to the Ombudsman involves no direct costs to the complainant and there are no complicated procedures which must be complied with. The Office has also often been successful in achieving resolution of complaints, both through informal discussions with the parties and through mediation. A recent example involved an FOI application for particularly contentious information, where several different agencies and organisations had a significant interest in the outcome of the matter. This dispute was successfully mediated by the Office.

An Information Commissioner could have the power to make determinations that were binding on agencies, in the circumstances where such an approach is appropriate and necessary. Given the experience of the Ombudsman in the six years since the commencement of the FOI Act, any power to make a binding determination would be used sparingly as most complaints do not proceed to formal investigation. For example, many are resolved to the satisfaction of the Ombudsman (and generally to the satisfaction of both parties).

This is demonstrated by the fact that it has seldom been necessary for the Ombudsman to formally report under the Ombudsman Act in relation to FOI complaints. In the past year only four investigations proceeded to formal report, with a further three being discontinued at the preliminary report stage on the basis that the matters had been satisfactorily resolved.

If there is going to be a “one stop shop” for the external review of FOI determinations and related conduct, it must also cover determinations made by Ministers.

If the Information Commissioner model is adopted, as one of its primary roles would be education and guidance, it would be essential that the legislation allow for the publication of any determinations made by the Commissioner. Such determinations would be particularly useful for the guidance of agencies and legal advisers and the general public, as are the determinations made by the Western Australian and Queensland Information Commissioners.

The Commonwealth is just completing a review of its FOI legislation. Perhaps the most significant idea floated in that review is for a body to monitor the operation of FOI in the Commonwealth sphere. It is proposed that the functions of such a body could include:

- monitoring and reporting on agencies’ administration of and compliance with the FOI Act, which could include collecting statistics from agencies and preparing an annual report on FOI;
- facilitation between parties;
- publicising and promoting the Act in the community;
- issuing guidelines on how to apply the Act;
- training agencies;
- providing legislative policy advice on access to government; and
- a role in overseeing the general information practices of agencies, including their policies on publication and pricing of information, use of FOI and information management practices.

This proposed body falls only one step short of being a comprehensive Information Commissioner (in that it does not have an external determinative review role), but otherwise seems to have just about every other relevant function.

The Commonwealth is in quite a different position to NSW in relation to FOI. From the commencement of the Commonwealth Act the Commonwealth AAT has had a determinative review function and has made hundreds of precedent decisions. During the same period the Commonwealth Ombudsman has, until recently had little involvement in FOI matters.

A proposal has been mooted to transfer the FOI jurisdiction of the NSW District Court to the proposed AAT. However, the likely advantages of an Information Commissioner over the District Court (or an AAT) in conducting external reviews of FOI determinations would include:

-
- the benefits that flow from some degree of specialisation;
 - informality and simplicity of process;
 - speed;
 - ability to facilitate resolution between the parties;
 - a broader perspective with an ability to look behind the original decision to identify any problems relating to policy, procedure or conduct on the part of the agency or its staff;
 - the process is very inexpensive for both the agency and applicant; and
 - education and advice role sits more comfortably with an Information Commissioner than a judicial or quasi-judicial body.

In addition, if the NSW Ombudsman was the Information Commissioner, there would be a depth of experience and internal precedent to draw upon.

In this regard, the former Ombudsman suggested that it would be appropriate for either the Ombudsman or Deputy Ombudsman to be constituted as an Information Commissioner. However, for simplicity, and to avoid administrative and budgetary complications, the Deputy Ombudsman option should be avoided.

In conclusion, in my opinion the Information Commissioner proposal would overcome the problems with the existing mechanisms for external review outlined in the former Ombudsman's report of January 1995.

27. To what extent are the functions proposed for the FOI Joint Committee already performed by the Ombudsman's Office or the Premier's Department?

Answer

The functions proposed for the Joint Parliamentary Committee involve an umbrella oversight role for FOI in NSW.

Within the severe resource constraints on the Office, it has done what it could to implement the proposed functions listed at 1.7(1), (2) & (4) of the former Ombudsman's January 1994 report. However, the efforts of the Office in this regard have necessarily been very limited.

Since the disbanding of the FOI Unit in the Premier's Department, that Department does not perform any of the proposed functions of the Joint Committee. It is only very recently that the Department has resumed any sort of active role in relation to FOI, but has confined itself, as far as I am aware, to updating the *FOI Procedures Manual* and the Freedom of Information (General) Regulation 1995.

In my opinion the problems identified in paragraphs 1.1 to 1.4 of the former Ombudsman's January 1995 Report cannot be properly addressed by an agency of the Executive Government. Firstly, what is required is clear independence, and secondly, political influence.

While certainly not disagreeing with the former Ombudsman's views about the importance of an organisation or body being charged with promoting FOI in this State, in my opinion an alternative mechanism for achieving this aim would be to expand the functions of the Committee on the Office of the Ombudsman to include the proposed FOI related functions. This would be particularly appropriate if an Information Commissioner is established under the FOI Act and the NSW Ombudsman is appointed Information Commissioner.

Raymond Denning withdrawal from the Witness Protection Scheme (Jan. 1995)

28. Has the Police Service adopted the reforms to the witness protection scheme recommended by the Ombudsman?

Answer

The Police Service has not adopted the reforms to the Witness Protection Scheme recommended in the Denning Report.

The Police Service reviewed the witness security unit and amended the Witness Protection Management Plan, however in doing so it enshrined in the plan considerations which this Office originally objected to as being unreasonable. Political embarrassment has been included as a legitimate consideration in assessing suitability for admission to the program. Further, the plan has now been amended so that the State Commander can remove a person from the program without giving reasons in situations where he/she is "privy to information not available to the Committee". In effect this legitimises the type of action that was taken in the Denning case.

We will be referring to this matter in our Annual Report and are considering what further action we will take.

The legal proceedings relating to this inquiry raised a number of issues relating to the cost of such judicial review for the Office.

29. How often is the Ombudsman taken to court in such appeals?

Answer

Since 1981, the Ombudsman has been involved in the following court cases:

<u>Date</u>	<u>Matter</u>
1981	Boyd v The Ombudsman and the Commissioner of Police
1982	Moroney v The Ombudsman (1st instance) Moroney v The Ombudsman (Appeal)
1987	The Ombudsman v Commission of Police
1988	Ainsworth v The Ombudsman
1990	Commissioner of Police and others v The Deputy Ombudsman and Assistant Ombudsman
1994	Commissioner of Police v The Ombudsman (Denning)
1994	Allen and others v Assistant Ombudsman [Police Officers subject of a reinvestigation by Ombudsman instituted proceedings challenging both jurisdictional and procedural issues. These proceedings were discontinued following the decision in the Denning matter.]
1995	Cudal v The Ombudsman and others
1995	Kur-ring-gai Council v The Ombudsman
1995	Botany Council v The Ombudsman Botany Council v The Ombudsman (Appeal being heard 6/10/95)

30. What is the cost to the Office of mounting defences against such challenges to the Ombudsman's powers or procedures?

Answer

The following table provides details of costs relating to legal challenges during the 1994/95 financial year. These figures include staff costs and legal fees including the costs incurred by the Crown Solicitor.

		COSTS			
Matter	Result	Barrister	Solicitors	Staff	Total
Denning	Office won	\$11,625	\$2,973		\$14,598
Kur-ring-gai	Office won	\$6,950	\$18,007	\$7,039	\$31,996
Botany	Office won - Botany Council has appealed	\$3,003*	\$7,382*	\$9,014	\$19,399
Total cost to Office		\$18,575	\$18,007	\$19,026	\$55,608
Total legal costs		\$21,578	\$25,389	\$19,026	\$65,993

* amounts incurred by the Crown Solicitor and paid from the Attorney General's Fund.

Police Internal Investigations - poor quality police investigations into complaints of police misconduct (Jan. 1995)

31. Is the Ombudsman's Office monitoring the implementation by the Police Service of recommendations contained in this report? If so, to what extent have the recommendations been adopted?

Answer

The Ombudsman recommended that the Police Service carry out a review to identify strategies for improving the present quality of investigations into police complaints.

On 23 January 1995, the then Minister of Police and Emergency Services, Mr Garry West, said, in a media release, that the police would review internal investigation procedures in the wake of the report.

Responsibility for the review has been allocated to the Commander, Professional Responsibility, who has requested, and received, responses from the Regions on the matters raised in the report. It is our understanding that this review has not as yet been completed.

32. The conclusions drawn in the report were based on a review of the Office's records of police investigations into complaints of police misconduct. The review disclosed 16 cases of recent poor quality police investigations. What percentage of the Office's records of police investigations for the period reviewed do the 16 cases represent?

Answer

This represents a very small percentage of matters investigated during that period. These were examples only and were not intended to represent all deficient investigations over the period in question.

33. Has the Office received any complaints which would suggest that the trends and patterns identified in the report have continued?

Answer

The quality of investigations is still variable. However the police have become more responsive to addressing issues raised by this Office concerning deficiencies that are identified to them. As an example, in response to a recent report from this Office concerning the adequacy of documentation provided, the Assistant Commissioner South Region issued a direction to staff stipulating the types of documents to be provided in reports on all investigations.

At the moment we are reviewing problems with investigations on a more systematic basis. In particular we are focusing on procedural deficiencies in the investigation of criminal matters and in the collection of documentary evidence by police. We intend to take this issue up on a managerial level with the Police Service.

The Office has encouraged the police to use complaints to address systematic issues, and three out of the four regions have begun to analyse complaints in this way.

- 34. Since this report the Police Service has produced a *Complaint Conciliation Manual* (March 1995) and *Procedural Guidelines for Conducting Preliminary Inquiries*. What is the Office's assessment of these two documents?**

Answer

Both documents are reasonably comprehensive, however they will need on-going review.

The preliminary inquiries manual was produced in response to recommendations by this Office concerning changes to the preliminary inquiry system. These changes involve more direct contact with both the complainants and this Office during the course of the inquiry.

This Office had an input into the development of both documents.

- 35. How has the Police Service responded to the other remedies suggested in this report?**

Answer

The Police Service engaged an ADR expert to review their proposed conciliation training program and to run a "Train the Trainer" course.

The Internal Affairs Training Unit has already run a number of conciliation training courses throughout the State. (11 courses so far, with sixteen participants at each).

The Police Service have recently produced a draft conciliation policy for the NSW Police Service and are preparing a pamphlet on conciliation to be distributed through police stations.

Public Meeting with the Ombudsman 9/10/95

Questions Without Notice

INDEX

Access and Awareness

Aboriginal Liaison Officer - activities	26
Additional funding	7-8, 15-16, 19-20
CHIPS	5, 8-9, 29
Country visits	14-16
- statistics	17
Guideline Manuals	26
Implementation of Committee recommendations	8
Media	7-8, 16-17
Report distribution	26

Anonymous complaints	11
-----------------------------------	----

Conciliations	33, 37
----------------------------	--------

Freedom of Information

Complaint numbers	23
Funding	22-23
Information Commissioner	33-4

Funds and Resources

Additional funding for inquiries	5-6, 11-12, 13, 18
Budget allocation 1995-6	12
Global budgeting	6
Is the Office demand-driven?	20
Office restructure	10
Program budgeting	3-4, 6
Staffing issues	24-25

Information Technology System	24-25
Case management system	
Computer network	
Management information	
Strategic Plan	
Internal Complaint Handling Systems	29-30
CHIPS	
Statistics	
Investigations	
Public interest investigations	18-19
Juvenile Justice Inquiry	12-13
KPMG Peat Marwick Funding Model	5
Legal Proceedings	
Botany Council	35
Ku-ring-gai Council	35
Legal costs	36
Local Government	
Code of Conduct	30
Office Workloads	
Complaint backlogs	23-24
Complaints referred by Members of Parliament	15
Causes of increased complaint numbers	7-8
Complaint increases - statistics	4-5
Ombudsman's Reports to Parliament	
Race Relations Inquiry:	
- external audit	31-2
- implementation of recommendations	31-2
Report on Raymond Denning	34

Police Complaints

Corruption versus misconduct

- definitions and investigation techniques 9-10

Liaison meetings with Police Service 25

Statistics 23-4

Protected Disclosures

Application to police officer 22

Central advisory body 21, 28-9

Funding 21

Need for legislative amendments 21-22, 27-8

TRANSCRIPT OF PROCEEDINGS BEFORE

COMMITTEE ON THE

OFFICE OF THE OMBUDSMAN

—
At Sydney on Monday 9th October 1995

—
The Committee met at 11 a.m.

—
PRESENT

Mr B. J. Gaudry (Chairman)

Legislative Council

The Hon. S. B. Mutch

The Hon. Elaine Nile

The Hon. Patricia Staunton

Legislative Assembly

Mr J. Anderson

Mr J. S. P. Kinross

Mr P. G. Lynch

Ms Reba Meagher

Ms Clover Moore

IRENE MOSS, Ombudsman, 580 George Street, Sydney.

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, 580 George Street, Sydney.

STEVEN JOHN KINMOND, Assistant Ombudsman, Police, 580 George Street, Sydney.

GREGORY ROBERT ANDREW, Assistant Ombudsman, General, 580 George Street, Sydney, affirmed and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before the Committee?

Ms **MOSS:** Yes.

Mr **WHEELER:** Yes.

Mr **KINMOND:** Yes.

Mr **ANDREWS:** Yes.

CHAIRMAN: You understand that it attracts parliamentary privilege?

Ms **MOSS:** Yes.

Mr **WHEELER:** Yes.

Mr **KINMOND:** Yes.

Mr **ANDREWS:** Yes.

CHAIRMAN: We have received a submission from the Ombudsman in response to questions from the Committee. Is it your wish that these submissions be adopted as part of your sworn evidence?

Ms **MOSS:** Yes, we have no problems with its being admitted.

CHAIRMAN: Would you like to elaborate on or make an opening statement on the submission?

Ms MOSS: We very much appreciate the interest shown and the opportunity to address you. We at the Ombudsman's Office look forward to a fruitful relationship. As much as it is important that the Ombudsman is the watchdog of public sector agencies in New South Wales—which includes the police, local government and prisons—we feel and appreciate that it is also very important that we at the Ombudsman's Office are also accountable to Parliament through this Committee. The old saying of, “Who guards the guardians?” should never have, “No-one” as an answer. We very much see the importance of cooperating and liaising with this Committee. Through this system we would certainly hope that we would gain greater insight into how we can improve ourselves, how we can correct our mistakes, and how we can operate more efficiently and more effectively. We would also hope that through this system the Committee will also monitor and assist us in implementing the goals through the tightening of the compliance of other public sector agencies to our reports. We also think that is very important.

We thank you for the opportunity to comment on your questions in advance. No doubt there are quite a few issues you may wish clarification of. We are happy to do that. The two key issues that we see as pressing at the Office at the moment are, firstly, police complaints. This is very important for us in that over half of our complaints are lodged under the police complaints system. We have a great interest in how this public debate is occurring and a great deal of interest in the issues that are arising before the royal commission, bearing in mind that we were never set up as a corruption fighter, but to handle misconduct and the day-to-day issues concerning the police. The second issue that we feel is important is the resource question, which we have outlined in some detail in writing in the report. I will leave it there. We are very happy to clarify the replies in the report as well as any other issues that you might wish to raise today.

CHAIRMAN: As we are conducting that separate inquiry into the role of the Ombudsman in the police complaints system, our questions in the initial phase did not concentrate on that aspect.

Ms MOSS: I understand that.

CHAIRMAN: But during the cycle of questioning we may refer to it, or you may wish to raise it in your answers because, as you say, it constitutes a major amount of your work. Going to the first group, funds and resources, in terms of

recommendations that came to the Office of the Ombudsman from the former inquiry, under the new charter of accounts adopted by the office will it be possible to compare funding and expenditure for a particular subprogram or activity within either the General Area or the Police Area over several years of operation?

Ms MOSS: Yes. Others would assist me to elaborate, but my understanding is that we have taken on board the recommendations of the last Committee about program budgeting. Whereas before it was one major program, that of investigations, we have divided it into the key programs of police and general. We have further subdivided those two programs into several subprogram areas. That information would be fairly easily accessible.

Mr WHEELER: The information would be accessible, but whether it is comparable between the Police Area and the General Area, whether you can compare like functions, would be a difficulty.

Ms MOSS: I suppose that is the case because the investigation process of police matters is quite different from the process with respect to general non-police complaints.

CHAIRMAN: How long is the review of the Office's existing charter of accounts by the manager of administration and financial accounting expected to take?

Mr WHEELER: I think we are hoping for a result in the next month about the charter of accounts, but at the moment we have the estimates to get out and various other pressures are on us, so we cannot be precise about that.

CHAIRMAN: I note that in quite a few of your answers you are under some pressure to produce, both in this form of administrative work and obviously in the many inquiries. Is the pressure of workload a constant difficulty within the office?

Ms MOSS: It is a huge problem. The biggest problem of workload is in the complaints handling area. We are constantly—despite the fact that we may not wish to because we would prefer, at times, to have more ambitious programs that might focus on either community education or possibly policy development in certain areas—having to divert resources into complaint handling. Since the KPMG review the number of complaints has gone up about 20 per cent. The greatest increase is actually seen in the Police Area. Before the last year we had a yearly number of about 4,600 complaints; this coming year we anticipate it will be 5,056 complaints, so that figure has gone up quite considerably.

Likewise, the complaint load in the General Area has also gone up by 7 per cent, so that our staff are primarily involved in the main function of investigating complaints and keeping our heads above water there. That has produced some strains in that, even when one is talking about, say, people taking leave—recreation leave, sick leave or whatever—that can produce pressures in that it is difficult to reallocate their complaint load in the time. It also produces a lot of stresses within the office. When we do our community education work, which may involve sending two officers to the country to do rural visits, it is almost impossible to reallocate their complaint load so that during the week that the officers are away their complaints are not reallocated.

If we were able to get resourcing just to put into the complaint area I think that would relieve a great deal of the stress. When we initially put in submissions to Treasury for additional funding we were quite ambitious. We took into account the Parliamentary Committee's report on access and awareness and we sought a considerable amount of funding for that and for other projects—for example, the CHIPS program, (complaint handling in the public sector). We did not get any additional funding so we know we cannot be as ambitious as we had planned. We scaled down our ambitions in the latest request to Treasury but we also did not get funding then. If I had to look at priorities, I suppose I would like to relieve the stresses in the complaint handling area.

CHAIRMAN: I understand that you used the KPMG Peat Marwick model as the basis for your submission for additional funding for 1994-95. As you said, that was declined by Treasury. Do you regard that model as a useful working document for the Office? Have you used that in light of the 19 per cent increase in complaint numbers and changes in the complaint profile as part of the whole approach to working within budgetary constraints?

Ms MOSS: I believe we did, but perhaps Greg Andrews might be the best person to answer that question, in view of the fact that he was here when the report was made.

Mr ANDREWS: The simple answer is that it is just a useful internal model that we can use to number-crunch and look at the implications of changes to complaint profile. We have some concern that some of the initial figures that were incorporated into that may not be exact. It is only one method that we use to predict resource implications.

The Hon. PATRICIA STAUNTON: You raised the question of program budgeting. Do I take it that, within the context of program budgeting, you have the capacity on a global budget basis to shift funds between various programs?

Ms MOSS: Well, yes. Theoretically, yes we can. Basically, our office can spend the budget that we receive from government the way we want to. Quite obviously, pursuant to the review that was done, we restructured and reorganised our accounting processes in accord with what was recommended. We feel that that is working quite well and quite efficiently.

The Hon. PATRICIA STAUNTON: So that you have sufficient flexibility to allocate funds?

Ms MOSS: We do, and that is done pursuant to management committee meetings in deciding if those shifts are necessary or appropriate. For example, there was a time when the Assistant Ombudsman, Police, felt that the handling of police complaints was somewhat lagging and we needed to shift funds into that area for a while. That is something that can be decided at a management meeting.

The Hon. PATRICIA STAUNTON: You have obviously identified resources as one of your biggest problems. On page 2 of your report you say that the recurrent allocation for 1995-96 is \$4,542,000, and on page 3 you refer to what you have called additional funding sought for. Do I take it, therefore—if I add those two figures together, what you got and what you asked for—that you asked for something in the vicinity of \$6 million? Am I correct in doing that sum?

Ms MOSS: The short answer is yes. From the first enhancement proposal we made, I think we did seek an additional \$1.4 million, or \$1.5 million, which would take it roughly to about \$6 million. We scaled that down considerably the second time around.

The Hon. PATRICIA STAUNTON: If my additions are correct, those figures on page 3 amount to about \$1.9 million?

Ms MOSS: I think it was a bit less than that.

Mr WHEELER: We asked at different times.

Mr KINROSS: The report refers to different years.

Mr WHEELER: Different years, yes.

The Hon. PATRICIA STAUNTON: I suppose what I am saying is that it is roughly around the \$6 million that you ideally would have asked for.

Ms MOSS: If you added the first and second amounts, but it probably would not have included that first amount. I would say that is not quite \$1.9 million but rather closer to \$1.5 million.

The Hon. PATRICIA STAUNTON: You mentioned in respect of 1995-96 that additional funding was sought for the access and awareness program, which is the biggest budget item that you have. As I understand it, the object of that program was to raise community awareness about the role of the Ombudsman and to facilitate the community's knowledge such as to make complaints if they see fit. You have not been able to run that program as you would have liked, is that correct?

Ms MOSS: Not as recommended by the Joint Parliamentary Committee. There is a level of community education that we feel we have got to do to fulfil our duty and we have continued to do that. We have continued the publication of brochures and booklets on various issues and guidelines in various languages—that is, the brochures; we give speeches; we send investigators out to the country to conduct talks, and that sort of thing. The thing is that there were some very important and ambitious recommendations made by the Joint Parliamentary Committee and for those specific recommendations that would have involved extra money, no, we could not engage in that. In fact, I think we will have to scale down, firstly because I understand that departments are expected to cut down on advertising by about 25 per cent. This coming year we may very well also have to cut down on the number of country visits because we just have not got the money to put into the allowances and the cost of travel.

The Hon. PATRICIA STAUNTON: You mentioned in your opening comments the increasing number of matters that have come before you by way of complaints, particularly in respect of police but of course in the General Area as well. Given that you are not able, as you have indicated, to undertake the access and awareness program to the extent that you would have liked or would have envisaged because of budgetary difficulties, to what do you attribute the increasing numbers of complaints?

Ms MOSS: I would say media still provide the main sources of information for the public. The result of the survey by the Ombudsman's Office the year before was that a high proportion of the public knew about the office. I would say

that that is a constant occurrence—we would get that increase anyway. But we are conscious that we are not reaching people in certain quarters—people of non-English speaking background, Aborigines and Torres Strait Islanders, people with disabilities and certain groups of disadvantaged. We are possibly not providing the best service for people who are illiterate. We thought of programs to embark on in this regard but without the extra funding I think it would be cruel to raise the level of dissatisfaction amongst people if we cannot satisfy them properly in handling their complaints. So we will deal with what we have got and keep up what we believe to be an appropriate level of community education. But it would not be possible to be more ambitious without more funding.

CHAIRMAN: Obviously the access and awareness report from the Parliamentary Committee was either ambitious or looking at the ideal. From your report and from the detailed report you have given in terms of what you have been able to implement, obviously you would be stating that to implement the proposals fully you would require further resourcing.

Ms MOSS: Yes.

CHAIRMAN: Have you assessed what resources would be required to fully implement such a program?

Ms MOSS: We did. Chris Wheeler might give some details on that.

Mr WHEELER: As you are aware, the plan we prepared was based on the Committee's report. We costed out the extra work involved plus some extra and it came in at \$795,000, as is mentioned at page 3. We put in a submission for extra funding. As we have said previously, that was not accepted.

Ms MOSS: There is a program there that I think is important which you could term as a sort of a community education program, complaint handling in the public sector. At the moment basically the only person who is dealing with that program is Greg Andrews. Whenever departments wish to have training on how to develop their internal grievance mechanisms, seminars are held on how to do that. Greg is basically the only person at our office who runs those seminars. We do charge for them. There would be greater returns with a little extra money being put into it, because it is a good preventive program. It would help agencies to learn to develop their own mechanisms, rather than having complaints come just to us. We feel it is a shame that we did not get extra funding to have one extra person in that area. At the

moment the Assistant Ombudsman is doing it solely, and it is a bit of extra work for him.

The Hon. PATRICIA STAUNTON: Referring to the complaints about police misconduct, I think you said that you are not a corruption busting agency; you are there to deal with complaints of misconduct. How do you distinguish between what you receive as a police misconduct complaint and what is corruption for the purposes of perhaps sending it on elsewhere? Do you find that there may be some potential for double dipping or double lodging of what may be a corruption complaint as opposed to a misconduct complaint?

Ms MOSS: There certainly can be double dipping but we think there are very clear distinctions between the matters which are the subjects of complaints—the day-to-day matters—and what we would see as the objective of what a corruption fighting body should be. Steve Kinmond has been working on this issue. He might be able to elaborate more clearly to the Committee.

Mr KINMOND: The kinds of matters that we have identified as being general corruption or serious corruption matters involve bribery, conspiracy, drug offences, perversion of the course of justice, consorting with criminals, et cetera. They would amount to about 10 per cent of the matters that come before our Office.

Ms MOSS: They are then referred to the ICAC for its consideration.

Mr KINMOND: Of course, often those types of matters will not be identified by a complaint handling model. They are the very types of matters that people will not be lodging complaints about. That is why I made the distinction between day-to-day policing matters, which affect the vast majority of people who come into contact with police, as opposed to the types of matters which fall within that description which will not be uncovered by the complaints handling system and will not be adequately dealt with by such a system.

Ms MOSS: We have observed as everybody else has that, corruption being a victimless crime, the methods that are presently adopted by the Royal Commission are indeed successful in exposing this whole business. The methods adopted involve covert operations, offering witness protection programs and getting the rollovers. It is the sort of intelligence gathering which is very proactive in its nature. In complaint handling, we at the office are very much also accountable to the complainants. Whatever decisions are made there, we liaise with the complainant and give reasons for the steps that are being taken. So it is very interactive in that regard;

whereas with respect to corruption fighting that is not necessarily the case. Some of the information may be uncovered through complaints. Therefore, the intelligence gathering should involve liaison with the complaint handling body as well but we would say that a lot of that information is gleaned in other ways and elsewhere. Chris may have something to add.

Mr WHEELER: If you think about the procedures adopted by a complaint handling body compared with those of a corruption fighting body, for example, the corruption fighting body is heavily into strict secrecy whereas the complaint handling body has as much openness as it possibly can, as the circumstances will allow. We have to warn people we are coming. Natural justice is involved by and large. There are all sorts of procedures which have been built up over the years, which have primarily come out of the Joint Committee's work, which are totally inappropriate for a corruption fighting body to adopt. A corruption-fighting body uses a complainant as a source of intelligence, not as a party, if you like, to the matter that is being looked at. So even if you had both functions in the one body they would in effect be two organisations. You could not have them in the same area. They could not use the same staff. The procedures would be different. The laws would be different. The philosophy would be radically different between the two functions.

CHAIRMAN: We are perhaps moving to another area. At the moment we are focusing more on funds and resources.

The Hon. ELAINE NILE: Page 2 refers to a saving of \$60,000 in the police team, on the recommendations of the consultants, which included the deletion of four positions and the creation of three new positions with different duties and responsibilities. In the area of saving, what has happened with the duties of the previous four positions?

Mr WHEELER: There was a restructuring of the administrative area and the duties of the four were basically either delegated to the teams or were restructured into the three remaining Members of staff.

The Hon. ELAINE NILE: But it refers to different duties and responsibilities.

Mr WHEELER: That is because it was restructured. It was not because the three are three of the four, if you like; they are new positions. We have redesigned the whole thing. While there is a lot of overlap, they are quite different from what was there before.

The Hon. ELAINE NILE: Do you accept anonymous complaints?

Ms MOSS: We do.

The Hon. ELAINE NILE: So you could investigate complaints coming from the prison system against officers and so on? They are definitely gone into well and truly, are they?

Ms MOSS: Yes. If anonymous complaints show substance, the Office would pursue them. It might get to a point where you cannot take it any further if the identity of the person were not revealed or the breach of natural justice might be such that it would be necessary for the name to be revealed. But we certainly would not reveal the name of the person without the person's permission. But complaints are taken seriously if they have substance.

Mr ANDREWS: There is a special provision in the Police Service Act which says that the Ombudsman can only investigate a complaint if certain conditions are met. They refer to it involving a relatively serious offence that warrants disciplinary action and with enough information in the anonymous complaint to enable an investigation to take place. There is no equivalent provision in the Ombudsman Act but we basically, as a matter of office procedure, adopt the same policy. So it is wrong to think that we take up every anonymous complaint; only those complaints which raise a serious issue and which contain sufficient information for the complaint to be investigated.

Mr KINMOND: Once again, if there is not sufficient information, it is appropriate for that type of complaint to be referred to a corruption fighting body. That is exactly the type of matter that we would imagine would need to be referred to a corruption fighting body as a piece of intelligence. Often the problem you have in relation to these matters is that you are getting only one small piece of the puzzle. You really need a body with a corruption focus that can pull this type of information together and then develop a profile in a particular area or in connection with a particular problem.

Mr KINROSS: My questions relate to responses to your funding request and question 5 specifically. In addition to those matters in 1995-96 when you made your request, the Carr Labor Government has since announced, if I am not mistaken, a couple of matters that it has wanted the Ombudsman to inquire into, one of which is the Department of Community Services. Is that request, which no doubt will require more resources and funding, included in the 1995-96 allocation?

Ms MOSS: Greg is the best person to answer, and the answer is no. Perhaps Greg can outline the details. It is actually into the Department of Juvenile Justice, or certain aspects of it.

Mr ANDREWS: The history of the matter is that in June the Minister for Community Services, Mr Dyer, asked the Ombudsman to consult him about a number of matters that had come to his attention concerning juvenile justice centres. A number of complaints had been made to the Minister and other information had been made available to him that raised concerns that led him to believe that some of the practices and procedures in the centres were defective to the extent that they may be so inadequate as to constitute maladministration. Some of the matters we were already aware of but some we were not. The Minister asked the Ombudsman whether she would be prepared to conduct an intensive investigation of juvenile justice centres. The Ombudsman said, "We would like to but we cannot afford to do so." We outlined the limited service we currently provide to juvenile justice centres. The Minister thought more about that and later approached the Ombudsman saying that he was very keen for something to be done and that he would be willing to provide funding. We then did a provisional costing and told him what it was likely to cost, outlined the terms of the inquiry we were prepared to do, and the Minister accepted that and we have now started the inquiry.

Mr KINROSS: Doing the sums following on from the questions from Ms Staunton, I think you have received roughly, on the 1995-96 allocation, about three-quarters of what you requested.

Ms MOSS: No. We received \$114,000 extra, which would just about cover the 3 per cent pay increase that has occurred with inflation and the general increase in goods. We received no additional.

Mr KINROSS: My question was, on page 3, if you take account of additional funding sought for 1995-96 which again, I think, totalled about \$1.6 million, and add that to the 1995-96 recurrent allocation of \$4.5 million or so in answer to question 4, then you total about \$1.6 million which is about three quarters, is that right?

Ms MOSS: Oh, I see what you mean—yes.

Mr KINROSS: In addition to that, what I am interested in is my last question which you referred to Mr Andrews to answer. Are there any other inquiries that you have been asked to undertake that have not been provided for in terms of funding?

Ms MOSS: No, not to my knowledge, not major inquiries of that nature. Of course, we have our normal complaint load which we may, indeed, institute formal investigations, but no additional.

Mr KINROSS: As a Parliamentary Committee we are going to undertake an inquiry into the role of police complaints itself. Has that not been provided for?

Ms MOSS: No, that comes out of our existing budget.

Mr KINROSS: And that, of course, will start when we begin to take submissions, and will have a role with you. You said a moment ago that, no, there was no other, but there was, there is that one. If you need to take it on notice, I am happy for you to do so, but I would like to know what other matters get referred? You know, governments have a preponderance to say, "Well, let us get the Ombudsman to do it" and then they do not provide the extra funds for it. I am interested, in addition to that, to know what other matters may have been referred to your office for which no additional funding has been provided?

Ms MOSS: I did not take into account the forthcoming inquiry of the Joint Parliamentary Committee but that would be one where no additional funding would come but we would be absorbing that from within our existing—yes, we are happy to take it on notice and get back to you with some details (see Appendix 3).

Mr KINROSS: If I could just go back for the moment to the community services inquiry for which Mr Dyer said he may provide some allocated funds, have you done a costing? Did you give that figure, or state what that figure was?

Mr ANDREWS: We did a provisional costing of \$110,000. He has agreed to fund it to that amount.

Mr ANDERSON: When I was reading page 5, the answer to question 9:

The savings from scaling down these outreach activities will be allocated to dealing with the rising numbers of complaints to the office."

Where are you taking the outreach activities away from? In scaling down these outreach activities, what are you actually scaling down? What are you taking away.

Ms MOSS: We are going to cut back on advertising which we are required to do from the guidelines anyway. We probably will have to scale down on trips to the country.

Mr ANDERSON: It says that here, but what does that actually mean? Are the people not going to get an opportunity of coming and seeing you, people who may have literacy problems?

Ms MOSS: It could mean that, yes. It means whereas before we might have planned say, 10 trips or so, for example, we might have to scale that down to five or six. It probably does mean that it cuts down on access of people to meet the Ombudsman's staff face to face. We would have to do more, again by telephone and written correspondence.

CHAIRMAN: Just picking up on that, have you reviewed the effectiveness of those visits in terms of those people who Mr Anderson said may have language difficulties or literacy problems, in terms of giving them the opportunity to bring to the Ombudsman concerns that they have which they do not have the opportunity of raising in a formal written fashion? To me it seems that one of the most valuable roles that the Ombudsman plays in my city which is Newcastle is to have a visit and to give people that opportunity of having a sounding board about their concerns in a way that is not available to them through other organisations.

Ms MOSS: I think that is something that we certainly could improve on. I do not think we are doing enough of that. We started country visits about how many years ago?

Mr ANDREWS: In the mid-1980s.

Ms MOSS: But we have not really assessed the effect of those country visits, have we?

Mr ANDREWS: No, we have not done any systematic evaluation. It is very obvious whenever you do make a country visit, because of the local publicity, you will always get people coming along who would normally never contact the Office through brochures or looking through the telephone book. They just do not know the Ombudsman exists until we actually front up in the town.

Ms MOSS: I would have to say, yes, we actually do pick up quite a number of complaints from those visits. I know with one particular visit it picked up in excess of about 40 matters so they are actually quite valuable.

The Hon. S. B. MUTCH: Do you have any figures on Members of Parliament who refer complaints? Do you have any figures on whether there are more complaints being referred from Members of Parliament? (See Appendix 3)

Ms MOSS: We actually did collect that but I did not bring the actual figures.

Mr ANDREWS: We can provide those.

Ms MOSS: I will take that on notice to provide some answer.

Mr ANDERSON: That is something I would like to progress further.

CHAIRMAN: Yes, certainly. From my perspective the more disadvantaged and disempowered people are living in those country communities, the greater the loss would be to them for not having that access.

Mr KINMOND: Just to respond to that issue, a couple of weeks ago I was up at Wilcannia and probably a more disadvantaged community would be difficult to find. It was an extremely valuable visit. The difficulty we have though is that it takes an enormous chunk out of my budget. I then have to cut back in relation to direct investigations of other areas. I mean, that is the reality. Our staff agree with you that these visits are very valuable. The problem is that we have a limited budget with respect to travel. The other additional element—and I am not saying this is a management response—is the difficulties for the staff. They come back after a week away and have to spend several months to catch up. It is a source of frustration to them because they enjoy the visits, they enjoy the contact with members of the community but there is this frustration that, "I have got to get through my work".

The Hon. ELAINE NILE: So you need how many? Actually how many bodies would you like, apart from the money? How many extra bodies would you like there—getting down to the nitty gritty.

Ms MOSS: In our initial enhancement proposal we sought about roughly \$1.5 million. I suppose in terms of bodies that would have roughly amounted to 20-21. We know that is probably pie in the sky and so we actually scaled down our

request considerably the next time around and we sought for extra, I think it was, about \$500,000 to \$600,000 for that. I would imagine you would be able to get about eight professional staff which would assist considerably in fulfilling our charter a lot better. It would very much assist in the complaint handling area just to keep our head more than a bit above water and it would allow us to do some community education programs which we are very conscious that we are not doing properly at the moment. At the moment people who are dedicated to the community education area, besides the investigators, are a total of two. We have got one relatively senior person who does the publications work, the brochures. In fact, her annual report last year was the annual report of the year, but she has got one assistant who is basically a junior clerk. She helps coordinate community education, would help coordinate the investigators in going out and doing the public speaking, coordinate statutory officers speeches: it really is not enough.

The Hon. ELAINE NILE: City people are okay, they know you are here, but places like Wilcannia, Bourke and so on, are important areas? Would they get preference when you are cutting back?

Ms MOSS: I do not think they are getting the appropriate access that they should. Quite clearly because of our position in the city metropolitan area I think people are getting better access and better service, and country or rural areas are not. If we just had an extra one or two staff, I think it would make a huge impact.

The Hon. ELAINE NILE: So they are really being discriminated against, are they not, the country areas?

Ms MOSS: Certainly once they reach us we would, of course, give equal service to them, once they have access to our Office. What worries me, of course, are the people who we are not reaching.

Mr KINROSS: Can I just pick up on that issue, the same issue of community access. Earlier on you said a lot of the education and awareness was coming through the media, and I took that to be the media when there is a scandal or so forth, that itself focuses attention on the initial investigative body such as yourself. In the country areas, to pick up the Hon. Elaine Nile's question, that does not happen as much, I would have thought, because maybe there is not that sort of scandal-type issue?

The Hon. PATRICIA STAUNTON: You must not have read the country press.

Mr KINROSS: What I am getting at is that your Office is not brought into the country as a consequence of the scandal as it is in the city; your Office tends to get more publicity when it goes out there of its own accord through lodging a public notice and saying, "Here we are, we are going to be in Coffs Harbour in two months' time, come and tell us your material." Would that be a fair summary?

Ms MOSS: We can take that on notice and get back to you (see Appendix 3).

The Hon. S. B. MUTCH: From information received 35 per cent of complaints are referred back to the agency complained of. Would that figure vary when you are conducting tours? Do you have separate figures for complainants who have come into your Office from country areas?

Mr ANDREWS: That is harder to pin down. Often the complaints come in and do not mention the response to a visit. We put up an ad saying that we are going to a country centre, and ask people to ring the Office and make an appointment. We find we are then able to handle a lot of inquiries over the phone. The people we see when we visit the country town is actually a smaller percentage of the number of people who made contact in that country town. We had already dealt with a lot of inquiries before we got there. There is usually an upsurge, after the visit, of people who heard that we were there but did not get a chance to see us. They had sent complaints in too. It is hard to document that precisely.

The Hon. S. B. MUTCH: I would like to know how substantive these complaints are. If these matters are substantive they should have been referred to you previously by either the local Member of Parliament or solicitors. Why these are not being referred to you seems to be the bigger problem. It is not good enough to merely announce that you are visiting a country centre.

Mr ANDREWS: The complaints we do take on the country awareness visits tend to mirror the sorts of complaints that come to the office generally. A lot of them tend to be premature and important ones are referred on and dealt with in an active way. A lot of people have not heard about or had contact with the office and this is their first opportunity to bring along a problem. They did not know where to take their problems before.

Mr KINMOND: The other value about country trips is what we learn about the local community, for instance in Wilcannia. We had received a significant number of complaints in the past but we did not understand the community. As a result of talking to scores of people we were able to achieve a much better focus in terms of

future complaints than we had in the past. In fact, by visiting there we resolved a number of things involving the police and the local community. There is a lot of value for us to meet the people. It assists us in relation to our investigatory role.

Ms MOORE: It seems to me to be a real waste of time to ask you detailed questions about the various things you are doing. It is apparent from this document that you do not have adequate funds to do your job. It must be terribly frustrating for you. Things that you have been set up to do you simply cannot do. Certain Acts of Parliament direct you to do certain things which you do not have the funds to do. Until this Committee can correct that situation we are wasting our time and we may as well all go home.

CHAIRMAN: Thank you for your comment, Ms Moore, but I would have thought that the function of the Committee was in its interaction with the Ombudsman to detail and ascertain the funds and resources situation at this moment. Obviously the outcome from that may be improvement in funding or change in direction. I noticed in the report that the number of direct investigations that you have undertaken, or reinvestigations, or perhaps public interest investigations, has declined. I imagine that is directly associated with the resourcing question. Could you expand on that?

Ms MOSS: Yes, it has. We are disappointed that that is the case, particularly in the Police Area where there has been a fairly sharp decline in numbers over the years from the days when the power to investigate was first given. The most substantial amendments to the police complaints system occurred in 1993. We think that those amendments essentially were very good in terms of assisting the Office to get proper and better powers to do its job. Regrettably we did not get any additional funding. When there is a situation of either investigating or reinvestigating a matter it actually does require quite some resources.

Basically you are doing what the police should be doing, even if you take on board a monitoring role, which is one step down from an investigation. That in itself is also resource intensive in that it requires a person from the Office to be with the officer as he is doing the interviews or whatever. We are disappointed that we have not been able to do more investigations in the Police Area. In the General Area we feel there have been improvements in the resolution of complaints. Partially that might be explained by the fact that we are able to conciliate a fair few of the matters with the public sector agencies. Again, Greg might like to expand on whether the funding situation has affected our ability to do more proactive work.

Mr ANDREWS: It certainly has. The background of the General Area is that over the last few years there has been a very active policy to resolve more complaints and move away from heavy-handed investigation to resolution. We have been able to reduce the numbers of matters that we declined at the outset. We are doing a great many more preliminary investigations and more of those are actually resulting in resolutions without the necessity to go ahead to a formal investigation stage. Also in the last 12 months we have introduced mediation services in the Office. A number of matters that previously would have gone on to a formal investigation are now being mediated successfully. This is a general trend, however some matters still need investigation. A good example is the prisons area. If you look at our annual report, a couple of years ago we were doing probably at least a dozen formal investigations every year. Last year we did one because we have built up a much better relationship with the Department of Corrective Services and we are able to actively get things changed there more readily than we used to. That wipes out the need to carry out a formal investigation in many circumstances.

CHAIRMAN: I imagine one of the benefits of that would be, as you said, a better understanding of the systemic problems associated with groups. Will the same thing happen with juvenile justice from the formal inquiry that you will be having?

Mr ANDREWS: We certainly hope so. That is one of the reasons we are keen to take up this opportunity.

Ms MOSS: By looking at the structures and the systems we hope that that will assist in preventing a lot more complaints in the future.

The Hon. PATRICIA STAUNTON: One of the documents provided to the Committee is marked Annexure C. It is called the Ombudsman's draft access and awareness plan. The document states:

The Access and Awareness Inquiry of the Joint Parliamentary Committee on the Office of the Ombudsman was completed in September 1994. The final report made 35 recommendations . . .

In response to that report the Ombudsman's Office prepared a draft access and awareness plan and submitted to Treasury an application for increased funding for the plan's implementation. That would have been a submission to Treasury for the 1994-95 year. Is that correct?

Ms MOSS: No, it was for the following year. When that report came down in September 1994 the Office then proceeded to take on board those recommendations and put flesh to it. I believe the actual plan was distributed in the briefing papers that were given to the Members of the Committee. From the particular plan that was developed we then worked out what was required in terms of resourcing the numbers of people, the on-costs from that, and then worked out the budget implications. That would have gone to Treasury in the 1995-96 proposal.

CHAIRMAN: In the area of funds and resources, in previous years submissions by your Office mentioned increased complaint levels. Treasury has clearly said that the Office is not demand driven. What is your response to that argument in terms of resourcing?

Ms MOSS: I do not entirely agree with that comment. Legally speaking it may not be demand driven in that there is a section in the legislation that does grant the Ombudsman discretion to decline complaints. If we were giving appropriate service to the public we should be trying to decline as few legitimate complaints as possible so that where there is substance, where in fact something should be looked into because it is unclear, we should be trying to satisfy the public in that regard. Even though at law we may not be demand driven the reality is that it is very hard to see your decline rate go up and more people dissatisfied as they walk out of the Office. That is very bad. We are conscious of rising dissatisfactions if we cannot fulfil the role of investigating people's complaints. I personally think that with a body such as ours in reality we are demand driven—maybe not legally, but I would hate to see us declining more and more.

CHAIRMAN: It is the difference between the dry legislative situation and the community expectation which does view the Ombudsman as a means of resolving difficulties?

Ms MOSS: Absolutely. If we cannot resolve them we take it seriously and tell them quite clearly why and try to assist them in finding resolution elsewhere. All of that takes time, resources and effort.

Mr KINROSS: Have you been given any indication, especially in light of tomorrow's budget, as to what may happen to the financial resources for your Office?

Ms MOSS: Yes, basically we were told, we have a reply.

Mr KINROSS: You are not expecting any change to that?

Ms MOSS: No.

Ms MOORE: Does that mean that you really cannot carry out the function you have been directed to carry out under the Protected Disclosures Act?

Ms MOSS: At the moment there is a huge problem with the Protected Disclosures Act. The law itself is extremely unclear. Recently we received advice from the Crown Solicitor that with the preliminary inquiries that come to our Office, even though they are not meant to be protected disclosures, if they indeed fulfil the sections of the Protected Disclosures Act we have to treat them as protected disclosures. That would have significant implications for our workload. We are trying to clarify that and seek amendments to the legislation to hopefully make that clear.

We have agreed with the Independent Commission Against Corruption and the Auditor-General to be the central advisory agency so that when anybody has any query about the legislation they come to us, even if it concerns the ICAC or the Auditor-General. Initially we agreed to that on the basis that we would get some assistance with funding, which we did not, and we deal with quite a few inquiries. We have about five formal investigations at our office under the Protected Disclosures Act at the moment. The only person at the Office who I can afford to deal with that is Chris Wheeler, who has been advising people when they call in. Chris might like to describe the situation.

Mr WHEELER: We have had ongoing correspondence with the Solicitor General and the Crown Solicitor in an attempt to clarify the various points. One of the primary difficulties is the one that the Ombudsman alluded to. It turns out that where a public official responds to us on behalf of a public authority, and does so voluntarily, and that response provides information which shows or tends to show maladministration, according to the advice we have received, that response itself is a protected disclosure. Within six months we must inform that person what we have done in relation to their disclosure. We are not allowed to identify them unless we go through the decision-making process set out in the Act. That creates difficulties for us because often we will forward to a complainant the response received from the public authority. We have just found out that we may not be able to do that unless we decide that it is in the public interest to do so and to make a decision in each case. It also makes it difficult for us to prepare statistics on the number of protected disclosures. We do not know the number, although we know the ones that we take up for formal investigation. It is an area in which we are looking forward to a review of the Act by the Joint Committee that is to be set up, because we can recommend various improvements.

CHAIRMAN: So are you saying that at the moment it fights against itself in a way?

Mr WHEELER: It is not so much that it fights itself. I think that it has broader implications than were intended.

Ms MOSS: We think that the legislation has unintended effect.

Mr KINROSS: Ms Moore and I can claim some unintended consequences, having served on that Committee.

Ms MOORE: The Act can be amended. This is a reform and it is charting new waters.

Mr WHEELER: There are teething problems.

Ms MOORE: The Act can be amended this session if those problems can be identified.

Ms MOSS: Clarification would be required as to how it applies to police officers as well because at the moment there are some provisions in the Police Service Act relating to complaints which are inconsistent with the requirements of the Protected Disclosures Act. We are faced with the question of whether or not to disclose a name to the Commissioner. Basically we are faced with inconsistent legislation.

Ms MOORE: My question related to the fact that the Act has been passed and you must now carry out certain functions as a consequence, although you have not been given the funding to do that. How are you doing it? Does it mean that other areas of work that you did previously are now suffering?

Mr WHEELER: That is correct. What suffers in the end is basic complaint handling. That is the bottom line. If we do anything else within existing funding, the basic complaint handling must suffer.

Ms MOORE: In terms of how you carry out your freedom of information function, how are you frustrated by not getting the funding that you sought, the \$179,000?

Ms MOSS: That is the area of probably the biggest backlog. It is extremely resource intensive. You get files on which officers must review hundreds, if

not thousands, of pages. At the moment the number of full-time officers on freedom of information is two. There is a backlog in that area at the moment.

Ms MOORE: So another area is not suffering; you are simply not able to carry out that freedom of information function as you need to do under the legislation.

Ms MOSS: That is correct.

Mr WHEELER: Over the years we have had to move resources from the freedom of information area to other areas of the Office because complaint loads have gone up much faster. There has not been a radical increase in complaints about freedom of information; of course, there has been an increase but there has been a far greater increase elsewhere. I mean, a 10 per cent increase in the police complaint load, cumulative every year, means that we have had to move resources.

Mr KINROSS: So in a sense you are demand driven?

Mr WHEELER: Yes.

CHAIRMAN: I notice that in your report you stated that you had a backlog in areas. Do you have a dedicated procedure in terms of dealing with that backlog? I know that within the ICAC Committee we found that a similar situation had occurred and procedures were put in place to deal with the backlog in a very defined way.

Ms MOSS: Perhaps I should refer these questions to the managers of the complaint-handling areas.

Mr ANDREWS: In the General Team the team manager systematically reviews the case load of all officers on a monthly basis and prioritises their work. We also produce turnaround time statistics relating to how quickly we assess, acknowledge, action and complete all cases in the general team. We feed that information back to the team Members on a quarterly basis, basically as a motivational tactic to keep them up to date on how well the team is progressing as a whole and how well they measure up to the average turnaround time of the team as a whole. Basically, it is a face-to-face monitoring situation.

Mr KINMOND: In the Police Area, simply to point out the backlog, in the 1994-95 year 5,056 complaints were received and 4,759 were finalised, so there

was a deficit of about 300 for that year. The problem to some extent was that the deficit occurred at the big end of complaint handling, namely, the determination of investigation matters. That gave me concern and for that reason I recommended to the Ombudsman a further restructuring of the police complaints area to distinguish investigation level work from non-investigation level work to ensure that there is closer monitoring of investigation work.

In addition, each investigation officer and assistant investigation officer has a production target for the week for which they are held accountable. They know the weekly average that is required in terms of production, and that is carefully monitored. In addition, I receive a print-out once a month which details all delayed investigation matters. With respect to those matters the supervisors are required to meet with the investigation officers to ensure that they get through their work. All of that is fine but the problem is that there is only a limited number of hours in a day. We have kept up with production levels to date but I am losing staff through stress.

CHAIRMAN: The KPMG Management Review Report noted some problems in terms of the computer technology, particularly links between the various departments in the office. Has that been addressed?

Ms MOSS: We certainly hope that it will be addressed by the new system that we are about to put in. Mr Andrews might like to outline that.

Mr ANDREWS: The Office developed an information technology strategic plan. It put together a capital works bid and was successful in getting funds to put in a new information technology system. What that boils down to is that we have put a new computer network through the Office which is currently operational. We are also putting in a new case management system which will probably be up and running by December. At the moment we have three separate databases in the Office: one that deals exclusively with police complaints, another one that handles all our telephone inquiries, and another one that registers all our case work in the non-Police Area. We are moving to a single platform on which all of that will be integrated and everyone will be able to talk to each other. We have also designed in the system a lot of performance indicator reports so a lot of the information that we need as managers, into which we must put a lot of manual effort to get anything out, will automatically pop out of the system which should help things a lot.

Ms MOSS: We are hopeful that the system that we are about to get will increase data gathering considerably.

Ms MOORE: But the fact of the matter is that you do not have enough personnel. Your human resources are down. Your resources are stressed because you have too much work to do and not enough people to do it, and you need more funding.

Ms MOSS: Yes.

The Hon. ELAINE NILE: The quota system intrigues me because if you get a dicey case it could break down your quota for the week or the month.

Mr KINMOND: It could. That is important. I have made it clear to staff that that is an average that is required over time, and it is based on projected complaint figures. We have distinguished the investigations area from the non-investigations area.

The Hon. ELAINE NILE: Can you tell me a little about the stress? What happens with your officers? Do you have psychologists within the department?

Mr KINMOND: They leave.

The Hon. ELAINE NILE: So there is no-one within the department to counsel staff.

Ms MOSS: That would be a luxury. It may be the person handling complaints.

Mr KINMOND: Over the past 12 months turnover in the police team has been in excess of 50 per cent.

The Hon. ELAINE NILE: So you do not operate with Internal Affairs or any other department within the police when you go out streaming, in that sense.

Mr KINMOND: We do. In fact, cooperation between the Ombudsman's Office and the Police Service is quite close. We have monthly liaison meetings, and some excellent work is now done between our Office and the Police Service. In fact, later when this Committee considers the police complaints area, I will be able to report some promising information. The system has become much more streamlined as a matter of necessity and there have been some significant improvements. I meet on a monthly basis the Assistant Commissioner (Professional Responsibility), and I frequently meet the Regional Commanders. We get a fairly reasonable response, which is good.

CHAIRMAN: After our discussions to date, it is taken as read that there is difficulty in meeting expectations, given the funding available. There is also an advertising problem. With specific strategies concerning Aboriginal and Torres Strait Islander people, have you advertised your services in specific media outlets directed at those communities?

Ms MOSS: I understand that we have. But more importantly, our Aboriginal liaison officer has been very good in going out and talking to communities. We cannot afford more ambitious programs such as producing videos and things like that. However, I understand that we have contacted Aboriginal media groups which have tried to give us assistance. Our liaison officer and the Assistant Ombudsman, Police, have gone out to quite a few Aboriginal communities.

CHAIRMAN: Do you charge for the guideline manuals that you produce?

Ms MOSS: We charge \$30 for some manuals, and up to \$50 for the guidelines for good conduct by public officers.

CHAIRMAN: Is there any avenue for disadvantaged groups to access manuals at less cost, or is it user pays?

Mr WHEELER: To anyone who puts a case to us, we hand out manuals basically for free. In some cases when people ask for bulk copies we hand them out at a discount. It is mainly to recoup our costs. We are not trying to make massive profits. It is primarily to recoup the costs of production: putting them together, sending them out and keeping the records up to date so that we can send out updates.

Mr KINROSS: Are you required to send copies of your public reports to libraries? I know that there is an enormous number.

Mr WHEELER: Under the Commonwealth Copyright Act and the State Copyright Act, we are required to send copies to a certain number of libraries including the Parliamentary Library, the Fisher Library and the National Library. However, we do not send them out to every library in the State; it would be an expensive exercise.

Ms MOORE: All the things that you cannot do are listed in the report.

Ms MOSS: Yes, we have listed them in detail.

Ms MOORE: The report is there for us to look at and see what you cannot do. I think that it is terrible what you cannot do, given that you have been asked to do it, or it is recommended that you do it. I think we all agree with the job that we would want you to do if you had the funding to do it.

Mr KINROSS: Should that amendment to the Protected Disclosures Act be taken up as a matter of urgency?

Mr WHEELER: Yes. We were awaiting the Joint Committee, believing that was the appropriate avenue, but if there is an interest in taking it up earlier, we would be more than happy to.

Mr KINROSS: It will be March next year before that commences. You would prefer if the amendment was taken up in this budget session?

Mr WHEELER: Indeed, to remove the teething difficulties.

CHAIRMAN: At the moment do you feel that you have a clear idea of the range of difficulties associated with the implementation of the Act in relation to the Ombudsman?

Mr WHEELER: Yes, indeed.

Ms MOSS: Yes, we could probably outline some specific amendments that would be required.

CHAIRMAN: From your knowledge of those difficulties to date, would it be a comprehensive review of the Act, or very specific amendments?

Ms MOSS: Probably at the moment fairly specific, mainly focusing on some of those fairly obvious problems highlighted in the Crown Solicitor's advice. We had liaised extensively with the Crown Solicitor's office and the Solicitor General's office, so they have had a fairly good opportunity to look at the problem areas. Obviously over time we might see more problems that could be resolved. It is evolving legislation and no doubt there would be other problems that would be revealed over time.

Mr LYNCH: You mentioned two specific problems earlier. Have you identified any more at the moment?

Mr WHEELER: There are several problems, some of which are not that important but others are far more important. They are areas that need to be clarified. They can only be identified by using the Act.

Mr KINROSS: It would be magnified because you are not the only investigating agency?

Ms MOSS: That is right.

Mr KINROSS: There is the ICAC, which deals with issues of corruption, and reporting back to people who have made complaints subject to the Protected Disclosures Act. I am not suggesting that the ICAC is more important than the Ombudsman, but corruption tends to get headlines more than mishandling of complaints or administrative procedures.

Ms MOSS: This would affect them in the same way.

Mr KINROSS: I presume the Crown Solicitor's advice to you is the same as that for all the investigating agencies?

Ms MOSS: It probably could be, with some modifications.

Mr WHEELER: They have not asked for the advice, but it would have general application.

Mr KINROSS: Are you the ones who first picked this up?

Ms MOSS: I would say so.

Mr WHEELER: We are the ones who give advice on the Act, who have spent a lot of time working with the Act.

Ms MOSS: We give advice to the public on behalf of the ICAC and the Auditor-General.

CHAIRMAN: You are the central focus for the Protected Disclosures Act?

Mr WHEELER: Informally, that is right. We forward copies of the advice we receive to the other investigating authorities so that they can keep up with it on a daily basis.

Mr KINROSS: This was part of the charter of reform.

Ms MOORE: It was, and we expected teething problems. We tried to produce the best possible Act.

Ms MOSS: We could get some of the major problems fixed up fairly soon, if Parliament is prepared to do that.

CHAIRMAN: Have you noticed signs of improvement in the internal complaints handling system used by departments and agencies since the production of the guidelines?

Ms MOSS: It is hard to actually link it directly to the production of guidelines, but we would say that we have noticed improvements in dealings with public sector agencies generally. Even with the police we have had improvements on the processes of how to handle the complaints. We would say that over the years we have noticed improvements in their complaint handling procedures with public sector agencies generally.

Mr ANDREWS: The specific focus of the CHIPS program over the last 12 months has been on running training courses for public sector officers about complaint management. We have been running one every month since December. We are about to take that course to a couple of regions, specifically some of the country councils that have expressed interest, but could not afford to come to the city. It has also been taken up by the Office of the Council on the Cost of Government as part of the guarantee of service. A recent Premier's memorandum went out requiring agencies to update their guarantee of service to incorporate some front-line complaint handling procedures, and as part of that the Council on the Cost of Government has underwritten the reprinting of our guidelines on effective complaint handling, which I revised. They are currently being printed and will be sent out to all public sector agencies.

Ms MOSS: The figures for that are probably interesting because the number of public sector agencies that now have internal grievance handling mechanisms would be 60 per cent.

Mr ANDREWS: About 60 per cent.

Ms MOSS: Before we started conducting these seminars and programs it was about 15 per cent, so that is quite encouraging—15 per cent to about 60 per cent.

CHAIRMAN: The outcome ought to be that complaints are solved and dealt with within the departments by a more effective mechanism. Hopefully there will be less need for involvement by the Ombudsman.

Ms MOSS: That is a good management tool. It educates the departments to be more aware of customer needs and services. We think that developing grievance handling mechanisms is really a very important part of the management system.

Mr LYNCH: Has the Ombudsman had any role in supervising or superintending whether councils have adopted a code of conduct for their councillors and staff?

Ms MOSS: I do not know that we have supervised it. We have certainly encouraged it by guidelines.

Mr WHEELER: I take it you are thinking of the requirement under the Local Government Act?

Mr LYNCH: And I think there was some encouragement prior to the new Act as well.

Mr WHEELER: Certainly for many years the Office of the Ombudsman has supported the adoption by councils of a code of conduct and worked with the Department of Local Government and the ICAC in that regard. In 1993 the Act was amended to code of conduct. It really is the Department's responsibility to monitor whether councils have been complying. I do not think we have identified a problem.

Mr ANDREWS: We have certainly made submissions to the Department of Local Government about what should be in that code of conduct.

Ms MOSS: The investigative arm of the Department of Local Government has specifically asked to take on the role of investigating ethics and conduct issues. By agreement with us we have agreed that they handle those complaints.

CHAIRMAN: Several reports were made to the Parliament by the former Ombudsman, Mr Landa, which we did not have an opportunity to discuss prior to his leaving the position. General questions have been asked, but in relation to race relations and police you state that the Office is unable to conduct the external audit of the Police Service implementation of the recommendations contained in the report on race relations. Was your Office the body preferred by the Police Service to conduct this audit? Was additional funding sought by the Office for such activity?

Ms MOSS: I think the police would have been happy for us to take over that audit role, although other audit organisations were suggested. I think initially my predecessor suggested that the Auditor-General take up the role. Then it was felt that was inappropriate because many of the issues did not fall within his portfolio. We would be happy to take over that role if we were resourced to do so. In our enhancement proposal we sought additional funding for it, but we did not get it. It would not be possible within our resources to do a proper audit without that resourcing. In any event we have been in close contact with the service about what it has done with respect to the area. It is presently conducting a review which is not yet completed.

The problem is that when you look at the recommendations made in the race relations report, a lot of them hit on quite major systemic and structural changes, and I am not confident that those recommendations will be taken up. For example, the recommendations hit at quite major issues like the lateral entry into the police force as being a way of overcoming some of those major cultural problems dealing with people of non-English speaking background, or women, or gay people. I do not know that the issue of lateral entry, for example, as we suggested in that report, would be taken up.

Other major issues that were hit at were operational changes, which again are important in terms of structural change. For example, incorporating into senior executive officers' performance contracts the fact that they have to take into account these sorts of issues and take the management of them seriously. I doubt very much that that would be taken on board. I think there are some problems with how the Police Service might adopt the race relations report. I understand that, in liaison with the Ethnic Affairs Commission, it has agreed to adopt many things. Again, Steve has been in close contact with the service about various initiatives and he might like to outline some of them.

Mr KINMOND: We knew that what we could effectively achieve was quite limited in light of resources. In fact the race relations issue was something that we put together in relation to a proposal for enhancement of funding, given the acceptance of the Police Service for us to act as the external body. I am still involved

in ongoing discussions. In fact, I have a meeting this week about race relations issues. The Police Service has recently decided to review its Aboriginal strategic plan, which has the strong support of the Minister for Police. We are hoping to ensure that one arm of the Police Service communicates with the other arm: the body responsible for the implementation of the race relations report obviously talks to the body that has been set up to deal with the implementation of the Aboriginal strategic plan. Assuming that we do not receive funding, my invitation to the Police Service will be that with regard to the race relations issue and the Aboriginal strategic plan we are happy to do the external audits, subject to its funding us. It is certainly worth an attempt. That is the line I will be putting.

Mr KINROSS: If it says no, who then might undertake that audit?

Ms MOORE: I think it would be grateful for that offer.

Mr KINMOND: Yes, and the problem is that perhaps no-one will. That is the concern.

Ms MOSS: If it says, "Yes, we would like you to audit that area", it would pay for our officers to go up there. We are talking about travelling and travelling expenses, that sort of thing.

Mr KINROSS: Was your meeting with Commissioner Lauer effective? Did you walk away thinking the Commissioner was going to give this Aboriginal strategic plan teeth, or was it lip-service?

Mr KINMOND: It was a meeting with the Minister for Police and I was of the view that the Minister was committed to dealing with this issue. The Minister's view was that he was concerned that things needed to be implemented. To have a plan in place is one thing, but it is important that the plan be implemented.

Mr KINROSS: Bearing in mind the things we are hearing from the Royal Commission, are the people with whom you are dealing in the Police Service competent to deal with these issues, or do you despair?

Mr KINMOND: It depends on the individual. I would just like to be fair in my responses and say that it depends on who I am dealing with.

Mr KINROSS: What avenue do you follow when you find your resources are tied up because you are chasing around or you feel you are being led on a wild goose chase, intentionally or through incompetence?

Mr KINMOND: This is illustrated in our strategy in relation to the race relations report. We look for complaints, for example, which will illustrate the point and we are then in a position to use yet another case example to show why the issue needs to be pursued. That is one particular strategy. The other particular strategy is essentially to put forward reasonable propositions, to obtain agreement in relation to those propositions, and then to hold them accountable.

Ms MOSS: It is a bit bandaid in a sense. For example, the team went up to a particular area and was not happy with the liaison of the service with the Aboriginal community. We came away with written agreements and we are going to try and pursue it that way. Again, I suppose, if you look at it in a broad-brush way it is a bit bandaid but we think it is better than nothing.

Mr KINMOND: If you look at our work in the conciliation area our strategy is to not let go. We take a hold and we might get shaken around over the years, but we do not let go until there is progress. That is the kind of role that the Ombudsman's Office should play. We continually need to put these things on the public agenda until change is effected.

Ms MOORE: If I could just make a comment, you would have been really helped by the Royal Commission. In regard to the things you have been finding you will see that action will now occur. The problems in Kings Cross recently outlined in the Police Royal Commission are problems which, as the local Member, I have been identifying in a lot of detail for many years. Now we are to get 30 extra officers because the Royal Commission has identified the very real problems that exist there. It should also help you.

CHAIRMAN: If the role of the Information Commissioner were taken up by the Ombudsman, do you see any conflict between the role of the Commissioner making determinations, as opposed to the Ombudsman making recommendations?

Ms MOSS: It is a departure of roles, in that the Ombudsman's Office has never been involved in determinations, but we feel that if indeed the Information Commissioner were created in such a way as to have the Ombudsman wearing two hats, then that can be resolved. In fact, the person making the determinations would not be the Ombudsman but would be the information commissioner. We made that suggestion

because we think that, on the whole, we would be much more cost-effective and would handle things more speedily at a lot less cost to the public.

We felt that the appeals to the judicial body, the District Court, have not been so many in these years. We are talking about a handful because we are talking about people mounting a legal action with all its attendant costs. We believe we would provide value for money in that area. We think that other functions that this person could do, namely the community education function, would be very important. That would not necessarily sit well with either a quasi-judicial body or a judicial body. We think we have the expertise and the background in handling those matters, so we think that for value for service we could do a good job in that area.

CHAIRMAN: You could create a split personality and successfully do so.

Ms MOSS: That is right.

Mr WHEELER: There is an alternative way of looking at it, which is that the District Court, if you like, makes a determination standing in the shoes of the original decision maker. The Ombudsman, I believe, is able to, in effect, release information if the Ombudsman believes it is in the public interest to do so. In some ways you are not actually making a determination; you are not saying, "We are going to change the determination of the original body." The Ombudsman is clearly able at the moment, through a special report to Parliament and possibly under section 52 of the Freedom of Information Act, to release information if the Ombudsman believes it should be released, releasing it in a report. I am going to be seeking clarification from the Solicitor General on that point to make sure that that interpretation is correct, but it looks as if that may be an alternative to the Ombudsman being a determining body. It is merely releasing information that is in the Ombudsman's possession.

CHAIRMAN: Are there any questions on Raymond Denning and the witness protection scheme?

Mr LYNCH: Is there any further action that you can take?

Ms MOSS: Probably our annual report would be the most appropriate avenue, but essentially no; they have not responded with action that is appropriate to our recommendations.

Mr KINROSS: I refer to page 17 of the report and I declare my interest. Ku-ring-gai Council took you to court recently in respect of your powers and I note that you won. An officer of the Ombudsman's Office advised me recently that there was a settlement. Is that current as of about three weeks ago?

Mr WHEELER: In the Ku-ring-gai matter there has been an order for costs against the Council. An offer has been made as to what would be an acceptable figure.

Mr KINROSS: The matter was to go back before Justice Smart and I believe it was settled as between the parties. Does the order referred to on page 18 include that settlement offer?

Mr ANDREWS: No. The matter went back before Justice Smart, he made a ruling and we have a cost order. The normal thing is that that would now be taxed and there would be quite a lot of delay in defining what the actual costs will be. We have made an offer to the Council's solicitors saying that we would accept an amount. They have made a counter offer and we are dealing with that at the moment.

Mr KINROSS: Given that the former Mayor of Ku-ring-gai Council has lost office and is no longer a councillor, do you still intend to pursue the inquiry into his conduct?

Ms MOSS: The inquiry is still proceeding.

Mr KINROSS: Do you know when the inquiry intends to resume?

Ms MOSS: It is being conducted at this moment. It is continuing. It is resuming now, after the court case.

CHAIRMAN: I understand that the appeal in the Botany case was handed down on Friday.

Ms MOSS: Yes, and we won that, as well. We hope they do not appeal to the High Court.

Mr WHEELER: The judgment has not been formally handed down but the Court of Appeal made its decision plain. We did not even get to make submissions. As soon as the other side had finished the court basically said, "If that is all you have

got, that is the end of it". The court will be handing down written reasons soon but it was made very plain that the appellant had not got up.

CHAIRMAN: Have you ever lost such a case?

Ms MOSS: No.

CHAIRMAN: Is it a significant draw on your resources?

Ms MOSS: It is a draw on people, yes. We try whenever we can to get the services of the Crown Solicitor because we cannot afford to go elsewhere. Thus far the Crown Solicitor has been very good in assisting us with the cases.

Mr WHEELER: In the Denning matter we acted as solicitors ourselves and briefed counsel directly. In the Ku-ring-gai case we used some specialist lawyers who had experience in that area, but we try wherever we can to find a way of doing it for free, basically.

Mr KINROSS: Would the funds for that come from a reallocation of priorities?

Ms MOSS: We have a small budget set aside for legal cases. I think we have had to cut back on that this coming year. We are hoping we will not be taken to court.

Mr WHEELER: I think our budget is \$15,000 this year, and that is for cases and advice. Anything to do with obtaining outside assistance is \$15,000. That is all we can afford.

Mr KINROSS: Mr Kinmond could I ask you a question relating to a police internal issue. You may have some more up-to-date information than I do. I declare an interest because I have a constituent, Mr Bruce, who has had interminable problems. Can you tell me what the state of the investigation is and whether there has been a resolution of that matter?

Mr KINMOND: I will have to take that question on notice.

Ms MOSS: I recall writing something on it but as to the latest update, I would have to take that question on notice (see Appendix 3).

Mr KINROSS: If I could make a comment about conciliation, it sounds as though you are working pretty well on that, given the substantial reduction. The internal investigation, in light of our announced inquiry into the handling of matters, do you feel that this could lead to some duplication of resources between the Police Royal Commission and our proposed inquiry into police handling of complaints?

Ms MOSS: But essential; I do not know if it really will be. I think it is important that the Joint Parliamentary Committee come to a view on it and look at it, and be another appropriate scrutineer of the system. Several bodies are looking at this issue at the moment and there will no doubt be several opinions on it.

Mr WHEELER: After all, the current system is the child of this Committee and its first report. Any thought of amending that system should have the input of this Committee.

Ms MOSS: The 1993 amendments were primarily because of the Joint Parliamentary Committee.

Mr KINROSS: Mr Kinmond, have you become full-time Assistant Ombudsman, Police, as a result of the Police Royal Commission and its inquiry or were you performing this task before?

Mr KINMOND: The reason I am acting is that several months ago the former Assistant Ombudsman, Police, left and I was appointed to act in the position. It was advertised several weeks ago but the position has not yet been filled.

(The witnesses withdrew)

(The Committee adjourned at 1.00 p.m.)

APPENDIX 1
Minutes



JOINT COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

Minutes of the Meeting and Hearing held on Monday 9 October 1995
at 11.00am, Waratah Room, Parliament House, Sydney

MEMBERS PRESENT

Legislative Assembly

Mr Gaudry (Chairman)
Mr Anderson
Mr Kinross
Mr Lynch
Ms Meagher
Ms Moore

Legislative Council

Mr Mutch
Mrs Nile
Ms Staunton

In attendance: Ms Miller, Clerk to the Committee, Ms Minnican, Project Officer and Ms Parker, Assistant Committee Officer.

Apologies were received from Mr Fraser and Mr Stewart.

The Chairman opened the meeting in closed session and the Committee discussed the general procedure for the meeting.

At 11.08am the meeting was opened to the public and the Chairman welcomed the Ombudsman, Ms Moss, the Deputy Ombudsman and Assistant Ombudsmen.

Ms Irene Moss, Ombudsman of New South Wales, affirmed and acknowledged receipt of summons.

Mr Christopher Wheeler, Deputy Ombudsman of New South Wales, affirmed and acknowledged receipt of summons.

Mr Steven Kinmond, Assistant Ombudsman of New South Wales, affirmed and acknowledged receipt of summons.

Mr Gregory Andrews, Assistant Ombudsman (Police) of New South Wales, affirmed and acknowledged receipt of summons.

The Chairman tabled the answers and documents received from the Ombudsman in response to the Committee's questions.

The Ombudsman addressed the Committee, then the Chairman commenced questioning Ms Moss, followed by other members of the Committee.

Questioning concluded, the Chairman thanked the Ombudsman, Deputy and Assistant Ombudsmen for attending.

The Committee adjourned at 1.00pm, sine die.

Minutes of the Meeting of the Joint Committee on the Office of the Ombudsman

Monday, 20 November, 1995
Waratah Room, Parliament House, 9:30am

Members Present

Legislative Assembly

Mr B Gaudry (Chairman)
Mr J Anderson
Mr J Kinross
Mr T Stewart

Legislative Council

The Hon S Mutch
The Hon E Nile

Apologies

Mr A Fraser, Ms R Meagher, Ms C Moore, Mr P Lynch, The Hon P Staunton.

In Attendance

Ms Ronda Miller (Clerk), Ms Helen Minnican (Project Officer) and Ms Natasha O'Connor (Assistant Committee Officer)

1. Confirmation of Minutes

Minutes of the meeting held on 12 September, 1995 and the General Meeting held on 9 October were confirmed on the motion of Mr Anderson, seconded by Mr Mutch.

2. Correspondence arising from the Minutes

The Committee endorsed letters despatched, in accordance with resolutions made at the deliberative meeting on 12 September, 1995, on the motion of Mr Kinross, seconded Mr Anderson.

3. Correspondence received - The Committee considered the following correspondence:

- a Correspondence from Mr Dowsett dated 11 October, 1995 concerning the Committee's response to his original correspondence about the investigation of his complaint to the Ombudsman's Office.
- b Correspondence from the Ombudsman dated 28 September, 1995 providing advice on an FOI complaint made to the Office by Mr Peter Gill (representations made by Mr T Windsor, MP on behalf of Mr Gill).
- c Correspondence from Dr Evan Davies to the Premier dated 6 July, 1995 concerning the Ombudsman's investigation and report on the Psychologists Registration Board - forwarded by the Director-General, Cabinet Office on 21 September, 1995.
- d Correspondence from the Director-General of Cabinet Office dated 27

September, 1995, forwarding a complaint by Councillor Leon Atkinson of Nambucca Shire Council about the procedures used by the Ombudsman in an investigation of the Council.

The Committee resolved, on the motion of Mr Stewart, seconded by Mr Anderson, in relation to item:

- a** to advise Mr Dowsett that it has considered the points he has made but has not changed its original decision regarding his complaints;
- b**
 - i) to forward a copy of the Ombudsman's advice to Mr Windsor; and
 - ii) to write to the Ombudsman to obtain an assurance that the Office's Procedure Manuals include advice for its officers when dealing with similar requests by complainants for confidentiality;
- c**
 - i) to refer Dr Davies' correspondence to the Ombudsman for advice on any procedural issues; and
 - i) to advise Dr Davies of this action and remind him that the Joint Committee is not authorised to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman in relation to a particular investigation or complaint; and
- d** to write to the Ombudsman, acknowledging the former Ombudsman's advice dated 28 November, 1994, and seek further advice on the suggestions made by Councillor Atkinson.

General Business

The Committee discussed potential conflicts for its members when dealing with matters affecting the interests of their constituents.

The Committee agreed, on the suggestion of Mr Kinross, that advice be sought from the Clerk on:

- i) the position of a Member in their role as a member of the Committee as distinct from their role as a Member of Parliament where they are required to represent the interests of their constituents; and
 - ii) potential for conflict arising from these two roles.
4. Draft Third General Meeting Report - The Committee resolved on the motion of Mr Stewart, seconded by The Hon E Nile, that: the draft report, as distributed to members on 3 November, 1995 be taken as read and dealt with in globo; that the draft report be the Report of the Committee and that it be signed by the Chairman and presented to the House, together with the minutes of evidence; that the Chairman, Project Officer and Committee Clerk be permitted to correct stylistic, typographical and grammatical

errors.

5. Police Complaints Review

The Committee resolved on the motion of Mr Stewart, seconded by Mr Anderson:

- i) to take evidence from the following witnesses -
 - Ombudsman
 - Assistant Ombudsman (Police)
 - Police Commissioner
 - NSW Police Service-Head, Professional Integrity Branch
 - Head, Education and Training Command
 - Head, Customer Assistance Unit
 - Mr Martin Mulhall
 - Dr Chris Devereay - Senior Policy Analyst
 - Chairman, Criminal Law Committee, Law Society of NSW
 - Chairman, NSW Police Board
 - Commissioner, ICAC
 - Mark Le Grand, Director, Official Misconduct Division, Criminal Justice Commission
 - Dr Andrew Goldsmith, Monash University
 - Mr Gary Sturgess
 - Mr Peter Wilmshurst
- ii) to take in camera evidence from a witness who had requested complete confidentiality
- ii) not to distribute any submissions prior to the commencement of public hearings.

The meeting concluded at 11.20am

APPENDIX 2

**Annexures supplied by the Ombudsman in
“Answers to Questions on Notice”**

- A - Implementation status - Recommendations in Joint Committee’s Report into the adequacy of Funds and Resources available to the Ombudsman

- B - Funding Submissions

- C - Ombudsman’s draft access and awareness plan

- D - Protected Disclosures

Annexure A

Implementation status - Recommendations in Joint Committee's Report into the adequacy of Funds and Resources Available to the Ombudsman

Recommendation 1 - It is recommended by the Committee that the Ombudsman should without further delay implement program budgeting which would require the Ombudsman's Office to record and report costs and revenues by activity, by program and by responsibility centre.

Current Position - This recommendation has been complied with on the basis that the Police Area and General Area are the main separate programs. The chart of accounts contain 23 different cost centres, so it will be possible to supply detailed financial information by sub-programs and activities. A review of the existing chart of accounts will be undertaken by the Manager Administration and Financial Accountant in light of a full financial year of its operation. Further dis-aggregation, or even aggregation, of accounts may be warranted after this review.

In the 1995/96 Budget Papers, the Office's activities will be reported in two programs rather than the one general program used to date. By separating the key core activities of the Office and reporting on that basis, we will be more accountable to the Parliament and the public for the use of our resources.

Recommendation 2 - The Committee recommends that the Ombudsman should be appraised by the Cabinet Office and the Opposition (which included the Independents in the Parliament) of any proposed legislation that may impact upon his jurisdiction prior to such legislation being introduced into the Parliament.

Current Position - A letter was sent to the Cabinet Office. It appears that the Office has been consulted on relevant matters since then.

Recommendation 3 - The Committee recommends that the Ombudsman should adopt the structural recommendations contained in KPMG's Management Review Report.

Current Position - The following table provides a comparison of the staffing that existed prior to the KPMG report the number recommended by KPMG and our current staff number.

STAFF PROFILE			
Category	Position prior to KPMG review	Number of positions recommended by KPMG	Number of current positions
Statutory Officers	4	4	4
Investigative teams, FOI & Telecommunications	45	42	47
Special Positions	4	2	1
Inquiries	4	3	4
Administration	15	16	16
Total	72	67	72

In general terms the Office has adopted the structural recommendations contained in KPMG's Management Review Report, with a few variations. The effective strength of the Investigative Teams is currently 42.4 whereas the KPMG Report recommended 34 positions based on the 92/93 complaint numbers and complaint profile (both of which have changed significantly in the meantime).

Their recommendations to have a third IO position in the FOI unit and one IO position in the TIIU unit were rejected on the basis of comparative workloads, and these positions were therefore allocated to the Police Area and General Area of the Office. In addition, 0.7 of each of the two TIIU positions are costed to the General Area. As the current performance figures show, these positions have been needed to process the increased number of complaints dealt with by each Area. In the budget allocation for 1994/95, the 1.5% mandatory productivity saving was restored. One additional position in both the Police and General Areas was created as a consequence. Additional positions have also been created in either the Police or General Areas as a result of reviewing and restructuring the administrative area of the Office.

The recommendation for deleting one position in Information Systems and one in Inquiries was followed as the view was taken that given the then current information technology and workload, neither of these positions was expendable. A separate review of the staffing levels of the Information Systems Area of the Office will be undertaken when the introduction of the new information technology is completed in October, 1995. The Aboriginal Liaison Officer position, as opposed to an identified Investigation Officer position, was created and graded, with the approval of PEIRA, at 5/6 level. The identified Investigation Officer position was deleted.

There has been significant changes in complaint numbers and the complaint profile since KPMG made its initial recommendations based on the 92/93 figures. Complaints received in 94/95 totalled 7636 an 19% increase since the KPMG report. Further the complaint profile has changed. Of significant note is the substantial drop in the percentage of complaints declined at the outset and the substantial increase in the percentage of complaints made the subject of preliminary inquiries in the general area and conciliations/resolved cases in both the police and general areas. This means a far greater percentage of complainants to the Ombudsman are now having their matters actively dealt with. The KPMG report recognised that both these types of changes would warrant the need for extra staff.

COMPLAINTS FINALISED	General		Police	
	92/93 Profile	94/95 Profile	92/93 Profile	94/95 Profile
Outside jurisdiction (%)	22	23		
declined at outset (%)	44	26	42	35
preliminary inquiries (%)	27	38	22	22
Conciliated/resolved (%)	6	12	20	28
formal investigations (%)	1	1	16	14
total (%)	100	100	100	100
no. of complaints finalised	2454	2426	3796	4759

COMPLAINTS RECEIVED	92/93	94/95	% increase
Total Complaints Received	6424	7636	19
General	2416	2580	7
Police	4008	5056	26

The 7636 complaints received in 1994/95 are formal written complaints. This does not include the more than 8392 informal complaints and 4522 inquiries to the Office in the same period.

Recommendation 4 - *The Committee recommends that the Ombudsman should canvass with departments subject to his jurisdiction the merits of arranging for the secondment of department officers to his Office.*

Current Position - Action has been taken on this matter, but only in special circumstances, particularly given that the Office has now moved entirely to permanent appointments. To date an officer has been seconded for a 6 week period from Corrective Services and agreement has been reached in principle with the ICAC to second an officer, although this has not yet been implemented. An officer from the

Department of Women has been seconded to the Office for 9 months to work on the Inquiry into the Department of Juvenile Justice.

Other options for secondments will be considered when they present themselves.

***Recommendation 5** - The Committee recommends that seconded officers be excluded from involvement in investigations concerning their department of origin to prevent conflict of interest situations.*

It also is recommended that the Ombudsman investigate the possibility of arriving at an arrangement whereby the department concerned will make some contribution towards the costs of such a secondment.

Current Position - Historically the Office has not prevented temporary staff from dealing with complaints relating to their Department, unless there has been an identified conflict of interest. In future, temporary seconded staff will be excluded from involvement in investigations concerning their Department.

***Recommendation 6** - The Committee recommends that the Ombudsman should continue to apply his present procedures to the future handling of complaints taking into account the proposed restructure of the Office and staff recommended in this report.*

Current Position - This has been done.

***Recommendation 7** - It is recommended that a procedures manual be maintained by the Ombudsman. It is further recommended that the procedures manual should be reviewed at least annually by the Joint Parliamentary Committee on the Ombudsman, meeting in General Session with the Ombudsman.*

Current Position - The Police Area Manual and General Area Manual have been completed and copies provided to the Joint Committee. The Police Area Manual is currently being reviewed by a senior officer of the Office. Both manuals are kept under regular review.

***Recommendation 8** - The Committee recommends that the Ombudsman should provide the Committee with a copy of the Corporate or Strategic Plan, which should be the subject of regular annual review, for discussion with the Ombudsman in a General Meeting.*

Current Position - Copies of previous Corporate Plans have been provided to the Joint Committee. The Corporate Plan is currently being revised and should be available in November, 1995.

Recommendation 9 - *The Committee recommends in accordance with the Ombudsman Corporate Plan, Goal 6, Financial Services, that forthwith the Ombudsman is to fully implement activity and program budgeting and costing in accordance with the requirements for a proper Financial Management Information System as applicable to all other inner-budget sector organisations.*

Current Position - Up to and including the 1994/95 financial year the Office has only one program - that is the investigation of complaints. However, during the 1994/95 year, the Cabinet Office requested that the Office along with a number of other agencies, prepare program statements that would better reflect achievements as opposed to resources used. The Office has prepared two programs statements a police statement and a non police statement. Other activities such as corporate support and public relations have been divided between programs.

In addition to financial information, program statements identify outcomes, outputs and inputs of the program. They show this information for the three previous years as well as a forecast for the current and next financial years.

All agencies are now required to developed these statements. They will be progressively published in the Budget Papers to improve accountability. An edited revision of our program statements will be published in the 1995/96 Budget Papers.

Recommendation 10 - *The Committee recommends that regular communication and consultation with the Committee upon management issues, including performance measures, should be conducted as part of the Joint Committee's General Meetings with the Ombudsman which are to take place on a six monthly basis.*

It is further recommended that the Ombudsman include in his Annual Report details of performance measures, efficiencies and productivity savings.

Current Position - This is being done in relation to the Annual Report. Further discussion will be held with the Joint Parliamentary Committee to determine the specific information it requires on a regular or ad hoc basis.

Current performance measures used by the Office indicate that for example 1994/95 the average number of complaints dealt with by police investigatory staff was 264 while the target was 220. In terms of completion time of complaints, significant improvements have been made in the time taken to finalise matters in all areas of the Office except FOI. Strategies have been put in place to improve completion times in the FOI area.

Recommendation 11 - *It is recommended that the Ombudsman's Office arrive at benchmarks for the performance measures outlined by the consultancy team in its Management Review Report, in addition to any other alternative performance measures considered appropriate by the Ombudsman.*

These benchmarks should be included in the review of performance measures by an external auditor as proposed in Recommendation 20 and which also is presented to the Committee.

Current Position - The Office has arrived at benchmarks for the more practical performance measures outlined in the Management Review Report, for example the whole question of performance measures was reviewed as part of the preparation of the Corporate Plan and will again be considered as part of the review of the Corporate Plan is expected to be finalised in November, 1995. Discussions have been had with staff of the Audit Office and, subject to the finalisation of a number of issues including costs, the Audit Office will audit our performance indicators.

Recommendation 12 - The Committee recommends that the Ombudsman renegotiate his lease prior to the option renewal date at a better leasing arrangement than presently prevails. It is recommended that if the Ombudsman is unable to negotiate a more favourable leasing arrangement he should seek, on the expiration of the current lease in 1995, a more favourable leasing arrangement in consideration of exercising his option.

Current Position - The lease has been renegotiated on favourable terms with, an initial savings of \$188,000 in the first year.

Recommendation 13 - It is recommended that the Ombudsman's Office pursue a program of integrated information technology reform on the basis of expert advice from the consultants already engaged by the Office. In doing so it should pay close attention to those deficiencies and inefficiencies highlighted by KPMG in its report and from the independent consultant engaged by the Ombudsman in order to avoid these problems in any new system implemented.

It is further recommended that the Ombudsman should report on this program to the Committee as part of proceedings during the next General Meeting.

Current Position - This has been done. An Information Technology Strategic Plan was prepared by Deloitte Touche Tohmatsu. Treasury approved funding of the recommendations in the Plan. A tender was prepared in late 1994 and a Contract entered into in June 1995. Implementation is underway and will be substantially completed by October 1995.

Recommendation 14 - The Committee recommends that the Ombudsman create an Aboriginal Liaison Officer position to focus exclusively on non-investigation work promoting the Ombudsman's Office throughout the Aboriginal and Torres Strait Islander community.

Current Position - This has been done. Consideration is now being given to the identification of a second permanent Aboriginal Investigation Officer position specifically for the Police Area to deal with more sensitive complaints by Aboriginal and Torres Strait Islanders about the conduct of police.

Recommendation 15 - The Committee recommends that the Ombudsman should accommodate those recommendations relating to Public Awareness visits which were contained in KPMG's report.

Current Position - The KPMG Report recognised that the public awareness strategies adopted by the Office made appropriate use of a restricted budget, but noted problems existing in raising awareness within particular groups - Aboriginal, NESB, youth etc. Recommendation for choosing Annual Report cases that can be used to target these groups is a matter that will be addressed as far as possible in this year's Annual Report. Development of further strategies for contact with Aboriginal people is underway.

A draft Access and Awareness Plan has been developed in the light of the Joint Committee's 1994 Report on Access and Awareness and additional funding was sought to enable the plan to be implemented. However, funding was not provided and as a consequence this program has not been fully implemented (See Annexure C).

Recommendation 16 - On the balance, the Committee does not recommend the introduction of a general user fees system, however, it does recommend that in some instances, for example special projects like CHIPS, the Ombudsman should examine the possibility of obtaining a portion of the financial expense of such initiatives from the departments to which he provides this service.

Such arrangements would have to be made on a case by case basis in consideration of the nature and extent of the special project concerned and the degree to which it falls outside the Ombudsman's ordinary functions.

Current Position - This is being done. The Police Service funded the Police Race Relations Inquiry and a fee is charged for attendance at complaint management courses run by the Office. The various Guidelines now produced by the Office are sold for \$30 or \$50 a copy.

The Minister for Community Services has requested that the Office conduct a review of the Department of Juvenile Justice and will reimburse the Office for any costs incurred in conducting this review.

Recommendation 17 - The Committee recommends that in relation to the appropriation of funds for the Ombudsman, the Ombudsman should continue to prepare his budget estimates according to the normal budgetary process.

Current Position - This is being done.

Recommendation 18 - The Committee recommends that prior to sitting of the Parliamentary Estimates Committees the Ombudsman should present his budget for the forthcoming year to the Committee. The Committee would take evidence from the Ombudsman regarding his budgetary requirements and budget performance for the previous year and report to the Premier and Treasurer Estimates Committee at the time it is convened.

Current Position - This has not been done as yet. It will be more relevant for the Joint Committee to receive and take evidence on the Estimates earlier in the year, and it is hoped that this approach will be adopted in 1996 for the 1996/97 Estimates.

Recommendation 19 - The Committee recommends that the Ombudsman's Office should no longer be exempted from the requirement for 5 year program performance reviews as the absence of such reviews has in the opinion of the Committee been detrimental to the Ombudsman's efforts to efficiently and effectively manage his Office.

The Committee further recommends that the Ombudsman should commence the first such review without delay so that the Office's program performance can be considered by this committee as part of its oversight of the Office during the current financial year. The results of the review, to the extent that they have implications for the State Budget, shall be made available, at the absolute discretion of the Joint Committee, to the Management Review Advisory Committee.

It would then be up to the Joint Committee to determine its course of action in relation to each review.

Current Position - The Office agrees to this recommendation and over the next 5 years we intend to undertake program performance reviews of all major Office programs.

The Office has recently prepared several Program Statements for its major functional areas in line with a determination by the Expenditure Review Committee and submitted details of two quality customer service projects to the Office of the Council on the Cost of Government. Each of these programs and projects will be subject to ongoing performance monitoring.

It should be noted that a number of reviews of the performance of the Office have been conducted in recent years, including:

- 1) the 1992 management review of the Office by Judy Johnston, which led to the restructure of the Inquiries Section;
- 2) the 1993 Complainant Survey and the 1994 Public Authority Survey and the 1995 complainant survey;

- 3) the 1993 management review of the complaints function by KPMG Peat Marwick on behalf of the Joint Committee, which led to the restructuring of the Office;
- 4) the 1993 review of the Information System by Doll Martin Associates, resulting in the initial Information Technology Strategic Plan;
- 5) the 1993/94 review carried out by Delloitte Touche Tohmatsu resulting in the final Information Technology Strategic Plan, which has been sent to the Capital Works Committee;
- 6) the May 1994 management review of the administrative functions of the Office by Doll Martin Associates, which led to the restructure of the Administration Area;
- 7) the internal program reviews carried out in relation to complaint assessment and management in 1992 and the Aboriginal Liaison Officer position in 1993; and
- 8) the inquiries undertaken by the Joint Committee.

The Ombudsman agrees that the Office should not exempt from the normal reference requirements or public sector agencies.

Recommendation 20 - The Committee recommends that as part of the ordinary annual audit of the Ombudsman's Office the auditor should include a review of the Office's performance measures.

It is further recommended that the Committee should review the impact of this audit upon the resources of the Office when examining the Ombudsman's budget in accordance with Recommendation 18.

Current Position - Discussions have occurred with staff from the Audit Office however, the scope of the performance audit and cost had not been finalised prior to the 1994/95 audit. This matter will be explored for the 1995/96 audit.

Recommendation 21 - In view of the scope for further efficiencies in the operations of the Ombudsman's Office, as recommended by this report, and the further initiatives of the Ombudsman in relation to his information technology proposals and negotiations relating to his leasing arrangements the Committee does not recommend any increase in funds for the Office.

The Committee further recommends that the Ombudsman reports upon the achievement of the efficiencies and other initiatives to be introduced to his Office to the Committee prior to the 1994 Budget and in accordance with Recommendation 18 contained herein.

Current Position - The first paragraph of this recommendation is noted with regret.

The second aspect of this recommendation was met, in part, by a report on staffing and efficiency measures given to the Joint Committee in 1994 and comments made at the General Meeting of the Joint Committee on 23 June 1994.

Given the significant increase in complaint numbers since implementation of the measures recommended by the Joint Committee, and the extra resources devoted by the Office to complaint handling in the public sector and mediation, the Office has made several (unsuccessful) submissions to Treasury seeking a significant increase to its recurrent budget.

Recommendation 22 - The Committee recommends that the Ombudsman should prepare ongoing formal management reports on at least a monthly basis covering such topics as staffing, efficiency and effectiveness initiatives, costs and activities. On a six monthly basis a formal management report based on the monthly reviews should be submitted to the Joint Committee for its consideration in exercising its functions under the Ombudsman Act.

Current Position - Staffing, financial performance and general efficiency issues are generally reviewed each month by the executive Management Committee or more often as required. An interim report on staffing and efficiency measures was supplied to the Joint Committee in June 1994.

The format of the regular report to the JPC has not been finalised, however it is anticipated that the new complaints management system will generate reports on key performance indicators on demand. This matter should be the subject of further discussion between the Ombudsman and the Joint Committee.

Recommendation 23 - It is recommended that the Office undertake a full costing of public interest and direct investigations, in addition to a random sample costing of other investigations and declines. Responsibility for this sampling should be rotated through the investigation teams to alleviate any administrative effort in compiling this information.

Current Position - The Office has costed the Home Fund matter (\$51,979) and the Police Race Relations Inquiry (\$120,146). The Office is conducting an inquiry into the Department of Juvenile Justice which will be costed on an ongoing basis.

No costing has been undertaken of the two recent public interest/direct investigations, being:

1. the investigation into the decision by police to take Raymond Denning out of the Witness Protection Program; and

2. the investigation concerning Detective Sergeant Locke's complaint alleging a direction to destroy a document containing a complaint.

No random sample costing of other investigations and declines has as yet been carried out. This may occur during 1995/96, subject to the availability of resources.

Recommendation 24 - The Committee does not support special investigations funding as a protected item as it would have to be used as such thus limiting the Ombudsman's control over an item which falls within his existing allocation.

Current Position - This has been noted.

Annexure B

Funding Submissions

13 April 1995

The Hon R J Carr, MP
Premier, Minister for the Arts
and Minister for Ethnic Affairs
Premier's Wing
Level 8
State Office Block
Macquarie Street
SYDNEY NSW 2000

Dear Premier

Let me again congratulate you on your appointment as Premier and Minister for the Arts and Minister for Ethnic Affairs, and thank you for agreeing to participate in the launch of the guidelines on our 20th Anniversary. I look forward to having a productive working relationship with you.

My letter is to draw your attention to the major under-resourcing of my Office. I noted media reports that you had concerns about the resources provided to the Ombudsman and enclose a brief submission which outlines the enhancements which I believe are essential to enable me to properly carry out the duties of my Office.

I would also like to outline how you are likely to come into contact with my Office in your role as Premier. In that role you have responsibility for the Office of the Ombudsman and I would expect to be able to discuss with you from time to time general matters concerning the role, function and performance of the Office. The Ombudsman also has jurisdiction over some of the bodies that come within the Premier's portfolio and it is in that context that we are also likely to have contact.

As you would be aware, the Ombudsman has jurisdiction to investigate certain conduct of NSW public authorities including police and local councils. Last year the office dealt with approximately 16,000 oral and written complaints.

Our philosophy is that the Ombudsman should ideally be an avenue of last resort. Premature complaints are referred back to the public authorities involved and are part of the 35% of all complaints declined at the outset.

We try to resolve the bulk of complaints through preliminary enquiries or more formal conciliation procedures. Only 17% of complaints against the police are the subject of formal investigations. In the non-police area, less than 5% of complaints end up being the subject of formal investigations where coercive powers may be exercised.

Priority is given to matters that identify structural and procedural deficiencies in public administration and individual cases of serious abuse of powers, especially where there is no alternative and satisfactory means of redress.

NSW Ombudsman

*for fairness,
integrity and
improved public
administration*

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If a report of "wrong conduct" does eventuate from any investigation involving an agency coming within your responsibility, there is a statutory requirement that I provide you with an opportunity to consult me on the matter. This process is implemented by my sending you a 'draft report'. You may then choose to consult me personally on the matter or not. Under past administrations, Ministers have usually taken this opportunity to have a face to face meeting.

This is a process common to many Ombudsman jurisdictions internationally. It appears to be recognised as a useful mechanism for Ministers to get an insight into their agencies from an independent and objective external source. I hope that if the occasion arises you would chose to consult with me on such reports.

Again, you have a statutory right to consult me at any time during a formal investigation involving a body for which you have responsibility. Most CEO's would advise their Ministers of any formal investigation being conducted by the Ombudsman, particularly of any serious matter. I am, however, happy to consult with you at any time on any matter that you think I may be able to assist you with, subject to my obligations of secrecy under the Ombudsman Act.

You should also be aware that subject to my limited resources I have been attempting to take a pro-active role in encouraging better public administration in the state. My office is currently running training courses and offering consultancy assistance to agencies in the development of effective internal complaint systems. Guidelines on effective complaint management, on Freedom of Information procedures and on good conduct and administrative practice for local councils have been produced in recent times and widely distributed. I am also making our mediation service available to public authorities on a fee for service basis for disputes that are not the subject of formal complaints to the Ombudsman.

I hope to continue these initiatives as well as providing the basic service of independent assessment and investigation of citizen complaints. The office receives and effectively deals with the widest and greatest number of dissatisfactions against government services and practices than any other agency. Not only does the office provide a 'safety valve' for citizen dissatisfaction, but it performs a central function in government accountability.

I will be contacting your Director General in the next few days to arrange a meeting at your earliest convenience at which I can brief you more fully on current developments.

Yours sincerely

Irene Moss
OMBUDSMAN

OFFICE OF THE OMBUDSMAN - FINANCIAL RESOURCES

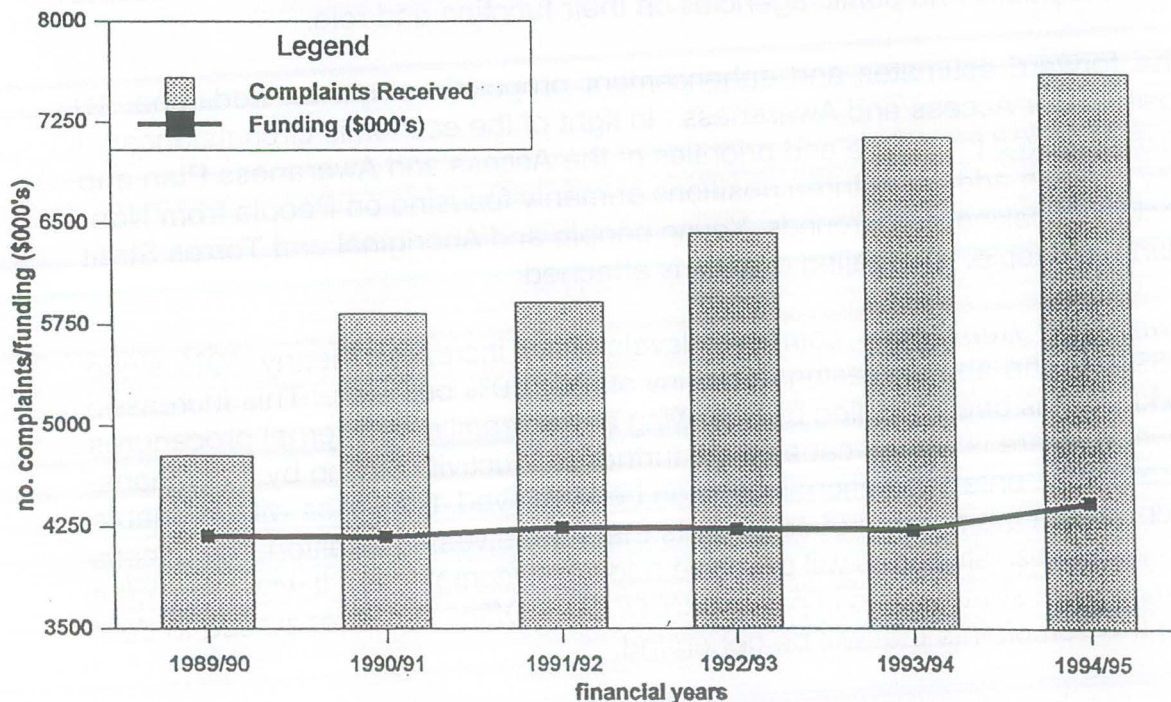
Background:

On the 6 February, 1995 the Ombudsman submitted her forward estimates and enhancement proposals for the three financial years commencing 1995/96. These estimates sought additional funding to deal with increases in complaint numbers as well as for other initiatives imposed by legislation (eg Protected Disclosures) and recommendations made by the Joint Parliamentary Committee on the Ombudsman (JPC). The amount sought was approximately \$1.5 million for each of the three forward years.

The Office of the Ombudsman has not received any additional funding to its recurrent budget for some time (except for escalation factors to cover inflation and the restoration of productivity savings in 1994/95). Greatly increased complaint levels have been dealt with by reviewing procedures and policies as well as implementing the recommendations of the JPC's inquiry into the funding of the Office.

The following graph shows the relationship between the written complaint levels and the budget allocation received by the Office. (NB the complaint level for 1994/95 is an estimate based on trends and complaints received to date. The complaint figures do not include oral complaints received - some 8761 were received in 1993/94).

Complaints & Funding



Revised enhancement proposal:

I recognise that your Government has economic concerns and will be implementing strategies to reduce spending. However, my Office is in need of additional resources to provide basic services to the public. In particular, the following priority areas have been identified:

- ▶ **Access and Awareness** - the JPC recently made 35 recommendations to rectify problems associated with the public's access to the Office as well as increase public awareness of my role. In addressing the report of the JPC I have developed a detailed Access and Awareness Plan which includes individual strategies for:
 - Aboriginal and Torres Strait Islander People
 - Young People
 - People from Non-English Speaking Backgrounds
 - Women
 - People living in non-metropolitan NSW
 - People with a Disability
 - Prisoners

The aim of this plan is to redress fundamental equity and access problems identified by the JPC. It recognises that the Ombudsman plays a vital public service to people of NSW and accordingly access and awareness issues play an important role in the equitable functioning of my Office.

It should be noted that newer complaint handling bodies such as ICAC and the Community Services Commission have been significantly resourced to educate both the public and public agencies on their function and role.

The forward estimates and enhancement proposal sought an additional 10 positions for Access and Awareness. In light of the economic circumstances, I have reviewed the scope and priorities of the Access and Awareness Plan and now seek an additional three positions primarily focusing on People from Non-English Speaking Backgrounds, Young people and Aboriginal and Torres Strait Islander People. A detailed costing is attached.

- ▶ **Complaint Handling** - complaint levels have increased nearly 60% since 1989/90, and are increasing at a fairly steady 10% per year. This increased workload has been handled by reviewing and streamlining internal procedures however, there is limited capacity for further productivity saving by this means. Accordingly, unless additional staff can be employed, the Office will be unable to cope with the number of complaints that it receives. In addition, the access and awareness strategies will generate additional complaints. It would be futile to implement strategies to improve access if the Office is not resourced to deal with the complaints that will be generated.

Changes in police legislation in 1993 empowered the Ombudsman to have a more pro active role in the police complaints system in appropriate circumstances. However, the request for additional funding to effectively use

these new powers was not granted and as such the ability of the Office to conduct direct investigations when necessary in the public interest has been severely hampered.

Special investigations such as those relating to Homefund and Police Race Relations were funded by external bodies (eg the Police Service or by Parliament). A mechanism available to enable the Ombudsman to conduct public interest investigations is the allocation of "protected" funds for this purpose. Protected funds can only be used for the specific purpose for which they are allocated and if not spent during the financial year the unspent portion is returned to Treasury.

The forward estimates and enhancement proposal sought an additional 5 positions for Police Complaints. In light of the economic circumstances, I accept that the direct investigation and special investigation functions must continue to be severely limited and now seek only 2, covering both the police and non-police areas. A detailed costing is attached.

▶ ***Complaint Handling In the Public Service (CHIPS) Program*** - for some time the Office has been assisting public agencies to develop internal guidelines for effective complaint handling. These guidelines have been widely used throughout the public sector (and in a modified form throughout local government) and improvements in dealing with customer complaints have been realised.

The CHIPS program was further developed to introduce agencies to mediation and to improve the skills of the public sector in this regard. The Office was instrumental in developing an accredited training course in mediation and is currently providing complaint handling and mediation training to agencies.

I see the Office playing a key role in the public sector in relation to:

- providing advice and training to public authorities on improved customer service through the design of effective complaint systems
- providing a valuable mediation service to both the public and public authorities
- expand the use of conciliation for dealing with police complaints

The Office is perceived by public authorities to be at the cutting edge of improvements to customer service. Requests from public authorities such as the SRA, Housing, the Police Service as well as local councils indicate a strong demand for training and advice from this Office in this area.

The Office has developed a strategy to highlight the benefits of CHIPS and mediation of disputes throughout the public sector, including the development of training and information sessions and assistance in the design of complaint handling procedures. However, to implement this strategy resources are required. As the Office has broad jurisdiction over the public sector it is in an

ideal position to be an effective change agent - improving the processes and procedures in the public sector and particularly in relation to customer service. Accordingly, I believe that the medium to long term benefits and potential savings (throughout the public sector) of this proposal outweigh the resources needed in the short term.

The forward estimates and enhancement proposal sought an additional 3 positions for the CHIPS program. In light of the economic circumstances, I have revised this to one. A detailed costing is attached.

- ▶ **Protected Disclosures** - the Protected Disclosures Act commenced operations on 1 March, 1995. The aim of the Act is to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration and serious and substantial waste in the public sector. The Ombudsman, along with ICAC and the Auditor General, is a body to which disclosures may be made. By their nature, protected disclosures are very resource intensive to deal with.

At meetings of the Protected Disclosures Steering Committee (chaired by OPM), it was decided that one of the agencies should provide advice to public officials, and it was agreed that the Ombudsman was the most appropriate body to give advice to protected "whistleblowers". The Ombudsman agreed subject to adequate resources being provided.

The forward estimates and enhancement proposal sought an additional 1 position for Protected Disclosures and I resubmit this for consideration. A detailed costing is attached.

- ▶ **Freedom of Information** - under the Freedom Of Information (FOI) Act, the Ombudsman is one of the two external review bodies for FOI applications (the other being the District Court). Complaints can be made to the Ombudsman about the refusal of a public authority to release documents.

Our experience has shown that problems exist in the application of the FOI legislation. In particular, there is excessive delays by agencies in making determinations (well beyond the statutory period), agencies are charging excessive amounts for documents obtained under FOI, and agencies are using inapplicable exemptions to justify refusals to release information. It is imperative that some agency take a more pro active role in the review of the implementation of FOI in NSW. The Office has, in a limited extent, attempted to be pro active. In particular, areas that require attention are:

- auditing agencies implementation of the FOI Act;
- monitoring and analysis of FOI Annual Reports by agencies; and
- monitoring and review of Statement of Affairs and Summaries of Affairs by agencies.

The Office does not have the capacity to perform this pro active role within current resources. This is due to a steadily increasing number of requests for external reviews which are extremely labour intensive due to the nature of the matter and the fact that they often deal with sensitive issues with highly emotional people involved. There is not the capacity to decline any external review applications as there is with other types of complaints under the Ombudsman Act and accordingly the increasing levels must be dealt with by an increase in resources.

The forward estimates and enhancement proposal sought an additional 2 positions for Freedom of Information and I have revised this to one. A detailed costing is attached.

Summary:

Enhancement Proposal	Original enhancement proposal				Revised enhancement proposal			
	staff	95/96	96/97	97/98	staff	95/96	96/97	97/98
Access and Awareness	10	794,533	709,046	730,523	3	301,280	241,125	285,143
Complaint Handling	5	340,754	306,481	316,158	2	138,520	134,417	137,095
CHIPS	3	198,713	192,056	198,324	1	62,360	61,308	62,648
Protected Disclosures	1	73,743	70,665	73,140	1	56,260	55,208	56,548
Freedom of Information	2	179,607	167,450	172,401	1	45,160	47,108	48,448
Total	21	1,587,350	1,445,698	1,490,546	8	627,281	554,868	605,580

DETAIL COSTING FOR ENHANCEMENT PROPOSALS

Enhancement Proposal	Line item	1995/96	1996/97	1997/98
ACCESS AND AWARENESS	Salary Related:			
	Salary - 3 positions at Clerk Grade 7/8 (ie \$40,841 - 45,207)	122,523	127,809	131,442
	Payroll tax (7% of salary related items)	8,863	9,246	9,508
	Overtime (based on 2% of salary costs)	2,450	2,556	2,629
	Annual leave loading (17.5% of 4 weeks salary)	1,644	1,715	1,763
		135,480	141,325	145,343
	Maintenance costs:			
	Initial setup:			
	computer x 3	6,000		
	desk etc x 3	3,000		
	Travel			
	airfares - based on 1 visit each person per month (ie 3 trips per month) @ \$500 per trip	18,000	18,000	18,000
	subsistence - travel 5 days per month each person @\$110 per day	19,800	19,800	19,800
	Fees - translations, designers, graphic artists	30,000	30,000	30,000
	Advertising - ethnic press, promotional etc	20,000	20,000	20,000
	Printing - publications, translations etc	40,000		40,000
	Postal	6,000	6,000	6,000
	Office overheads (including stores, telephone etc)	3,000	3,000	3,000
	Training - including staff awareness training	20,000	3,000	3,000
		165,800	99,800	139,800
	TOTAL COST FOR PROPOSAL	301,280	241,125	285,143
	COMPLAINT HANDLING	Salary Related:		
Salary - 2 positions at Clerk Grade 7/8 (ie \$40,841 - 45,207)		81,682	85,206	87,628
Payroll tax (7% of salary related items)		5,909	6,164	6,339
Overtime (based on 2% of salary costs)		1,634	1,704	1,753
Annual leave loading (17.5% of 4 weeks salary)		1,096	1,143	1,176
		90,320	94,217	96,895
Maintenance costs				
Initial setup:				
computer x 2		4,000		
desk etc x 2		2,000		
Travel				
airfares - based on 4 trips per annum per person @\$500 per trip		4,000	4,000	4,000
subsistence - travel 10 days per annum per person at \$110 per day		2,200	2,200	2,200
Fees				
translations, transcriptions etc		10,000	10,000	10,000
legal advsings		20,000	20,000	20,000
Office overheads (including stores, telephone etc) plus taping equipment (year 1)		4,000	2,000	2,000
Training (\$1000 per person)	2,000	2,000	2,000	
	48,200	40,200	40,200	
TOTAL COST FOR PROPOSAL	138,520	134,417	137,095	

DETAILS COSTING FOR ENHANCEMENT PROPOSALS

Enhancement Proposal	Line Item	1995/96	1996/97	1997/98
CHIPS	Salary Related:			
	Salary - 1 position at Clerk Grade 7/8 (ie \$40,841 - 45,207)	40,841	42,603	43,814
	Payroll tax (7% of salary related items)	2,954	3,082	3,169
	Overtime (based on 2% of salary costs)	817	852	876
	Annual leave loading (17.5% of 4 weeks salary)	548	572	588
		45,160	47,108	48,448
	Maintenance costs			
	Initial setup:			
	computer x 1	2,000		
	desk etc x 1	1,000		
	Travel			
	airfares - based on 6 trips per annum @\$500 per trip	3,000	3,000	3,000
	subsistence - travel 20 days per annum per person at \$110 per day	2,200	2,200	2,200
	Advertising, marketing	2,000	2,000	2,000
	Printing - publications/manuals etc	5,000	5,000	5,000
	Office overheads (including stores, telephone etc)	1,000	1,000	1,000
	Training	1,000	1,000	1,000
		17,200	14,200	14,200
	TOTAL COST FOR PROPOSAL	62,360	61,308	62,648
	PROTECTED DISCLOSURES	Salary Related:		
Salary - 1 position at Clerk Grade 7/8 (ie \$40,841 - 45,207)		40,841	42,603	43,814
Payroll tax (7% of salary related items)		2,954	3,082	3,169
Overtime (based on 2% of salary costs)		817	852	876
Annual leave loading (17.5% of 4 weeks salary)		548	572	588
		45,160	47,108	48,448
Maintenance costs				
Initial setup:				
computer x 1		2,000		
desk etc x 1		1,000		
Travel				
airfares - based on 4 trips per annum @\$500 per trip		2,000	2,000	2,000
subsistence - travel 10 days per annum per person at \$110 per day		1,100	1,100	1,100
Printing - publications		3,000	3,000	3,000
Office overheads (including stores, telephone etc)		1,000	1,000	1,000
Training		1,000	1,000	1,000
		11,100	8,100	8,100
TOTAL COST FOR PROPOSAL		56,260	55,208	56,548

DETAILED COSTING FOR ENHANCEMENT PROPOSALS

Enhancement Proposal	Line item	1995/96	1996/97	1997/98	
FREEDOM OF INFORMATION	Salary Related:				
	Salary - 1 position at Clerk Grade 7/8 (ie \$40,841 - 45,207)	40,841	42,603	43,814	
	Payroll tax (7% of salary related items)	2,954	3,082	3,169	
	Overtime (based on 2% of salary costs)	817	852	876	
	Annual leave loading (17.5% of 4 weeks salary)	548	572	588	
		45,160	47,108	48,448	
	Maintenance costs				
	Initial setup:				
	computer x 1	2,000			
	desk etc x 1	1,000			
	Travel				
	airfares - based on 5 trips per annum @\$500 per trip	2,500	2,500	2,500	
	subsistence - travel 20 days per annum per person at \$110 per day	2,200	2,200	2,200	
	Printing - publications/manuals	5,000	5,000	5,000	
	Office overheads (including stores, telephone etc)	1,000	1,000	1,000	
	Training/education	10,000	5,000	5,000	
		23,700	15,700	15,700	
	TOTAL COST FOR PROPOSAL	68,860	62,808	64,148	
	TOTAL ENHANCEMENT SOUGHT		627,281	554,868	605,580



OFFICE OF THE OMBUDSMAN
3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

Our reference:

Your reference:

20 February 1995

Ms Carolyn Burlew
Office of Public Management
Level 8
State Office Block
Phillip Street
SYDNEY NSW 2000

Dear Ms Burlew,

Re: Forward estimates and Enhancement proposals

Thank you for the opportunity to discuss our forward estimates and enhancement proposals this morning. I appreciated your feedback and advice.

I offer the following information to clarify the priority aspects of two of the enhancement proposals.

QUALITY SERVICE/ADR ENHANCEMENT

The Ombudsman's Complaint Handling in the Public Sector (CHIPS) program aims to reduce customer dissatisfaction with government services by equipping public authorities with strategies to more effectively handle grievances internally and use complaint systems as a quality management tool. In the long run this will reduce the number of complaints coming to the Ombudsman and generally improve public sector efficiency and effectiveness. It is the only part of the Ombudsman's general program which is pro-active in nature and not based upon investigating wrong conduct of public authorities.

At the core of the Ombudsman's proposed enhancement for the CHIPS initiative, is the increasing demands made on the Office by public authorities for expert consultative advice on designing, re-designing and implementing effective internal complaint management systems.

A survey of all state agencies and local government authorities conducted in December 1994 confirmed that a large percentage of agencies do not have a general policy on complaints or procedures and systems for dealing with them except on an individual, ad hoc basis (only 30% of local councils and 59% of state agencies and statutory authorities have such policies or systems). Moreover, the

strategic use of complaint data as a form of customer research for planning purposes is still extremely low (only 34% of state agencies analyse complaints in any systematic way and only 8% of local councils do this).

However, in response to the Premier's Quality Customer Service memorandum 94-45 and the general maturing of Guarantee of Service and other quality management initiatives, a large number of these authorities are now concentrating on enhancing their performance in relation to customer complaints. The Office's Guidelines on Effective Complaint Management continue to be widely distributed and there is currently high interest in workshops on complaint management scheduled over the coming months (80% of the local councils and 66% of the state level agencies surveyed expressed interest in these workshops). Many public authorities however seek more than this general advice. They want the Office to provide a personalised consultancy service to assist them to develop new complaint management systems and train their staff. There is a particular high demand to provide this service to country based organisations.

There is only one current position dedicated to the CHIPS/ADR project. That position is totally occupied with managing the Office's in-house mediation program and contributing to the current training program that introduces participants to complaint management theory and best practice ideas.

The office is not able to currently respond to the increasing demand for authority specific assistance which in turn frustrates those authorities in achieving their own quality service objectives. The demand for this service has risen significantly since distribution of the complaint management survey and is expected to grow even further as a by-product of the complaint management workshops scheduled for 1995.

The priority focus for this enhancement is therefore to obtain at least one additional staff resource to extend the pro-active CHIPS project to provide a more comprehensive service to public authorities. Specifically the position would act as a consultant to public authorities to develop new internal complaint systems on site and conduct authority specific training activities on effective complaint handling and customer service.

POLICE COMPLAINTS SYSTEM

By way of introduction I set out a greatly simplified explanation of the way the police complaints system works. Complaints are received by the Ombudsman who then decides what action will be taken on them. The major categories of action, in increasing order of resources required by this Office, are as follows: decline, conciliate, preliminary enquiries, investigation, direct investigation/ reinvestigation.

Decline is, as the name suggests, a decision not to investigate the matter. It is the quickest and cheapest action but still requires an assessment of the complaint and a determination giving reasons.

In conciliations the Police Service engages under our supervision in alternative dispute resolution with the complainant.

In the case of preliminary enquiries this Office either obtains or directs the police to obtain more information which we assess before deciding whether to decline or investigate.

Investigation means a police investigation including the gathering of evidence and obtaining of statements. An investigation is carried out in the more serious cases where there is sufficient prima facie evidence to justify it. The report of that police investigation is then sent to this Office and analysed before determining whether the complaint is sustained or not. These investigations require us to carry out an intensive review of the investigation report and interaction with both the police and the complainant. In select cases we monitor the investigations by having one of our officers attend interviews.

A direct investigation or reinvestigation is one where this Office actually carries out the investigation itself, that is, we interview witnesses and gather and analyse physical evidence. This is the most time consuming and resource intensive activity of all. Last year we only did six of these. We should have done considerably more of these but resource constraints did not allow it.

The essential problem is one of quality and the effect on quality of continuously increasing volume. Whilst the increase in complaints from one year to another has not been dramatic the effect is cumulative. There have been no staff increases since 1989 to deal with increased volumes and in that time the number of police complaints has increased from 2403 to just over 5000 (projected for 1994/95), an increase in excess of 100%.

Managerially we have already done what we could to handle the increased workload. In meeting this challenge we have benefited considerably from the review of the structure and processes of this Office carried out by KPMG Peat Marwick on behalf of the Joint Parliamentary Committee. We have implemented almost all of the changes recommended by that review as well as a range of other management initiatives. Those initiatives have enabled us to actually reduce the number of matters we have declined. In addition, we have focused on cleaning up our formerly extensive backlogs. This is indicated by the fact that determinations (ie matters decided) exceeded complaints received for the period 93/94.

We also consider that we have our people in the right proportions in the right places. The police team is responsible for roughly 60% of the complaints coming into the Office and it has 58% of the total investigative resources (30 out of 52) presently available to the Office.

Notwithstanding the above, we are concerned that the volume problems are preventing us from optimising our performance in respect of oversighting police investigations and carrying out our own direct investigations. An example of this is provided by the fact that the number of direct investigations/ reinvestigations has

gone from 23 in 1987/88 to 6 in 1993/94 despite the fact that we were granted considerably expanded powers in respect of these investigation by Parliament in 1993. There have been a number of cases which we considered to be deserving of direct investigation but where we were unable to do one because of resource constraints. Some examples are as follows:

- Alleged assault in custody occasioning severe facial injuries. The police investigation, which was carried out by a sergeant at the same station where the assault occurred, found the matter not sustained.
- Complaint by a woman that her 14 year old son was assaulted in custody. Evidence of injuries consistent with assault.
- Alleged assault in custody of 18 year old youth.
- Alleged Travel Allowance and Quota rorts by Highway Patrol. Investigator's recommendations overturned by Region Commander.
- Failure to properly investigate over a three year period a well founded allegation by an Aboriginal woman of wrongful eviction.
- Alleged police failure to adequately deal with a woman in custody who was heavily pregnant leading to her giving birth in custody. Subsequent failure to report the matter to the Ombudsman.

The nature of matters such as those listed above is that whilst they may be of a extremely serious nature it is difficult to get to the bottom of them without expending considerable resources. If we do not get to the bottom of them, injustice may be done to complainants and the matters may surface later in a highly public and sensational way.

In the KPMG review a workload model was proposed for use in this Office. If we apply that model to our projected workload for this financial year and plan to carry out 10 direct investigations, the model projects an increase of 3 staff over present numbers in the police team.

We are concerned that if we do not get the increase in resources the following adverse effects may occur:

- Delays in finalising matters may once again begin to creep up unacceptably
- The quality of oversight which we provide particularly in respect of police investigations, which relate to the more serious complaints, may decline
- The number and quality of direct investigations, re investigations and special investigations which are the most important single investigations we do, will decline.

Yours sincerely,

Irene Moss
OMBUDSMAN



OFFICE OF THE OMBUDSMAN
3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

Our reference:

Your reference:

The Hon J J Fahey, MLA
Premier
Level 8
State Office Block
Macquarie Street
SYDNEY NSW 2000

Dear Premier

RE: FORWARD ESTIMATES AND ENHANCEMENT PROPOSALS

The attached document represents the Forward Estimates for the Office of the Ombudsman for the three financial years commencing 1995/96. The actual deadline for submission of these forward estimates was 30 January, 1995 however the Treasury extended the deadline to allow me the opportunity to consider the submission for my Office.

Also included with the forward estimates are five enhancement proposals that seek additional funds to effectively implement current services and additional functions given to the Ombudsman under new or amended legislation. A number of these proposals have been highlighted in Special Reports to Parliament or through discussions with officers of the Premiers Department. The following is a summary of the enhancement proposals and the cost for each financial year of the forward estimates.

Enhancement Proposal	no. staff required	1995/96	1996/97	1997/98
Access and Awareness	10	794,533	709,046	730,523
Police Complaints	5	340,754	306,481	316,158
Alternative Dispute Resolution	3	198,713	192,056	198,324
Protected Disclosures	1	73,743	70,665	73,140
Freedom of Information	2	179,607	167,450	172,401
Total	21	1,587,350	1,445,698	1,490,546

More detailed information on each proposal can be found in the forward estimates papers. I have also included supporting documentation including relevant Special Reports to Parliament and a report of the Joint Parliamentary Committee on the Office of the Ombudsman.

I understand that requesting \$1.5 million may seem large given the existing budget of the Office, however, having carefully looked at the reports of the Joint Parliamentary Committee on the Office of the Ombudsman and the efficiency initiatives implemented by the Office as a consequence, as well as reviewing the resources available to various other investigative agencies, I am firmly of the opinion that the Office is under resourced. I think this is the appropriate time, given my recent appointment, for the financial problems of the Office to be addressed by Government to enable me to properly achieve my charter and meet the expectations of NSW citizens.

You would be aware that the Office of the Ombudsman has not received any additional funding to its recurrent budget for some time (except for escalation factors and the restoration of productivity savings in 1994/95). Greatly increased complaint levels have been dealt with by reviewing procedures and policies and by the dedication of the staff of the Office. However, it appears to me that the Office is at a stage where no further substantial efficiency improvements can be made by reviewing and/or changing how the work is performed.

In addition, the added pressures placed on the Office through such things as the recent inquiry on Access and Awareness by the Joint Parliamentary Committee, make it impossible to fulfil my charter on existing resources. More and more is expected of my Office (and rightly so) but the sheer volume of the increasing complaint numbers makes it impossible to focus on other areas such as education for minority and disadvantaged groups. The newer complaint handling bodies have been funded for educational roles. The Office, on the other hand, is expected to perform an education function particularly to minority and disadvantaged groups, within existing resources while still dealing with the sharply rising complaint levels.

I think that the funding of other adequately funded investigative agencies can be used as **benchmarks** for assessing the funding of my Office. The following table highlights the value for money that the Office of the Ombudsman provides. This table compares the budgets of a number of complaint handling bodies:

	Ombudsman	Community Services Commission	ICAC	Royal Commission
Budget	\$4,428,000	\$2,560,000	\$13,157,000	\$20,535,000
Staff level	72	31	145	125
Cost per employee	\$61,500	\$82,581	\$90,738	\$164,480
% increase over Office's Cost per employee		34%	48%	267%

Notes:

- It is recognised that this is not a perfect comparison, that special circumstances and factors apply in each of the listed organisations. This table is indicative of the significant differences in funding that apply between various complaint handling bodies.
- **The budgets and staff levels shown above are taken directly from the 1994/95 Budget Papers.**

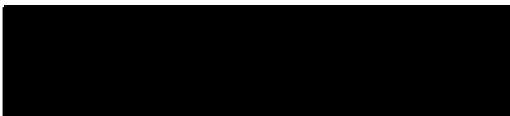
The above table does not include an important factor - the number of complaints received and investigations conducted by each organisation listed. In this regard reference should be made to the table on page 45 of the Office's 1993/94 Annual Report as well as the Annual Reports of the individual investigation/complaint handling agencies.

In assessing these proposals regard should be had to the fact that the NSW Ombudsman receives and resolves by far the greatest number and range of complaints expressing dissatisfaction with government service of any public agency in this State. Properly resourced this function will inevitably lead to greater public satisfaction with government service.

In my term of Office I wish to strengthen and extend the focus of the Office in actively resolving complaints against public bodies, which I note is in accordance with Government policy.

As can clearly be seen, my Office is significantly under resourced when compared to other adequately funded complaint handling bodies. Accordingly, I request that you look favourably on my application for additional funding as detailed in the enhancement proposals. I am available at any time to discuss these proposals or other matters with you or to provide additional information if necessary.

Yours sincerely



Irene Moss
Ombudsman

6 FEB 1994

MINISTER: THE PREMIER

NEW PROGRAM/ENHANCEMENT - Request for additional funds

OFFICE OF THE OMBUDSMAN

Access and Awareness

1. BRIEF DESCRIPTION OF THE PROPOSAL:

Unlike newer complaint handling bodies such as the ICAC, Anti-Discrimination Board and Community Services Commission at the State level and the Human Rights Commission at the Federal level, the Office has not been resourced to educate the both the public and public agencies on good conduct and administrative practices, the role and jurisdiction of the Office, or to promote our services throughout the State. While no funding has been provided to the Office for this purpose, the other agencies mentioned above have significant budgets to perform their education functions.

Previous Ombudsmen have held the view that the Office should have in place a coordinated access and awareness strategy with the aim of reaching all citizens of the State and, in particular, disadvantaged groups. I support this aim and have approved the framework for such a strategy. As well, in September, 1994 the Joint Parliamentary Committee on the Office of the Ombudsman (JPC) released the report of its Inquiry into Access to and Awareness of the Office of the Ombudsman. What the JPC found was inequity in the use of the Office of the Ombudsman which had resulted from:

- ▶ a lack of understanding of the role of the Office amongst various community groups such as people from non-English speaking backgrounds, Aboriginals, and young people; and
- ▶ no specific programs within the Office to target minority groups.

The JPC made 35 recommendations which it believes would improve the public's access to the Office as well as increase public awareness of the role of the Ombudsman. In reaching its findings, the JPC held a number of public inquiries taking evidence from a range of individuals and organisations including the Ethnic Affairs Commission and the Aboriginal Legal Service. While these organisations recognised the severe resource constraints that the Office must work within, each identified deficiencies in the Office's provision of services to specific minority groups in the community. The JPC agreed that the Office did not provide an adequate service to specific minority groups and that a program should be developed to improve our performance in this regard.

The Ombudsman agrees that a coordinated approach should be adopted, but again the resource issue must be addressed. A draft Access and Awareness Plan has been developed as a response to and based on the recommendations in the JPC's report. This plan consists of a series of programs targeting specific minority groups where access and awareness is low as well as certain programs designed to improve our services to all clients. Each program is described in detail and includes objectives, activities, time frames, responsibilities, budgets, resources and performance reviews. Programs include individual Access and Awareness Plans for:

- ▶ Aboriginal and Torres Strait Islander People;
- ▶ Young People;
- ▶ People from Non-English Speaking Backgrounds;
- ▶ Women;
- ▶ People living in non-metropolitan NSW;
- ▶ People with a Disability; and
- ▶ Prisoners.

Other elements of the Plan include:

- ▶ Plain English Policy
- ▶ Written Complaint Assistance Program
- ▶ Complainant Education Program
- ▶ Information Exchange Program
- ▶ Assessment Program

The draft Plan is attached for your information. Details on each program will not be reproduced here as a summary is provided in the draft Plan.

A detailed Access and Awareness Program requires staff dedicated solely to those tasks. In addition, allowance must be made for extra investigation staff to deal with increased complaints from the disadvantaged groups the targets of the Access and Awareness Plan. In the past, staff performing the limited public awareness duties undertaken by the Office, or other special projects, were taken "off line" for a limited period with no adjustments to their investigative workloads. This resulted in delays in the investigation of complaints. With a more time intensive program such as that developed, it is not appropriate nor are the resources available to implement the various programs by using existing staff who are, in the normal course of their work, unable to process the high complaint levels currently being experienced.

The Office has been reviewed by the JPC in terms of improving efficiency to deal with the high complaint levels and we have implemented the recommendations made by the JPC in this regard. Even with improving the way work is performed, the Office has no capacity to divert resources away from the investigation of complaints to access and awareness particularly as complaint levels are increasing and it is expected that the Access and Awareness Program will in itself generate additional complaints from those minority and disadvantaged groups who at present do not complain to the Office.

The effective implementation of these programs will rely on the government granting the office additional resources through an enhancement.

2. STAGE OF PLANNING

The framework of the Access and Awareness Plan has been prepared. Subject to resources, it is the Ombudsman's intention, to implement the various strategies identified in the Plan before the dates indicated.

3 PROPOSED STARTING DATE

The Strategies of the Plan will be implemented when resources are provided.

4. RESULTS/BENEFITS OF PROPOSAL

The results and benefits of the proposal are:

- ▶ The access and awareness plan is designed to redress fundamental equity and access problems as identified by the JPC, the Ombudsman and various management consultants. The Ombudsman provides a vital public service to the people of NSW and access and awareness issues play an important role in the equitable functioning of the Office. The right of review available through our Office is of no use to a person who is not aware of our existence or who cannot gain access to our services. The Ombudsman will properly fulfil its charter.
- ▶ Although the Office is required to implement government policies such as the Charter of Principles for a Culturally Diverse Society, Womens Policy Statement and well as the legislative programs such as the Disability Strategic Plan, the level at which they are implemented and the positive achievements expected is dependent on resources available.
- ▶ It is easy to equate the lack of complaints with the provision of a satisfactory service. Often this is not the case. Information provided to the JPC in its inquiry as well as information gained through surveys conducted by this Office, indicate that members of minority and disadvantaged groups who have complaints about government agencies and police often seek no remedy. This would indicate that government services are not being adequately provided to all sections of the public. By increasing the resources of the Office and thereby improving our services to minority and disadvantaged groups, the Office can identify deficiencies in services provided by other public authorities resulting in improved customer service in the public sector.

- ▶ the Access and Awareness Program can have a preventative effect improving services to the public by highlighting the remedies available if public sector agencies did not provide the services they are required to provide.
- ▶ The recommendations of the JPC will be implemented.

5. NUMBER OF ADDITIONAL STAFF REQUIRED FOR THE PROPOSAL(full time equivalent basis)

Budget Year	Forward Year 1	Forward Year 2
10	10	10

6. DOES THE PROGRAM HAVE HIGHER PRIORITY THAN ANY EXISTING PROGRAM? IF NO, WHY IS IT CONSIDERED ESSENTIAL?

Under the Budget process, the Office of the Ombudsman has only one program ie the *"Investigation of Citizens' Complaints and Monitoring and reporting on Telecommunications Interception Activities"*. Due to this, the Ombudsman cannot give this enhancement proposal a higher priority than the existing program. However, the enhancement proposal is essential to enable the Office to implement its Access and Awareness Plan which addresses deficiencies identified by the Joint Parliamentary Committee on the Ombudsman.

7. IF THE PROPOSAL HAS IMPLICATIONS EITHER FINANCIAL OR NON-FINANCIAL FOR OTHER ADMINISTRATIONS, HAVE THEY BEEN CONSULTED AND DO THEY SUPPORT THE PROPOSAL?

NA

8. IF THE PROPOSAL REQUIRES THE EXPENDITURE OF CAPITAL FUNDS EITHER BY THE AGENCY OR OTHER ADMINISTRATIONS, HAS A REQUEST FOR THESE FUNDS BEEN INCLUDED IN THE PROPOSED CAPITAL WORKS OF THE DEPARTMENT OR OF OTHER ADMINISTRATIONS?

All costs have been identified as recurrent and have been included in the attached proforma.

9. FINANCIAL COST OF PROPOSAL

FINANCIAL COSTS OF PROPOSAL

Schedule J22L

- Accrual Based Agency

Access and Awareness	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>RECURRENT EXPENSES</u>				
. Employee related	0	507	492	519
. Other operating expenses	0	343	244	244
. Depreciation	0	16	16	16
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Total Expenses	0	866	752	779
LESS:				
<u>Offsetting expense saving to agency</u>				
. Employee related	0	0	0	0
. Other operating expenses	0	0	0	0
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Net Recurrent Expense to the Agency	0	866	752	779
LESS:				
User Charges Revenue				
Other Departmental Revenue				
Impact on Net Cost of Services	0	866	752	779
PLUS:				
Decrease in provision for recreation leave				
Decrease in other accrued expenses				
Increase in inventories				
Increase in prepayments				
Increase in receivables				
Non cash revenues (eg donations)				
LESS:				
Depreciation	0	(16)	(16)	(16)
Superannuation	0	(23)	(24)	(29)
Long Service Leave				
Bad/doubtful debts expense				
Increase in provision for recreation leave	0	(30)	(1)	(1)
Increase in other accrued expenses	0	(2)	(2)	(2)
Decrease in inventories				
Decrease in prepayments				
Decrease in receivables				

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Other non cash expenses (specify)				
Impact of Proposal on Agency's Consolidated Fund support	0	795	709	731
PLUS: <u>Increase in Consolidated Fund support to other organisations (1)</u>				
<ul style="list-style-type: none"> . Employee related . Other operating expenses . Grants and subsidies . Other services 				
LESS: <u>Offsetting savings in Consolidated Fund support to other administrations (1)</u>				
<ul style="list-style-type: none"> . Employee related . Other operating expenses . Grants and subsidies . Other services 				
<u>Additional Consolidated Fund</u>				
<ul style="list-style-type: none"> . collected by agency . collected by other administrations (1) 				
Net additional current Cost to the Consolidated Fund	0	795	709	731

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>CAPITAL EXPENDITURE</u>				
Total direct capital expense	0	0	0	0
Total flow-on expense to other administrations (1)	0	0	0	0
Gross Capital expense of Proposal	0	0	0	0
PLUS:				
Purchase of investments				
Advances paid to other organisations				
Advances repaid to other organisations				
Asset sale proceeds transferred to the Crown				
Increase in asset sale receivables				
Increase in other capital revenue receivable				
LESS:				
Sale of Investments				
Advances repaid by other organisations				
Advances received from other organisations				
Total asset sale revenue				
Decrease in asset sale receivables				
Other capital revenue				
Decrease in other capital revenue receivable				
Net Additional Capital Cost to the Consolidated Fund	0	0	0	0
Other financial implications of the proposal (for example impact on capital expenditure, Government Guarantee, write-off of debts, Transfer of assets etc. - specify)				
NOTE: (1) Specify name of other administration or if more than one such organisation show totals and include details as an attachment to this table				

MINISTER: THE PREMIER

NEW PROGRAM/ENHANCEMENT - Request for additional funds

OFFICE OF THE OMBUDSMAN

Police Complaints System

1. BRIEF DESCRIPTION OF THE PROPOSAL

This proposal is the result of the following:

▶ Race Relations

With the approval of the Minister for Police, the Ombudsman conducted an inquiry into Police Race Relations. The report of that Inquiry was recently tabled in Parliament and is attached for your information.

One recommendation of the report was that an external audit of the Police Service's achievements in better serving Aboriginal, ethnic and other minority groups be conducted. The Police Service has accepted this recommendation. After full consideration of what existing agencies would be most appropriate to implement the audit, the Police Service has now nominated the Office of the Ombudsman as the most appropriate body to conduct this special procedure given its independence and unique knowledge and understanding of the police service.

There are two other organisations that could claim responsibility for auditing the achievements of the Police Service. These bodies are the Ethnic Affairs Commission and the Anti-Discrimination Board. On closer examination however, it is evident that this Office is the most appropriate because:

- the Ethnic Affairs Commission has no jurisdiction over a number of minority groups including Aborigines and the young and as such, if it had responsibility for auditing achievements, some component would have to be handled elsewhere ie the function would have to be split.
- the Anti-Discrimination Board, has a specialised jurisdiction in relation to complaints and does not have the expertise and knowledge of this Office in the procedures, policies and structure of the Police Service.
- the Ombudsman has the role of civilian oversight of the Police Service and individual police officers.

This audit function will require additional resources.

► Direct investigation/monitoring powers

For over a decade the Ombudsman has had power to reinvestigate police complaints where public interest dictated the need. In 1993 as part of the Government's major initiative regarding police complaints, the Ombudsman was given additional powers for the direct investigation and monitoring of complaints about Police. A substantial rise in numbers of police complaints during this period with no increase in resources has meant available staff time is consumed by statutory obligations to review all police conducted investigations and otherwise deal with all police complaints. Consequently, the Office has not been able to utilise the direct investigation powers to any appreciable extent as demonstrated in the following table:

Financial Year	No. direct Investigations & reinvestigations
1987/88	23
1988/89	11
1989/90	12
1990/91	13
1991/92	7
1992/93	4
1993/94	6*

Note:

These figures do not include Special Reports to Parliament on police related matters or reports arising out of, particularly major, assessments of investigations carried out by the Police Service.

* this was only 0.7% of the police complaints that were formally investigated by the Police Service

Additional staff are needed to properly implement the full functions of the Ombudsman to directly investigate serious matters. In addition set up costs, including the purchase of equipment and training, will be required.

Even after the restructure that came out of the KPMG Peat Marwick review in 1993, the Office does not have the capacity to fund this new function from existing resources.

In addition, the increased focus on qualitative improvement in the conciliation of police complaints is extremely resource intensive thereby further restricting the Ombudsman's ability to deal with rising complaint levels (see below).

It is informative to make some comparisons with the funding of the ICAC. In our view, the ICAC has adequate funding to conduct its investigations and in our view this level of funding should be taken as the **benchmark** for assessing the adequacy of funding for this Office. A comparison between the functions and funding of the two agencies strongly supports the fact that this Office is significantly under resourced.

It is important to note that in the 7 years since 1988, the ICAC has only investigated a small number of serious matters about police - 17 reports in total - compared to 76 reports by this Office arising out of direct investigations and reinvestigations of complaints about police. This means that a large number of serious issues which should be directly investigated by a non police body "fall between the cracks" and are not investigated.

Due to the procedures and practices adopted by this Office for direct investigations which are based on 18 years experience, such investigations carried out by this Office are far less costly than those carried out by the ICAC. This is of course also affected by the fact that some ICAC inquiries have broader terms of reference.

An examination of the ICAC's Annual Reports for 1991/92, 1992/93 and 1993/94 identifies the costs of completed investigations with public reports. The following is a summary of that information:

Year	Number of investigations*	Costs#	Comments
1991/92	9	2,945,000	The cost includes internal "direct" costs such as salary for investigators etc, actual hearing costs, actual investigative expenditure eg travel and standard rates for hearing days including charges for the presiding Commissioner. The amount of \$1,808,000 was included for administrative and general overheads.
1992/93	10	5,928,000	The cost is based on the above however, the amount included for administrative and general overheads was \$3,395,000.
1993/94	4	1,726,759	This amount does not include any internal costs ie only external costs are reported in this Annual Report. The costs of hearing, Commission salaries travel and the like are not included in the \$1.7 million. The Annual Report states that \$457,000 was spent on legal services alone during the year.
Total	18	10,599,759	This figure is understated as the ICAC has not included any internal costs for 1993/94
Average		\$588,876	NB this figure is understated as no internal costs are included in 1993/94 figures.

Notes:

* not all investigations involve police matters.

total costs do **not** include costs incurred by other parties or witnesses involved in an ICAC investigation. These costs include legal assistance and the ex-gratia payment scheme administered by the Attorney General.

The average costs of an ICAC investigation where public reports are produced is **\$588,876** which is understated as no internal costs were included in the 1993/94 figures reproduced in the their Annual Report.

The Ombudsman does not keep individual costing for all direct investigations or reinvestigations, however, costings have been kept for a number of major inquiries conducted over the past few years. A summary of those costs are:

Inquiry	Cost	Comments
Prison's Inquiry into the use of force in prisons	\$63,000	Funding provided by Parliament as a supplementation to budget. It includes salary and other expenses as well as the costs involved in using formally questioning 156 witnesses.
Homefund	\$51,979	This inquiry was requested and funded by Parliament. It includes salary and other expenses.
Angus Rigg	\$77,836	This Inquiry was commenced after the matter was raised in Parliament. The amount includes salary and other expenses including travel. No additional funding was provided.
Police Race Relations	\$120,146	This Inquiry was requested by the Minister for Police who made available funding for this purpose. This amount includes salary and other expenses.
Total costs	\$312,961	
Average costs	\$78,240	the average cost of an Ombudsman special inquiry/direct investigation.

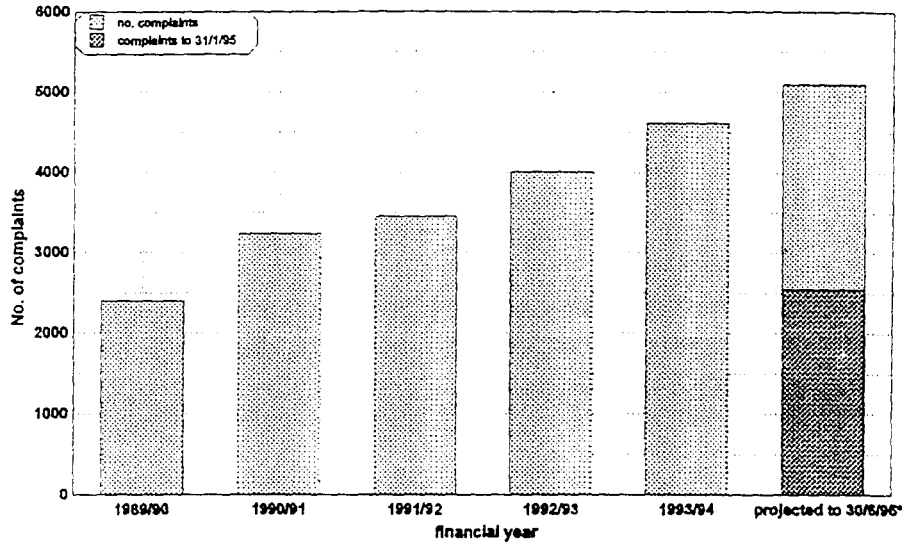
As can be seen, the Office generally spends less than **\$80,000** on each direct investigation, demonstrating that the Office does provide value for money.

To enable the NSW Ombudsman to effectively fulfil her responsibilities under the Police Service Act additional funding is essential.

► Rising complaint numbers

The number of complaints about police is steadily increasing as can be seen from the following graph.

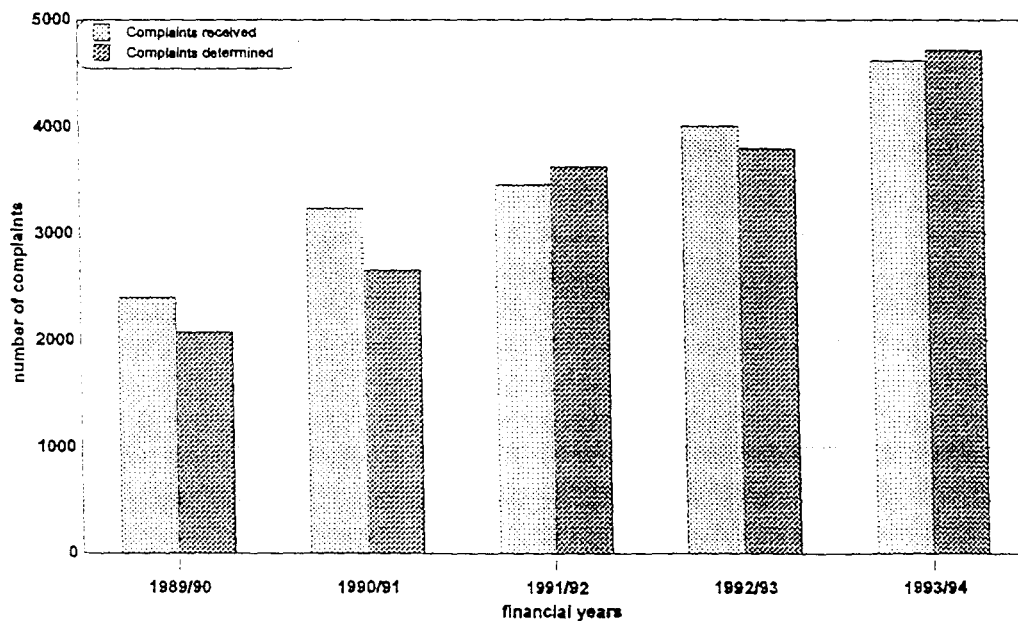
Police Complaints received



*projected using linear trend analysis

The Joint Parliamentary Committee and its consultants have reviewed the Office and recommendations were made to improve our efficiency. These have been implemented as well as other efficiencies initiated by the management of the Office. Although improvements in the way work is performed have been realised, the Office is now at a point where **no more appreciable efficiency gains can be made by reviewing work practices and changing procedures.** It should also be noted that procedures for dealing with complaints about police are for the most part, determined by the provisions of the Police Service Act and Ombudsman Act. The following graph showing the relationship between police complaints received and determined is reproduced from the Offices' Annual Report for 1993/94. Please note that the Office implemented the efficiency recommendations of the JPC in 1993/94.

Received/determined



The only way that increases in complaint load can effectively be dealt with is through an increase in resources. Even with an increase, the Office would still provide value for money in the investigation of complaints against police.

2. STAGE OF PLANNING

The recommendations of the Inquiry into Race Relations and our Police are currently being considered by the relevant parties. However, earlier discussions indicate that the recommendation relating to audit of achievements will be implemented. With proper resourcing, this can be implemented immediately.

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 came into operation on 1 July, 1993. The then Minister for Police stated that these amendments to the Police Service Act were a Government priority. However, no additional resources were forthcoming and as a result the direct investigation provisions of the Act have not been implemented in any substantial way.

With regards to increase in police complaint levels delays can be expected if resources are not increased which will result in public concern that complaints about police are not being dealt with efficiently and in a timely manner.

3 PROPOSED STARTING DATE

The auditing of police achievements in race relations will commence when funding is available.

The Office will become more pro active in direct investigations and monitoring of complaints when resources are available and until that time, the provisions and spirit of the legislation will not be fully implemented.

The increase in complaints is currently being experienced. Without additional resources to cope with this increase, long delays in the finalisation of matters will be experienced putting the Office in the same position it was in prior to the Joint Parliamentary Committees inquiry into our funding and implementation of efficiency measures.

4. RESULTS/BENEFITS OF PROPOSAL

The benefits of the proposal are:

- ▶ the Government achieves its policy objectives in the area of Police complaint handling (the very reasons for the amendments to the legislation).

- ▶ issues that are considered "matters of public interest" such as the Angus Rigg complaint are seen by the public to be investigated fully and independently by the Ombudsman.
- ▶ effective and efficient investigation of complaints about police both by the Police Service and the Ombudsman.
- ▶ the success of the amendments will in part be determined by an increase in the number of complaints about police which are conciliated. This in turn will lead to greater resources being available to be devoted to the investigation of serious complaints, with significant reduction in delays.
- ▶ the success of the system will in part be determined by the number of direct investigations by this Office and the number of police investigation monitored by staff of this Office.
- ▶ improved NESB and other disadvantaged group access as these are the explicit focus of direct investigations and monitoring as made clear in the Ombudsman Annual Report.

5. NUMBER OF ADDITIONAL STAFF REQUIRED FOR THE PROPOSAL(full time equivalent basis)

Budget Year	Forward Year 1	Forward Year 2
5	5	5

6. DOES THE PROGRAM HAVE HIGHER PRIORITY THAN ANY EXISTING PROGRAM? IF NO, WHY IS IT CONSIDERED ESSENTIAL?

Under the Budget process, the Office of the Ombudsman has only one program ie the "*Investigation of Citizens' Complaints and Monitoring and reporting on Telecommunications Interception Activities*". Due to this, the Ombudsman cannot give this enhancement proposal a higher priority than the existing program. However, the enhancement proposal is essential to enable the Office to meet the increasing demands placed on it in the police complaints area. These demands have been generated by the government's initiatives regarding police complaints as well as an increase in the public's awareness of the Office and the resultant increase in the number of complaints lodged.

The proposal is essential to ensure that there is an overall confidence in the police complaint system and that measures of accountability and efficiency are continually monitored and improved.

7. IF THE PROPOSAL HAS IMPLICATIONS EITHER FINANCIAL OR NON-FINANCIAL FOR OTHER ADMINISTRATIONS, HAVE THEY BEEN CONSULTED AND DO THEY SUPPORT THE PROPOSAL?

Prior to submission of the first enhancement bid in January 1993, there had been some consultation with the Director General, Ministry for Police, concerning the financial impact of the amendments on the Police Service budget. The Ombudsman believes that a significant part of the cost of the proposal to the Office, in relation to staff costs for direct investigations, would be offset by savings in the Police Service portfolio, in the area of Professional Responsibility. Unlike re-investigations, the police are relieved of carrying out an investigation every time the Ombudsman uses his direct powers of investigation.

8. IF THE PROPOSAL REQUIRES THE EXPENDITURE OF CAPITAL FUNDS EITHER BY THE AGENCY OR OTHER ADMINISTRATIONS, HAS A REQUEST FOR THESE FUNDS BEEN INCLUDED IN THE PROPOSED CAPITAL WORKS OF THE DEPARTMENT OR OF OTHER ADMINISTRATIONS?

All costs have been identified as recurrent and have been included in the attached proforma.

9. FINANCIAL COST OF PROPOSAL

see attached

FINANCIAL COSTS OF PROPOSAL

Schedule J22L

- Accrual Based Agency

Police Complaints	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>RECURRENT EXPENSES</u>				
. Employee related	0	251	244	258
. Other operating expenses	0	118	75	75
. Depreciation	0	10	10	10
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Total Expenses	0	379	329	343
LESS:				
<u>Offsetting expense saving to agency</u>				
. Employee related	0	0	0	0
. Other operating expenses	0	0	0	0
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Net Recurrent Expense to the Agency	0	379	329	343
LESS:				
User Charges Revenue				
Other Departmental Revenue				
Impact on Net Cost of Services	0	379	329	343
PLUS:				
Decrease in provision for recreation leave				
Decrease in other accrued expenses				
Increase in inventories				
Increase in prepayments				
Increase in receivables				
No leave				
LESS:				
Depreciation	0	(10)	(10)	(10)
Superannuation	0	(12)	(12)	(15)
Long Service Leave				
Bad/doubtful debts expense				
Increase in provision for recreation leave		(15)	0	0
Increase in other accrued expenses	0	(1)	(1)	(2)
Decrease in inventories				
Decrease in prepayments				
Decrease in receivables				

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Other non cash expenses (specify)				
Impact of Proposal on Agency's Consolidated Fund support	0	341	306	316
PLUS:				
<u>Increase in Consolidated Fund support to other organisations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
LESS:				
<u>Offsetting savings in Consolidated Fund support to other administrations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
<u>Additional Consolidated Fund</u>				
. collected by agency				
. collected by other administrations (1)				
Net additional current Cost to the Consolidated Fund	0	341	306	316

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>CAPITAL EXPENDITURE</u>				
Total direct capital expense	0	0	0	0
Total flow-on expense to other administrations (1)	0	0	0	0
Gross Capital expense of Proposal	0	0	0	0
PLUS:				
Purchase of investments				
Advances paid to other organisations				
Advances repaid to other organisations				
Asset sale proceeds transferred to the Crown				
Increase in asset sale receivables				
Increase in other capital revenue receivable				
LESS:				
Sale of Investments				
Advances repaid by other organisations				
Advances received from other organisations				
Total asset sale revenue				
Decrease in asset sale receivables				
Other capital revenue				
Decrease in other capital revenue receivable				
Net Additional Capital Cost to the Consolidated Fund	0	0	0	0
Other financial implications of the proposal (for example impact on capital expenditure, Government Guarantee, write-off of debts, Transfer of assets etc. - specify)				
NOTE: (1) Specify name of other administration or if more than one such organisation show totals and include details as an attachment to this table				

MINISTER: THE PREMIER

NEW PROGRAM/ENHANCEMENT - Request for additional funds

OFFICE OF THE OMBUDSMAN

Alternate Dispute Resolution and Quality Service

1. BRIEF DESCRIPTION OF THE PROPOSAL

The NSW Government has encouraged the use of alternative dispute resolution (ADR) techniques including conciliation and mediation. It has also required agencies to focus on improving customer service. The Premiers Memorandum No 94-25 - *Use of Alternative Dispute Resolution Services by Government Agencies* - and Memorandum No 94-45 - *Quality Customer Service* - apply. In addition, the Ombudsman Act was recently amended to enable the Ombudsman to conciliate and mediate complaints.

The Office of the Ombudsman has the potential to be the driving force behind ADR in the public sector including the police service. Over the last few years, the Office has:

- ▶ developed and successfully implemented the *Complaint Handling in the Public Sector (CHIPS)* program. Under this program, the Office used its vast experience of grievances and complaint resolution to develop *Guidelines for Effective Complaint Handling*. These guidelines have been widely adopted throughout the public sector and improvements in dealing with customer complaints have been realised.
- ▶ the CHIPS program was further developed to introduce agencies to ADR and to improve the skills of the public sector in this regard. The Office was instrumental in developing and organising accredited training courses and establishing a panel of mediators available for use throughout the public sector.
- ▶ the Office is designing and implementing further ADR training.
- ▶ the Office has been involved in the development of conciliation in the police service (see attached Special Report to Parliament).

The Ombudsman considers that the policy directives of the Premier (as noted above) are a natural extension of the CHIPS program. Accordingly, this proposal seeks additional funding to enhance our work in this area and particularly in relation to:

- ▶ providing advice and training to public authorities on improved customer service through the design of effective complaint systems.

- ▶ providing a valuable mediation service to both the public and public authorities.
- ▶ expand the use of conciliation for dealing with police complaints.

This funding is required to meet these objectives by:

- ▶ marketing the concept of mediation, conciliation and customer service to the public, peak community service providers and public authorities.
- ▶ servicing the demand for the Office's mediation/conciliation and complaint system design services.
- ▶ improving the skill level of key staff to ensure that the Office provides an effective conciliation/mediation service as well as providing expert advice on the development of complaint handling systems.

The need to enhance our work in the three areas outlined above has arisen due to:

- ▶ the impact of legislative/policy changes outlined above which directly affect the core operations of the Office.
- ▶ increase in demand by public authorities for training and advice from the Office regarding the design of effective complaint handling strategies (consistent with Premier's Memorandum No 94 - 45).

The Office of the Ombudsman is perceived by public authorities to be at the cutting edge of improvements to customer service. Requests from public authorities such as the SRA, Housing, Local Government, Police Service, Consumer Affairs and BSC have indicated a strong demand for training and advice from this Office in this area. For example, in the first six months of this year, the Police Service hopes to train 1,150 police officers in conciliation strategies and have requested the assistance of this Office. To date we have had to refuse direct involvement in providing training for resource reasons.

In addition, there has also been a strong interest by public authorities in our mediation program. They perceive that the Office is experienced in dealing with conflicts in a fair and equitable fashion. Unfortunately, the Office is loath to promote its services in this field due to an inability to resource resulting demand.

Major advances have been made in relation to the conciliation of police complaints (6% to 28.5%). Success in this area has led to increased demand for this Office to become more actively involved in directly conciliating matters. Without additional staff this demand cannot be met.

2. STAGE OF PLANNING

Although the Office has the legislative base to undertake conciliations and mediation, the lack of resources makes it impossible for the Office to pursue alternative dispute resolution mechanisms to the extent that positive results throughout the public sector would be achieved - NB there has been some

results in the Police Service as documented in a recent Report to Parliament on this issue, a copy of which is enclosed. The Office has developed a strategy to highlight the benefits of ADR throughout the public sector, including the development of training and information sessions and assistance in the design of complaint handling procedures. Until the resource issues are addressed, this proposal cannot proceed. Finally the capacity for this Office to successfully promote ADR mechanisms is seen in the recent work with the Police Service. Further resources are required to continue this process as outlined in the Report to Parliament.

3 PROPOSED STARTING DATE

The proposal can only be fully pursued when resources become available. Therefore, the proposed starting date is 1 July, 1995.

4. RESULTS/BENEFITS OF PROPOSAL

The benefits/results of the proposal are:

- ▶ as a key organisation providing leadership in promoting quality customer service we are in a strong position to secure broad based implementation of government policy (Memorandum No 94 -95).
- ▶ the Office's reputation for impartiality places it in a strong position to provide a credible mediation/conciliation service for the benefit of the public and the public sector.
- ▶ extensive surveys by this Office have shown a high level of customer satisfaction where public authorities have adopted non adversarial ways of dealing with complaints (eg 84% of complainants indicate that they are pleased with police conciliations - highest level of satisfaction).
- ▶ direct financial saving to public authorities from resolving complaints (eg police investigation level has dropped from 28% to 14% of all complaints through the use of conciliations) - an enormous financial saving to the police as a result.
- ▶ If the proposals outlined in this document are adopted then this Office will be able to play a key role in ensuring that the Government initiatives as outlined in the Premier's Memo's are implemented.
- ▶ as the Office has broad range jurisdiction over the public sector it is in an ideal position to be an effective change agent - improving the processes and procedures in the public sector and particularly in relation to customer service. In addition, the Office deals with complaints between the public and public officials whereas other complaint handling agencies (eg Consumer Affairs) intervene in private issues and have little or no jurisdiction over public agencies.

5. NUMBER OF ADDITIONAL STAFF REQUIRED FOR THE PROPOSAL(full time equivalent basis)

Budget Year	Forward Year 1	Forward Year 2
3	3	3

6. DOES THE PROGRAM HAVE HIGHER PRIORITY THAN ANY EXISTING PROGRAM? IF NO, WHY IS IT CONSIDERED ESSENTIAL?

Under the Budget process, the Office of the Ombudsman has only one program ie the "*Investigation of Citizens' Complaints and Monitoring and Reporting on Telecommunications Interception Activities*". Due to this, the Ombudsman cannot give this enhancement proposal a higher priority than the existing program. However, the enhancement proposal is essential to enable the Office, in line with government policy, to effectively use its conciliation and mediation powers. We will also provide expert advice and assistance in the establishment of internal complaint handling procedures within agencies as well as coordinating the implementation of ADR throughout the public sector. Without the necessary resources, the Office cannot provide this assistance.

7. IF THE PROPOSAL HAS IMPLICATIONS EITHER FINANCIAL OR NON-FINANCIAL FOR OTHER ADMINISTRATIONS, HAVE THEY BEEN CONSULTED AND DO THEY SUPPORT THE PROPOSAL?

The acknowledgment by other public authorities that the Office of the Ombudsman is a leader in ADR cannot be disputed. With the Office of Public Management scaling back its role in this area, it is imperative that at least one agency, which is seen as independent, be effectively resourced to promote ADR and quality customer service. This will have implications for the public sector as a whole as the focus on disputes and grievances will move from an adversarial environment to a more conciliatory one.

8. IF THE PROPOSAL REQUIRES THE EXPENDITURE OF CAPITAL FUNDS EITHER BY THE AGENCY OR OTHER ADMINISTRATIONS, HAS A REQUEST FOR THESE FUNDS BEEN INCLUDED IN THE PROPOSED CAPITAL WORKS OF THE DEPARTMENT OR OF OTHER ADMINISTRATIONS?

All costs have been identified as recurrent and have been included in the attached proforma.

9. FINANCIAL COST OF PROPOSAL

Alternative Dispute Resolution	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>RECURRENT EXPENSES</u>				
. Employee related	0	134	133	141
. Other operating expenses	0	76	66	66
. Depreciation	0	3	3	3
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Total Expenses	0	213	202	210
LESS:				
<u>Offsetting expense saving to agency</u>				
. Employee related	0	0	0	0
. Other operating expenses	0	0	0	0
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Net Recurrent Expense to the Agency	0	213	202	210
LESS:				
User Charges Revenue				
Other Departmental Revenue				
Impact on Net Cost of Services	0	213	202	210
PLUS:				
Decrease in provision for recreation leave				
Decrease in other accrued expenses				
Increase in inventories				
Increase in prepayments				
Increase in receivables				
No leave				
LESS:				
Depreciation	0	(3)	(3)	(3)
Superannuation	0	(6)	(6)	(8)
Long Service Leave				
Bad/doubtful debts expense				
Increase in provision for recreation leave		(5)	0	0
Increase in other accrued expenses	0	0	(1)	(1)
Decrease in inventories				
Decrease in prepayments				
Decrease in receivables				

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Other non cash expenses (specify)				
Impact of Proposal on Agency's Consolidated Fund support	0	199	192	198
PLUS:				
<u>Increase in Consolidated Fund support to other organisations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
LESS:				
<u>Offsetting savings in Consolidated Fund support to other administrations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
<u>Additional Consolidated Fund</u>				
. collected by agency				
. collected by other administrations (1)				
Net additional current Cost to the Consolidated Fund	0	199	192	198

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>CAPITAL EXPENDITURE</u>				
Total direct capital expense	0	0	0	0
Total flow-on expense to other administrations (1)	0	0	0	0
Gross Capital expense of Proposal	0	0	0	0
PLUS:				
Purchase of investments				
Advances paid to other organisations				
Advances repaid to other organisations				
Asset sale proceeds transferred to the Crown				
Increase in asset sale receivables				
Increase in other capital revenue receivable				
LESS:				
Sale of Investments				
Advances repaid by other organisations				
Advances received from other organisations				
Total asset sale revenue				
Decrease in asset sale receivables				
Other capital revenue				
Decrease in other capital revenue receivable				
Net Additional Capital Cost to the Consolidated Fund	0	0	0	0
Other financial implications of the proposal (for example impact on capital expenditure, Government Guarantee, write-off of debts, Transfer of assets etc. - specify)				

NOTE: (1)

Specify name of other administration or if more than one such organisation show totals and include details as an attachment to this table

MINISTER: PREMIER

NEW PROGRAM/ENHANCEMENT - Request for additional funds

OFFICE OF THE OMBUDSMAN

Protected Disclosures

1. BRIEF DESCRIPTION OF THE PROPOSAL

The Protected Disclosures Act should commence operation on or about 1 March, 1995. The Act aims to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration and serious and substantial waste in the public sector. It does this by offering protection to persons who make "protected disclosures" as defined under the Act. The Ombudsman, along with the ICAC and the Auditor General, is a body to which disclosures may be made.

The implementation of the provisions of the Act have been discussed at various meetings of the Protected Disclosures Steering Committee which is comprised of representatives of the investigating agencies, Cabinet Office, the Office of Public Management and DIRETFE. One issue to be determined is that of advice to public officials who wish to disclose information. Although all investigating bodies expressed concern at having to perform this role, the Ombudsman has agreed to do so if adequate resources are provided for this purpose. At its meeting on 3 February, 1995 the Steering Committee agreed that the Office of the Ombudsman was the most appropriate body to give advice to protected "whistleblowers". It was further agreed that a staff member at a senior level (at least a Grade 9/10 Clerk) was necessary due to the complexity and potential political sensitivity of disclosures. This person would also be involved in assessing and investigating protected disclosures. The Steering Committee recognised that the Office would need resources to perform this role.

The Ombudsman's position on additional resources for this new function has been formally referred to the Office of Public Management who is coordinating the introduction of the Act for the Premier.

The role of adviser is not a natural extension of the current advisory role that this Office performs in relation to potential complainants under the Ombudsman Act or Police Service Act. Disclosures under the Protected Disclosures Act may involve various complications relating to such things as the appropriate investigating authority to which a protected disclosure should be made, whether a potential disclosure falls within the limited part of the Ombudsman jurisdiction covered by the term 'maladministration', the applicability of certain provisions to

local government, the protection actually available to persons who make protected disclosures, the mechanisms available to ensure their protection, etc.

In addition, our experience indicates that the work involved in dealing with "whistleblowers" is significantly greater than the work involved with other complainants due to:

- ▶ the nature of the disclosures made, particularly in relation to their sensitivity and complexity; and
- ▶ the personal anguish and stress that the complainant feels as a result of making a disclosure about their employer or fellow workers.

It is expected that most "whistleblowers" would disclose information to the Ombudsman as the definition of maladministration in the Act is much broader than that of corrupt conduct and serious and substantial waste.

In these circumstances, it is imperative that funding be provided to enable the Office to effectively implement the legislation.

2. STAGE OF PLANNING

The Protected Disclosures Act should commence on or about 1 March, 1995.

3 PROPOSED STARTING DATE

The Act should commence on or about on 1 March, 1995 however, the Office will not be able to fully implement the spirit of the legislation until funding is provided. The anticipated starting date would therefore be 1 July, 1995.

4. RESULTS/BENEFITS OF PROPOSAL

The benefits of the proposal are:

- ▶ the Protected Disclosures Act can be effectively and fully implemented
- ▶ potential "whistleblowers" can contact the Office for advice on issues such as whether to make a disclosure, who to make the disclosure to eg either head of agency, Ombudsman, ICAC or Audit Office, the protection available and the information that should be provided. By having an independent body with qualified staff available to discuss concerns, the potential "whistleblower" will feel more confident in identifying corrupt conduct, maladministration and serious and substantial waste.
- ▶ the identification and eradication or rectification of corrupt conduct, maladministration and serious and substantial waste in the public sector will result in savings for the government.

5. NUMBER OF ADDITIONAL STAFF REQUIRED FOR THE PROPOSAL(full time equivalent basis)

Budget Year	Forward Year 1	Forward Year 2
1	1	1

6. DOES THE PROGRAM HAVE HIGHER PRIORITY THAN ANY EXISTING PROGRAM? IF NO, WHY IS IT CONSIDERED ESSENTIAL?

Under the Budget process, the Office of the Ombudsman has only one program ie the *"Investigation of Citizens' Complaints and Monitoring and Reporting on Telecommunications Interception Activities"*. Due to this, the Ombudsman cannot give this enhancement proposal a higher priority than the existing program. However, the enhancement proposal is essential to ensure that proper, accurate and timely advice is given about the Protected Disclosures Act as well as the nature and substance of the potential disclosure. The Ombudsman is prepared to perform this role on the basis that additional funding will be provided.

7. IF THE PROPOSAL HAS IMPLICATIONS EITHER FINANCIAL OR NON-FINANCIAL FOR OTHER ADMINISTRATIONS, HAVE THEY BEEN CONSULTED AND DO THEY SUPPORT THE PROPOSAL?

The responsibility for providing advice to potential whistleblowers has been discussed at meetings of the Protected Disclosures Steering Committee which is comprised of members of each investigating agency as well as Office of Public Management, Cabinet Office and DIRETFE. Both the ICAC and the Auditor General have indicated that both organisations do not want an active role in advising potential whistleblowers on the processes or requirements under the Act. The Ombudsman has indicated, with the agreement of the other agencies, that he will perform this role subject to the provision of additional resources.

8. IF THE PROPOSAL REQUIRES THE EXPENDITURE OF CAPITAL FUNDS EITHER BY THE AGENCY OR OTHER ADMINISTRATIONS, HAS A REQUEST FOR THESE FUNDS BEEN INCLUDED IN THE PROPOSED CAPITAL WORKS OF THE DEPARTMENT OR OF OTHER ADMINISTRATIONS?

All costs have been identified as recurrent and have been included in the attached proforma.

9. FINANCIAL COST OF PROPOSAL

FINANCIAL COSTS OF PROPOSAL

Schedule J22L

- Accrual Based Agency

Protected Disclosures Act	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>RECURRENT EXPENSES</u>				
. Employee related	0	56	51	54
. Other operating expenses	0	25	22	22
. Depreciation	0	1	1	1
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Total Expenses	0	82	74	77
LESS:				
<u>Offsetting expense saving to agency</u>				
. Employee related	0	0	0	0
. Other operating expenses	0	0	0	0
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Net Recurrent Expense to the Agency	0	82	74	77
LESS:				
User Charges Revenue	0	0	0	0
Other Departmental Revenue	0	0	0	0
Impact on Net Cost of Services	0	82	74	77
PLUS:				
Decrease in provision for recreation leave				
Decrease in other accrued expenses				
Increase in inventories				
Increase in prepayments				
Increase in receivables				
No leave				
LESS:				
Depreciation	0	(1)	(1)	(1)
Superannuation	0	(2)	(2)	(3)
Long Service Leave				
Bad/doubtful debts expense				
Increase in provision for recreation leave		(5)	0	0
Increase in other accrued expenses	0	0	0	0
Decrease in inventories				
Decrease in prepayments				
Decrease in receivables				

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Other non cash expenses (specify)				
Impact of Proposal on Agency's Consolidated Fund support	0	74	71	73
PLUS:				
<u>Increase in Consolidated Fund support to other organisations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
LESS:				
<u>Offsetting savings in Consolidated Fund support to other administrations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
<u>Additional Consolidated Fund</u>				
. collected by agency				
. collected by other administrations (1)				
Net additional current Cost to the Consolidated Fund	0	74	71	73

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>CAPITAL EXPENDITURE</u>				
Total direct capital expense	0	0	0	0
Total flow-on expense to other administrations (1)	0	0	0	0
Gross Capital expense of Proposal	0	0	0	0
PLUS:				
Purchase of investments				
Advances paid to other organisations				
Advances repaid to other organisations				
Asset sale proceeds transferred to the Crown				
Increase in asset sale receivables				
Increase in other capital revenue receivable				
LESS:				
Sale of Investments				
Advances repaid by other organisations				
Advances received from other organisations				
Total asset sale revenue				
Decrease in asset sale receivables				
Other capital revenue				
Decrease in other capital revenue receivable				
Net Additional Capital Cost to the Consolidated Fund	0	0	0	0
Other financial implications of the proposal (for example impact on capital expenditure, Government Guarantee, write-off of debts, Transfer of assets etc. - specify)				

NOTE: (1)

Specify name of other administration or if more than one such organisation show totals and include details as an attachment to this table

FINANCIAL COSTS OF PROPOSAL

- Accrual Based Agency

MINISTER: THE PREMIER

NEW PROGRAM/ENHANCEMENT - Request for additional funds

OFFICE OF THE OMBUDSMAN

Freedom of Information

1. BRIEF DESCRIPTION OF THE PROPOSAL

Under the Freedom of Information Act, the Ombudsman is an external reviewing body ie complaints can be made to the Ombudsman about the refusal of a public authority to release documents. The other external review body is the District Court which, is a more costly avenue of redress than this Office.

Initially, the Premiers Department's Freedom of Information (FOI) Unit coordinated a number of activities relating to FOI including advice to public officials, training, education and promotion as well as collecting and maintaining statistics on FOI applications and the like. The FOI Unit has been disbanded without its functions being transferred elsewhere.

Our experience has shown that problems exist in the application of the FOI legislation. In particular, there is excessive delay by agencies in making determinations (well beyond the statutory period), agencies are charging excessive amounts for documents obtained under FOI, and agencies are using inapplicable exemptions to justify refusals to release information. It is imperative that some agency take a more pro active role in the review of the application of FOI. The Ombudsman has, to a limited extent, attempted to be pro active. As agencies are looking more and more to the Office for advice as the "expert" in FOI, it is essential that we be adequately resourced to cope with this increasing role. Provision needs to be made for advice, education, promotion functions and for audits of how agencies are implementing the Act. A natural extension of this is the reporting role to the Parliament.

Initially, particular areas of attention will be:

- ▶ monitoring and analysis of FOI Annual Reports by agencies;
- ▶ monitoring and review of Statements of Affairs and Summaries of Affairs by agencies; and
- ▶ auditing the implementation of the FOI Act by agencies.

The Office does not have the capacity to perform this pro active role within current resources. This is due to a steadily increasing number of requests for external reviews which are extremely labour intensive due to the nature of the matter and the fact that it often deals with a sensitive issue with highly emotional

people involved. There is not the capacity to decline any external review applications as there is with other types of complaints under the Ombudsman Act and accordingly the increasing levels must be dealt with by an increase in resources.

For your information, a recent report to Parliament outlined the Office's views on the future direction of FOI in NSW. This included the creation of an Information Commissioner that would make binding determinations. The report also examined, in detail, the current requirements of the FOI Act and made a recommendation for improvement. These recommendations will be the subject of discussion with the government.

2. STAGE OF PLANNING

The Office has developed a framework for the audit and general education program. However, these programs can not be further developed until funding has been provided.

3 PROPOSED STARTING DATE

It is expected that the enhancement would commence when funding is made available.

4. RESULTS/BENEFITS OF PROPOSAL

The results/benefits of the proposal are:

- ▶ effective implementation of the Freedom of Information Act
- ▶ criticisms are being levelled at agencies concerning the excessive charges applied to FOI documents as well as delays in finalising matters (contrary to statutory requirements). This indicates that an education program is required and this can best be coordinated by the Office. The improvement in procedures will boost public confidence in FOI.
- ▶ training and checking of exemption application will result in a reduction of requests for external review
- ▶ more efficient and less costly administration at both the local government and state government level.
- ▶ increased open government leads to a far more friendly administration and much greater public satisfaction with the government and acceptance of its policies and ideas
- ▶ more efficient open government leads to significant savings by State agencies and local government.

5. NUMBER OF ADDITIONAL STAFF REQUIRED FOR THE PROPOSAL(full time equivalent basis)

Budget Year	Forward Year 1	Forward Year 2
2	2	2

6. DOES THE PROGRAM HAVE HIGHER PRIORITY THAN ANY EXISTING PROGRAM? IF NO, WHY IS IT CONSIDERED ESSENTIAL?

Under the Budget process, the Office of the Ombudsman has only one program ie the *"Investigation of Citizens' Complaints and Monitoring and reporting on Telecommunications Interception Activities"*. Due to this, the Ombudsman cannot give this enhancement proposal a higher priority than the existing program. However, the enhancement proposal is essential to enable the Office to become more pro active in the implementation of FOI in NSW and to at least partially fill the role of the former FOI Unit at Premiers Department. Many agencies are looking to the Office as the experts in this area and for the Office to actively advise and improve the application of the FOI legislation requires additional resources.

7. IF THE PROPOSAL HAS IMPLICATIONS EITHER FINANCIAL OR NON-FINANCIAL FOR OTHER ADMINISTRATIONS, HAVE THEY BEEN CONSULTED AND DO THEY SUPPORT THE PROPOSAL?

There will be implications for other agencies. The coordination and monitoring of the application/implementation of FOI will ensure a consistent approach to FOI throughout the public sector. The adoption of standardised procedures will reduce the time agency staff spend on FOI and therefore result in savings. In addition, costs such as legal fees including for advice etc currently incurred by agencies can be expected to decrease.

8. IF THE PROPOSAL REQUIRES THE EXPENDITURE OF CAPITAL FUNDS EITHER BY THE AGENCY OR OTHER ADMINISTRATIONS, HAS A REQUEST FOR THESE FUNDS BEEN INCLUDED IN THE PROPOSED CAPITAL WORKS OF THE DEPARTMENT OR OF OTHER ADMINISTRATIONS?

All costs have been identified as recurrent and have been included in the attached proforma.

9. FINANCIAL COST OF PROPOSAL

FINANCIAL COSTS OF PROPOSAL
- Accrual Based Agency

Schedule J22L

FOI	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>RECURRENT EXPENSES</u>				
. Employee related	0	105	103	109
. Other operating expenses	0	85	70	70
. Depreciation	0	2	2	1
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Total Expenses	0	192	175	180
LESS:				
<u>Offsetting expense saving to agency</u>				
. Employee related	0	0	0	0
. Other operating expenses	0	0	0	0
. Grants and subsidies	0	0	0	0
. Other services	0	0	0	0
Net Recurrent Expense to the Agency	0	192	175	180
LESS:				
User Charges Revenue				
Other Departmental Revenue				
Impact on Net Cost of Services	0	192	175	180
PLUS:				
Decrease in provision for recreation leave				
Decrease in other accrued expenses				
Increase in inventories				
Increase in prepayments				
Increase in receivables				
No leave				
LESS:				
Depreciation	0	(2)	(2)	(1)
Superannuation	0	(5)	(5)	(6)
Long Service Leave				
Bad/doubtful debts expense				
Increase in provision for recreation leave		(6)	0	0
Increase in other accrued expenses	0	0	(1)	(1)
Decrease in inventories				
Decrease in prepayments				
Decrease in receivables				

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Other non cash expenses (specify)				
Impact of Proposal on Agency's Consolidated Fund support	0	179	167	172
PLUS:				
<u>Increase in Consolidated Fund support to other organisations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
LESS:				
<u>Offsetting savings in Consolidated Fund support to other administrations (1)</u>				
. Employee related				
. Other operating expenses				
. Grants and subsidies				
. Other services				
<u>Additional Consolidated Fund</u>				
. collected by agency				
. collected by other administrations (1)				
Net additional current Cost to the Consolidated Fund	0	179	167	172

	Current Year \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>CAPITAL EXPENDITURE</u>				
Total direct capital expense	0	0	0	0
Total flow-on expense to other administrations (1)	0	0	0	0
Gross Capital expense of Proposal	0	0	0	0
PLUS:				
Purchase of investments				
Advances paid to other organisations				
Advances repaid to other organisations				
Asset sale proceeds transferred to the Crown				
Increase in asset sale receivables				
Increase in other capital revenue receivable				
LESS:				
Sale of Investments				
Advances repaid by other organisations				
Advances received from other organisations				
Total asset sale revenue				
Decrease in asset sale receivables				
Other capital revenue				
Decrease in other capital revenue receivable				
Net Additional Capital Cost to the Consolidated Fund	0	0	0	0
Other financial implications of the proposal (for example impact on capital expenditure, Government Guarantee, write-off of debts, Transfer of assets etc. - specify)				
NOTE: (1) Specify name of other administration or if more than one such organisation show totals and include details as an attachment to this table				

OPERATING STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Expenses				
Operating				
Employee related:				
- awards and enterprise bargaining	0	0	0	0
- payroll tax	217	224	226	226
- other employee related	3,552	3,463	3,507	3,546
Other operating expenses	1,011	1,026	1,035	1,035
Maintenance	29	30	34	34
Depreciation	194	379	362	313
Grants and subsidies (as per Sch J32B)	0	0	0	0
Other services (as per Sch 32C)	0	0	0	0
Total Expenses	5,003	5,122	5,164	5,154
less: Retained Revenues				
User charges (as per Sch J32D)	4	4	4	4
Other (as per Sch J32E)	130	21	21	21
Total Retained Revenues	134	25	25	25
plus: Loss on sale of prop, plant & equip	0	0	0	0
less: Gain on sale of prop, plant & equip	3	0	0	0
Net Cost of Services	4,866	5,097	5,139	5,129
plus: Gain on sale of prop, plant & equip	3	0	0	0
less: Loss on sale of prop, plant & equip	0	0	0	0
plus: Decrease in accrued expenses				
- Provn for rec. leave	0	0	0	0
- payroll tax	0	0	0	0
- interest *	0	0	0	0
- other *	16	7	0	0
Increase in inventories	0	0	0	0
Increase in prepayments	3	0	0	0
Increase in receivables				
User Charges Receivable				
- Budget Sector Agencies	0	0	0	0
- Other *	4	0	0	0
Other Revenue receivable				
- Budget Sector Agencies	0	0	0	0
- Other *	0	0	0	0
Increase in agency cash balances				
current (as per Sch J32K)				
- Crown (incl SD accounts)	90	0	0	0
- Other	0	0	0	0
Gain on sale of prop, plant and equipment	3	0	0	0
Non-cash revenues (eg donations) *	0	0	0	0
amount carried forward to page 2	4,982	5,104	5,139	5,129

OPERATING STATEMENT (cont)	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
amount brought forward from page 1	4,982	5,104	5,139	5,129
less: Non Funded Expenses				
Depreciation	194	379	362	313
Acceptance by State of agency -				
- Superannuation	298	192	194	226
- Long Service Leave	60	74	78	91
Other				
- Valuation adjustment on heritage assets				
- Decrement on revaluation of non current assets				
- Bad/doubtful debts expense	0	0	0	0
- Other non cash expenses (specify) *	0	0	0	0
Increase in accrued expenses				
- provision for rec leave	2	3	1	0
- payroll tax	0	0	0	0
- interest *	0	0	0	0
- other *	0	0	12	12
Decrease in inventories	0	0	0	0
Decrease in prepayments	0	0	0	0
Decrease in receivables	0	0	0	0
User charges receivable				
- Budget Sector Agencies	0	0	0	0
- Other *	0	0	0	0
Other revenue receivable	0	0	0	0
- Budget Sector Bodies	0	0	0	0
- Other *	0	0	0	0
Decrease in agency cash balances - current current (as per Sch J32K)	0	0	0	0
- Crown (incl SD accounts)	0	27	63	58
- Other	0	0	0	0
Loss on sale of prop, plant & equipment	0	0	0	0
CONSOLIDATED FUND CURRENT PAYMENTS	4,428	4,429	4,429	4,429

INVESTING STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>Outflows</u>				
Acquisition of property, plant & equipment (as per Sch 32 F)	536	135	34	0
Purchase of investments*	0	0	0	0
Advances repaid to other organisations				
- Budget Sector Bodies	0	0	0	0
- Other *	0	0	0	0
Advances repaid to other organisations				
- Budget Sector Bodies	0	0	0	0
- Other *	0	0	0	0
Asset sale proceeds transferred to the Crown	0	0	0	0
Debt repayments (principle)	0	0	0	0
<u>Less: Inflows</u>				
Sale of investments *	0	0	0	0
Advances repaid by other organisations				
- budget sector entities	0	0	0	0
- Other *	0	0	0	0
Advances received from other				
- budget sector agencies	0	0	0	0
- Other *	0	0	0	0
Proceeds from sale of property, plant and equipment (as per Sch J32G)	0	0	0	0
Other agency sources of receipts * (as per Sch J32E)	0	0	0	0
<u>Net Outflows</u>	536	135	34	0
<u>Plus:</u>				
Decrease in accrued capital works and services	0	0	0	0
Increase in agency cash balances - capital (as per Sch J32K)				
- Crown (inc S/D accounts)	0	0	0	0
- Other	0	0	0	0
<u>Less:</u>				
In Kind Asset Acquisition	0	0	0	0
Increase in accrued capital works and services	0	0	0	0
Decrease in agency cash balances capital (as per Sch J32K)				
- Crown (inc S/D accounts)				
- Other				
CONSOLIDATED FUND CAPITAL PAYMENTS	536	135	34	0

GRANTS & SUBSIDIES STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
	0	0	0	0
TOTAL GRANTS & SUBSIDIES	0	0	0	0

OTHER SERVICES STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
	0	0	0	0
TOTAL OTHER SERVICES	0	0	0	0

USER CHARGES STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Minor User Charges	4	4	4	4
TOTAL USER CHARGES	4	4	4	4

OTHER AGENCY REVENUE/RECEIPTS STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>Operating Statement: Other Departmental Revenue</u>				
Donations and Industry contributions	0	0	0	0
Interest				
- Crown (incl SD accounts)	7	7	7	7
- Other *	0	0	0	0
Grants from other Agencies				
- Crown	0	0	0	0
- Other Budget Sector Agencies	100	12	12	12
- Other *	0	0	0	0
Levies on Local Government	0	0	0	0
Dividends Received on Shares	0	0	0	0
Taxes, Fines and Regulatory Fees retained by the Agency (specify the nature of each item included in this category)	0	0	0	0
Other *	23	2	2	2
TOTAL OTHER AGENCY REVENUE/RECEIPTS	130	21	21	21

CAPITAL WORKS AND SERVICES PAYMENTS STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Capital Works				
Purchase of land	0	0	0	0
Purchase or construction of new dwellings	0	0	0	0
Purchase or construction of new buildings other than dwellings	0	0	0	0
Purchase or construction of new plant and equip other than transport equipment	536	135	34	0
Purchase of new transport equipment	0	0	0	0
Other new construction (eg dams)	0	0	0	0
Purchase of used physical assets other than land	0	0	0	0
Purchase of intangible assets	0	0	0	0
Capital Works and Services Payments	536	135	34	0

OFFICE OF THE OMBUDSMAN

Schedule J32G

ASSET SALES REVENUE/RECEIPTS STATEMENT	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
Proceeds arising from the sale of:				
Land	0	0	0	0
Dwellings	0	0	0	0
Buildings other than dwellings	0	0	0	0
Plant and equipment other than transport equip	0	0	0	0
Transport equipment	0	0	0	0
Other physical assets (eg dams)	0	0	0	0
Intangible assets	0	0	0	0
Total Asset Sale Revenue/Receipts	0	0	0	0

ALLOCATION ACROSS PROGRAMS

ORGANIZATION CODE:
501

TITLE:
OFFICE OF THE OMBUDSMAN

LINE ITEM CODE:
6.1

INVESTIGATION OF CITIZEN'S COMPLAINTS AND
MONITORING AND REPORTING ON
TELECOMMUNICATIONS INTERCEPTION ACTIVITIES

ASSET SALES REVENUE/RECEIPTS STATEMENT	Current Year Actual \$000	Budget Year 2 \$000
ORGANIZATION TOTAL	4,428	4,429
PROGRAM DISSECTION: - Code/Title		
6.1.1 Investigation of Citizen's Complaints and Monitoring and Reporting on Telecommunications Interception Activities	4,428	4,429
Case Management System	536	135

DISSECTION ON A GOVERNMENT FINANCE STATISTICS BASIS FOR SELECTED LINE ITEMS ACROSS PROGRAM

ORGANIZATION CODE:
501

TITLE:
OFFICE OF THE OMBUDSMAN

LINE ITEM CODE:
6.1

INVESTIGATION OF CITIZEN'S COMPLAINTS AND
MONITORING AND REPORTING ON
TELECOMMUNICATIONS INTERCEPTION ACTIVITIES

PROGRAM CODE:
6.1.1

INVESTIGATION OF CITIZEN'S COMPLAINTS AND
MONITORING AND REPORTING ON
TELECOMMUNICATIONS INTERCEPTION ACTIVITIES

GOVERNMENT FINANCE STATISTICS DISSECTION	Current Year ACTUAL \$000		Budget Year EST \$000
Crown Transactions			
NSW Treasury Corporation			
Capital Works Financing Corporation			
Budget Sector agencies (incl core C4 activities)	100		
Commercial (C1 to C3) activities of Budget Sector Agencies			
General Government Non Budget Sector Enterprises			
Public Trading Enterprises (incl Sydney Electricity)			
NSW Electricity			
NSW Local Government			
Commonwealth Government Departments and authorities			
Other State and Territory Governments			
Other (including Private Sector)	30		
EQUALS CLOSING BALANCES	130		0

DISSECTION OF INTRA BUDGET SECTOR TRANSACTIONS

	Current Year Actual \$000	Budget Year \$000	Forward Year 1 \$000	Forward Year 2 \$000
<u>Dissection of Grants from other Budget Sector Agencies</u>				
(Must agree in total with line item on Schedule J32E)				
<i>Agency</i>	<i>Description of Grant</i>			
DIRETFE	12	12	12	12
NSW Police	88	0	0	0
TOTAL GRANTS	100	12	12	12
<u>Dissection of Advances paid to (Q410), repaid (Q270), repaid by (Q310) or received from (Q010 other Budget Sector Agencies</u>				
TOTAL ADVANCES	0	0	0	0

CASH RECONCILIATION STATEMENT	Estimated Current Year \$000	Estimate Budget year \$000
Opening Balances (1 July)		
Special deposit Accounts (list)		
Bank Accounts (list) *	5	90
- petty cash		
plus: Increase in cash balances		
Current		
- Crown (incl SD accounts)	85	
- Other		
Capital		
- Crown (incl SD accounts)		
- Other		
less: Decrease in cash balances		
Current		
- Crown (incl SD accounts)		84
- Other		
Capital		
- Crown (incl SD accounts)		
- Other		
plus/(less) adjustments (as per page 2)	0	0
EQUALS CLOSING BALANCES	90	6
Comprising balances in:		
Bank Accounts (list) *		
- Recurrent	0	0
- Capital	0	0
	0	0
SD Accounts (list) *		
TOTAL CLOSING BALANCES	0	0

DETAILS OF ADJUSTMENTS	Estimated Current Year \$000	Estimate Budget year \$000
<u>Rationale for adjustment:</u>		
AS PER TOTAL OF ADJUSTMENTS ON PREVIOUS PAGE	0	0

Contact Officer: ALISON TURNBULL Tel no 286 1062

FRINGE BENEFITS TAX EXPENDITURE

FRINGE BENEFITS TAX EXPENDITURE	Actual Current Year \$000	Estimate Budget year \$000
<u>Fringe Benefits Tax</u>	70	70
TOTAL FRINGE BENEFITS TAX	70	70

EMPLOYEE RELATED PAYMENTS

Employees working on:

current activities	\$000	3,069
capital activities	\$000	0
Total (excl C1 to C3 activities)	\$000	<u>3,069</u>

Average A100 salary cost per employee as at 30 June, Current year (use A100 not EMPLOYEE RELATED PAYMENTS)	\$	43
--	----	----

STAFFING LEVEL

(Projected monthly staff numbers) **

	[staff number (equiv full-time)]		
	current activities	capital activities	total
July	70.0		70.0
August	72.0		72.0
September	72.0		72.0
October	72.0		72.0
November	72.0		72.0
December	72.0		72.0
January	72.0		72.0
February	72.0		72.0
March	72.0		72.0
April	72.0		72.0
May	72.0		72.0
June	72.0		72.0
Average staff number over year	71.83	0.00	71.83
PROJECTED YEAR END STAFF ESTIMATE	72.0	0.0	72.0

CAPITAL AND MAINTENANCE PROGRAM IMPACT STATEMENT

AGENCY: 501 Office of the Ombudsman

A. PROJECT INFORMATION:

Description of Proposed Project: Case management system(LANandrelevant hardware and software for a Complaints Management Information System).

	Total \$m	Curr. Year	Bud. Year	BY +1	BY + 2
Project Cash Flows					
Total Recurrent costs per annum (relating to Asset Expenditure only)		47	51	49	49
Consolidated Fund Receipts					

How is the project being funded ?Consolidated Fund (recurrent)

B.PROJECT INFORMATION

Project Name: Case Management System

Project Objective: Integrate and modernise information technology and implement a complaints management system.

Performance Indicators:

	Current	
	Year-1	Year
<u>Outputs</u>		
<u>Outcomes</u>		
<u>Asset Performance Measures</u>		

Outputs

Outcomes

Asset Performance Measures

Utilisation:

Cost:

C. IMPACT OF PROPOSED PROJECT ON PROGRAM

Assessment of impact on achieving Program Objectives:

The Capital program for 1995-97 is a continuation of a program currently being implemented, rather than separate programs. Years 2 and 3 of the program are integral to the overall success and productivity objectives.

Assessment of impact on Outputs and Outcomes:

System output will not meet expectations if year one acquisition is implemented only from a program that requires at least three year cycle.

Assessment of impact on Asset Performance Measures:

Asset performance will be compromised if only the first year's acquisition phase is implemented and no ongoing enhancement and upgrade is possible.

D. ALTERNATIVE SOLUTIONS

Outline of the results of assessing non capital solutions to achieving the desired program objectives

<u>Examples of Alternative Solutions</u>	<u>Assessment</u>
1. Reduce demand	There is no possibility of a reduced demand on this Office - rather the contrary.
2. Shift demand between facilities	The Office is a simple facility.
3. Alternative supply strategies	Sensitive material and secrecy provisions in this agency's legislation reduce the possibility of outsourcing the primary work of the office.
4. Improve use of existing assets	The project has this main outcome.
5. Sell Asset	Assets on hand are of little value and will have almost no impact on the project funding.

**CAPITAL AND MAINTENANCE PROGRAM
Project Information**

Agency Project Identification No: _____

Treasury Project Identification No: _____

Status: _____ 4 _____

Type of Work: _____ 10 _____

Project Description: Case Management System - LAN and relevant hardware and software for a Complaints Management Information System.

Start Date: _____ 31st March 1995 _____

Physical Completion Date: _____ 31st December 1996 _____

Financial Completion Date: _____ 30th June 1997 _____

Estimated Total Cost (\$'000): _____ \$705,000 _____

Construction Ratio %: _____

Urban Development Program Code: _____ 999 _____

Project Financial Details

	Prev. Years	Curr. Year	Bud get			Balance	
			Yr-1	Yr- Est	Yr		Yr+1
		\$000	\$000	\$000	\$000	\$000	\$000
Project Cash Flows							
Recurrent Cost*		47	47	51	49	49	
Consolidated Fund Receipts							

*Asset expenditure only

**Capital and Maintenance Program Summary
By Project Status and Source of Funds**

AGENCY: 501 Office of the Ombudsman

Type of Work/	Previous Actual	Years Expenditure	Estimated Expenditure	Proposed	Capital	Program
Source of Funds	CY - 2	CY - 1	Current Year	Budget Year	BY+1	BY+2
CAPITAL PROGRAM Project Status Major Works	\$000	\$000	\$000	\$000	\$000	\$000
- New Works						
Minor Works						
- New Works						
- Works in progress (including Annual Provisions)			536	135	34	
Total A			536	135	34	
Source of funds Consolidated funds:						
- Commonwealth SPP's						
- Capital						
- Recurrent						
Other						
- Capital			536	135	34	
- Recurrent						
Total A			536	135	34	
MAINTENANCE PROGRAM Project Status Major Periodic Maintenance						
- New Works						
- Works in Progress						
Routine Maintenance			47	51	49	49
Total B						
Source of Funds Consolidated Fund (Recurrent):			47	51	49	49
- Commonwealth SPP's						
- Other						
Other(Please Specify)						
Total B						
Agency's Total Program(A+B)						

Annexure C

Ombudsman's draft access and awareness plan

The Access and Awareness Inquiry of the Joint Parliamentary Committee on the Office of the Ombudsman was completed in September 1994. The final report of the inquiry made 35 recommendations, most of which aim to improve the level of access and awareness among target client groups or advocate the continuation of the Ombudsman's current activities to promote the role and services of the office to target groups and the broader NSW population.

In response to the report, the NSW Ombudsman prepared a draft access and awareness plan and submitted to Treasury an application for increased funding for the plan's implementation.

Treasury declined to provide the office with additional funding to implement the plan. In addition, the government has instructed the office to cut its advertising expenditure by 25 per cent.

Lack of staffing and funding resources has substantially affected the office's ability to implement the original plan. This annexure outlines those activities from the original draft plan which can be implemented within the existing resources of the office and those activities which cannot.

Aboriginal & Torres Strait Islands People

Aims

To ensure that Aboriginal or Torres Strait Island people know they can approach the NSW Ombudsman with complaints about State government authorities.

To ensure that if an Aboriginal or Torres Strait Islands person has a complaint about a State government authority that they can access the services offered by the NSW Ombudsman.

To improve the means of redress available to Aboriginal and Torres Strait Islander people in cases where the procedures of a public authority impinge on the ability to cater for culturally specific needs.

Objectives

To employ additional Aboriginal liaison staff to ensure effective access.

To promote the role and function of the NSW Ombudsman throughout the Aboriginal and Torres Strait Islander community.

To promote the NSW Ombudsman to agencies servicing the Aboriginal and Torres Strait Islander community.

To ensure the NSW Ombudsman is accessible to the Aboriginal and Torres Strait Islander populations of the State.

Promoting the office to the community

Activity one: identify community representatives, groups and networks.

- Liaise with known organisations and representatives and conduct a literature review to identify groups and representatives providing services to the communities within the state.
- Liaise with organisations and representatives to prepare contact lists and mailing lists

Activity two: identify media outlets and contacts

- Liaise with community representatives and service organisations to establish a list of Aboriginal and Torres Strait Islands electronic and print media outlets.
- Contact journalists, editors and advertising representatives to determine deadlines, information needs, advertising requirements and rates.

Activity four: establish a regular column or segment about the Ombudsman in the appropriate media

- Liaise with appropriate editors and journalists.
- Identify appropriate information for release.
- Prepare information for media use.
- Distribute information.

Promoting the Office to agencies providing services to the community

Activity one: identify agencies providing services to the community in the state

- Liaise with known organisations and representatives and conduct a literature review to identify groups and representatives providing services to the communities within the state.
- Liaise with organisations and representatives to prepare contact lists and mailing lists.

Employing additional liaison staff**Promoting the office to the community**

Activity three: advertise the office's services in relevant media outlets

- Liaise with community representatives and service groups to establish the communities' information needs.
- Prepare message and test relevance and appropriateness with community representatives and groups.
- Prepare advertising copy and design.
- Prepare advertising schedule for print and electronic media (taking into account country outreach program).
- Book space and time.
- Review quarterly.

Ensuring the Office is accessible to the community

Activity two: implement an on-going education program for staff

- Identify people willing to speak to staff on issues affecting the Aboriginal and Torres Strait communities
- Identify appropriate videos to show staff
- Develop an in-house program of talks and videos for staff
- Promote the program to staff
- Prepare an in-house collection of information resources including written, audio and visual material
- Promote the in-house information resource to staff

Promoting the Office to agencies providing services to the community cont'

Activity two: establish networks with appropriate agencies

- Identify key positions and individuals within agencies
- Make initial contact
- Establish regular liaison/network meetings

Ensuring the Office is accessible to the community

Activity one: conduct Aboriginal cultural awareness training for staff

- Identify training needs
- Identify training agent
- Identify key staff to attend
- Train staff
- Review effectiveness of training

Activity three: improve complainant access to interpreters

- Liaise with community representatives and service agencies to determine interpretation needs
- Revise procedures for engaging interpreters
- Establish interpreter network in metropolitan and regional centres
- Ensure on-going accessibility of interpreters

Ensuring the Office is accessible to the community cont'

Activity three: prepare and distribute written material explaining the role and functions of the office

- Liaise with service groups to establish information needs
- Prepare copy and design
- Review material with groups and community representatives
- Have material printed
- Distribute material
- Resupply or update

Activity four: conduct outreach visits to regional centres and Aboriginal communities

- Prepare a program of outreach visits in conjunction with the country outreach program targeting potential complainants (including complainants in custody) and agencies and groups servicing the community

People with a Disability

Aims

To ensure that if a person with a disability has a complaint about a State government agency, they can physically access the services provided by this office.

To ensure people with a disability have opportunities for work and career development within the Office.

Objectives

To identify and remove for people who have a disability barriers to access to services provided by the office.

To identify and remove for people who have a disability barriers to employment and career development within the Office of the NSW Ombudsman.

Ensuring accessibility

Can be or has been achieved within current funding	Cannot be achieved within current funding
<p>Activity two: ensure the Office is accessible to people who have a hearing impairment</p> <ul style="list-style-type: none"> • Purchase a TTY telephone • Train staff on the use of the TTY telephone • Promote the telephone by including the number on all letterheads, business cards, brochures, forms and advertisements • Write to peak organisations advising them of the telephone and number • Advertise the telephone number in peak organisation newsletters and other appropriate media • Continue advertising country outreach visits in regional and local press <p>Activity four: ensure the Office is accessible to people who have a physical impairment</p> <ul style="list-style-type: none"> • Review building access for people with physical impairment and make recommendations to building management as required • Ensure all country outreach venues are accessible to people who have a physical disability 	<p>Ensuring accessibility</p> <p>Activity one: ensure staff are sensitive to the difficulties facing people who have a disability</p> <ul style="list-style-type: none"> • Identify appropriate staff for sensitivity training • Identify appropriate trainer • Train appropriate staff • Review training <p>Activity three: ensure the office is accessible to people who have a sight impairment</p> <ul style="list-style-type: none"> • Review building access for people with sight impairment and make recommendations to building management for changes to improve access if required • Liaise with peak organisation to determine information needs for people with sight impairment • Prepare information as required • Ensure country outreach visits are announced on radio or television and that regional networks are notified <p>Activity five: ensure the office is accessible to people who have an intellectual impairment</p> <ul style="list-style-type: none"> • Implement a plain-English policy (outlined later in this plan) • Review availability and accessibility of community assistance for making a formal written complaint including members of parliament and local court houses • Promote this assistance to peak organisations and carers

Ensuring opportunities for work and career development

Activity one: provide appropriate work place technology and equipment for staff who have a disability

- Assess the equipment needs of new and existing staff who have a disability
- Undertake a survey of existing staff to ensure current staff with a disability have access to required technology
- Ensure appropriate staff receive available literature on equipment available to assist people who have a disability
- Assess the need of special equipment for new staff
- Provide funds in the annual budget for the purchase of special equipment for staff who have a disability

Activity two: review the principle of reasonable adjustment including position descriptions for new and existing staff

- Review existing internal policies on employment that will impact people who have a disability
- Ensure the principle of reasonable adjustment is included in these policies
- Provide information to managers and supervisors to raise awareness of reasonable adjustment
- Review through discussion with staff who have a disability, the implementation of reasonable adjustment.

Activity three: provide opportunities for the employment and training of people who have a disability

- Identification of positions that could be filled by a person with a disability and amend position descriptions as required.
- Contact peak bodies which assist people with a disability find employment when appropriate positions become available.
- Investigate opportunities for temporary employment or work experience.
- Develop and monitor career development plans for staff with a disability in line with the office's performance management system.

People from a Non-English Speaking Background

Aims

To ensure that if a person from a non-English speaking background has a complaint about a State government agency, that they are aware of the role of the NSW Ombudsman and that there are no cultural barriers to them accessing the services provided by the Office.

Objectives

To prepare a three-year awareness program targeting a different language group within the State every four months.

To provide culturally sensitive and appropriate information to clients.

To sensitise staff to the needs of people from a NESB.

To educate staff about interpreter service and internal resources available to people from NESB.

Awareness Programs

Activity one: develop a three year program, giving priority to those language groups most in need

- Liaise with Ethnic Affairs Commission and Ethnic Communities Council to prioritise needs within communities.

Providing culturally sensitive and appropriate information to clients.

Activity one: where needed, provide interpreters to assist clients lodge complaints

- Allocate budget for interpreters
- Revise procedure for engaging interpreters
- Provide training to enable staff to be more responsive to client needs
- Prepare information for inclusion in induction package

Activity two: where required have correspondence to clients translated from English to their own language

- Allocate budget for translations
- Revise procedure for arranging translations
- Advise staff on the availability of this client service and how it can be arranged
- Prepare information for inclusion in induction package

Activity three: distribute information brochures about our role and services in languages other than English.

- Consult with key representatives from language groups to determine distribution strategy
- Distribute brochures
- Evaluation of brochures and distribution

Activity four: provide ethnic media with copies of relevant media releases and publications

- Identify key ethnic media
- Liaise with media to determine information needs
- Supply media with copies of releases/publications

Awareness Programs

Activity two: develop programs targeting individual language groups

- Liaise with Ethnic Affairs Commission and Ethnic Communities Council to determine peak community organisations and key individuals
- Meet with organisations and individuals to determine community information needs, issues of concern, perceptions of barriers
- Develop programs for targeted groups
- Evaluate program

Training staff

Activity one: ensure staff are appropriately trained to deal with people from different cultural backgrounds

- Identify appropriate training courses
- Identify key staff to attend training
- Train staff

Women

Aim

To improve access to the NSW Ombudsman for women living in the State.

Objective

To provide women's organisations and women's service organisations with information about the NSW Ombudsman.

To designate investigation officers to deal with complaints from women regarding police compliance with the domestic violence provisions of the Crimes Act.

Can be or has been achieved within current funding

Cannot be achieved within current funding

Information provision

Activity one: develop a reference list of organisations

- Liaise with the Ministry for the Advancement and Status of Women and other peak women's groups to form a list

Activity two: produce an information kit for distribution to organisations

- Liaise with peak organisations to determine information needs and areas of concern
- Prepare information and design kits
- Produce kits and distribute

Complaints about police complying with domestic violence provisions

Activity one: identify suitable officer to deal with relevant complaints

- Identify officer
- Ensure designated officer is appropriately trained to deal with domestic violence issues

Activity two: monitor trends in the way police handle domestic violence issues

Information provision

Activity three: develop a speakers program for women's organisations

- Identify suitable officers
- Identify organisations interested in participating and group into regional areas (including metropolitan regions)
- Train officers in presentation techniques
- Prepare speakers kit
- Set dates for visits, book venues, notify participants

Young People

Aim

To improve access to and awareness of the NSW Ombudsman to young people living in the state.

To ensure young people in detention centres are aware of our Office and have access to its services.

Objectives

To establish and fill the position of youth officer within the Office

To develop appropriate written information for young people

To develop a youth media education campaign

To develop a secondary schools education campaign

To develop a university education campaign

To continue an outreach program to Juvenile Justice Centres

Continuing Juvenile Justice Outreach Program

- Identify suitable officers to visit centres to take complaints
- Develop program of visiting metropolitan centres twice each year and regional centres at least once each year
- Promote visits to young people in detention

Youth Officer

- Prepare job description and advertisement
- Fill position

Appropriate Written Information

- Identify peak youth organisations
- Liaise with organisations to determine information needs and appropriate delivery of information
- Prepare information and test message and delivery
- Print information
- Distribute to organisations/ detention centres/ include in appropriate education kits

Youth media education program

- Identify relevant youth media
- Identify issues within office of interest to youth (ie. police, environment)
- Liaise with media to determine possibility of sponsorship of segment, regular columns etc.
- Prepare information/develop program in accordance with discussions

Secondary School education program

- Liaise with Department of School Education to determine teacher's information needs especially in relation to Legal Studies
- Prepare information as required and distribute

University education program

- Identify appropriate areas of study including law and public administration
- Liaise with lecturers to determine information/ guest speaker needs
- Develop or collate information and organise speakers program as required

People in country NSW

Aim

To improve access to investigation officers and inquiries staff and awareness of the role of the NSW Ombudsman for people living in country NSW.

Objectives

To continue a program of country outreach visits, ensuring that major regional centres are visited at least once a year.

To develop a regional media strategy, including a regular regional press column.

Can be or has been achieved within current funding

Country Outreach Visits

While the country outreach visits will continue without increased funding, the number of visits will be decreased.

- identify and train suitable staff
- develop program of visits
- prepare presentation kit and update as required
- organise and promote visits

Cannot be achieved within current funding

Regional Media Strategy

- Identify key regional media
- Contact editors to discuss possibility developing a regular monthly column or segment
- Prepare column and segment for dissemination

People in Custody

Aim

To ensure that people in are aware of the role of the NSW Ombudsman and have access to the services this Office offers.

Objectives

To continue a program of outreach visits to every correctional centre in the State at least once each calendar year.

To review written information and complaint form for people in custody.

Can be or has been achieved within current funding	Cannot be achieved within current funding
<p>Outreach visits</p> <ul style="list-style-type: none"> • Identify suitable officers to attend centres • Prepare 12 month program in January each year to ensure each centre is visited at least once each year • Promote visits to people at individual centres <p>Review Written Information and Form</p> <ul style="list-style-type: none"> • Review current 'prisoners' brochure and complaint form in terms of use of plain-English and presentation of information. • Determine needs for translation of material • Prepare information as required and liaise with corrections service to distribute to every correctional centre • Determine during outreach visits if material has been distributed to inmates • Review distribution process with Corrective Services if required 	

Plain English Policy

Aim

To ensure all publicly available written material from the Office is written in plain English

Objectives

To conduct a written communications audit of the Office

To train staff in writing in plain English

Can be or has been achieved within current funding

Cannot be achieved within current funding

Communications audit

- Review all forms of written material produced by this Office for its clients
- Review responses to complainant survey regarding accessibility of correspondence and information

Staff Training

- Identify appropriate staff for training
- Develop in-house training program and timetable
- Conduct staff training

Complainant Education Program

The complainant survey conducted in 1993 indicates that most complainants expect a full formal investigation into their complaint. This unrealistic expectation can lead to client dissatisfaction and angst. There is a need to educate people who complain to the office to ensure they understand what to expect will happen to their complaint and how long each step is likely to take.

Aim

To ensure that each person who makes a formal written complaint to the Office is provided with information about our processes, our guarantee of service and our timeframes.

Objective

Develop separate information brochures outlining the processes involved in police and general complaints.

Distribute relevant brochures to each person who makes a formal written complaint.

Publications Program

The NSW Ombudsman is in a unique position to provide management and administrative guidance for public authorities. The Office has published the first five of a proposed series of guideline manuals for public authorities:

- Ombudsman's FOI Policies and Guidelines
- Ombudsman's Good Conduct and Administrative Practice: Guidelines for councils
- Ombudsman's Good Conduct and Administrative Practice: Guidelines for public authorities and officials
- Ombudsman's Guidelines for Effective Complaint Management (due to be published in mid October)
- Ombudsman's Guidelines for making a protected disclosure

To continue the promotion of good public administration in NSW the Office will continue to develop, produce and market guideline publications and education material for the NSW Public Service. Assessment Program

Assessment Program

A program will be developed to assess the impact of this total plan. It will principally involve collecting demographic data from complainants through the use of complainant surveys. The office will adapt the current computer software to collect and collate these statistics. The statistics will be used for comparison over time. A full assessment program will be developed when the program's funding is known.

Annexure D

Protected Disclosures

4.3 Protected Disclosures

Disclaimer

These guidelines are based on the Ombudsman's current views as to the interpretation of the *Protected Disclosures Act 1994*, which are in turn based on legal advice from the Crown Solicitor and the Solicitor General. Given the complexity of the Act it is possible that certain provisions could be interpreted differently by a court.

Persons seeking to rely on the *Protected Disclosures Act* and public authorities responsible for its implementation should seek their own legal advice if in any doubt as to the meaning of its various provisions.

4.3.1 Introduction

The *Protected Disclosures Act 1994* commenced operation on 1 March 1995. The aims of the Act are to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, and serious and substantial waste in the public sector.

The Act provides avenues by which public officials (both State and local) can make disclosures about corrupt conduct, maladministration or serious and substantial waste of public money.

This section of the guidelines deals with such questions as:

- 4.3.2 Who can make disclosures?
- 4.3.3 To whom can protected disclosures be made?
- 4.3.4 What are the preconditions for a disclosure to be protected?
- 4.3.5 What does "shows or tends to show" mean in practice?
- 4.3.6 Can a disclosure be only partly protected?
- 4.3.7 Once a disclosure is protected can the protection be lost?
- 4.3.8 What protections are available for persons who make protected disclosures?
- 4.3.9 What are some of the limits on the protection available under the Act?
- 4.3.10 What protections are available where a disclosure is not protected under the Act?
- 4.3.11 Can disclosures be referred to other bodies?
- 4.3.12 Is the identity of the person making the disclosure confidential?
- 4.3.13 What notification must be given to people who make protected disclosures as to action taken or proposed?

4.3.2 Who can make disclosures?

(1) Can only public officials make protected disclosures?

Only "public officials" may make protected disclosures under the *Protected Disclosures Act*.

Public officials are defined in section 4 of that Act as:

- persons employed under the *Public Sector Management Act 1988*;
- employees of local government authorities (ie. councils and county councils);
- any individual having public official functions or acting in a public official capacity, whose conduct and activities may be investigated by:
 - the NSW Ombudsman; or
 - the ICAC; or
 - the Auditor-General

This definition covers any public official whose conduct and activities can be investigated by any of the investigating authorities (being the NSW Ombudsman, ICAC or Auditor-General). This includes public servants, council employees, councillors, MP's, police officers and so on.

A protected disclosure can be made by a public official about a public authority even if the public official has never been or is no longer employed by that public authority. However, while the matter is not beyond doubt, the investigating authorities prefer the view that it is not the intention of the Act to extend protection to disclosures by persons of information or material which they became aware of or have obtained otherwise than by virtue of the fact that they are public officials and in that capacity.

(2) Are anonymous disclosures excluded from the operation of the Act?

The Act does not specifically refer to anonymous disclosures or impose any obligation on a person to identify themselves in a disclosure. Further, there is no obligation under the *Protected Disclosures Act*, *ICAC Act*, or *Public Finance and Audit Act* for a complaint or disclosure to be in writing. However, for a complaint to be made in accordance with the *Ombudsman Act* it must be in writing (although this does not require the identity of the complainant to be disclosed).

Whether anonymous disclosures are protected would be important in two circumstances:

- where an agency or officers of an agency identify the source of the disclosure from the contents of the disclosure or where they do so as the result of inquiries for that purpose; or

- where a person claims authorship at some time after the making of the anonymous disclosure, for example for the purpose of making a protected disclosure to a MP or journalist.

It is possible that if an anonymous disclosure was, by its terms, clearly made by a public official then it could be protected under the Act, particularly given that the Act emphasises the protection of "disclosures". Such an interpretation would be particularly important where an agency or its officers have gone out of their way to identify the source of the disclosure.

Where a person claims to be the author of an anonymous complaint at some stage after the complaint is made, a relevant question would be whether that person is able to prove, for example to the satisfaction of a court in relation to any proceedings under section 20, or GREAT in relation to an appeal, that the person was in fact the source of the complaint. The answer to this question must be left for the determination by the courts and GREAT.

An alternative argument is that anonymous disclosures do not attract the protection of the Act as the Act can only operate effectively in circumstances where there can be no doubt as to the identity of the person who made a disclosure.

This issue must await clarification, either by Parliament or the courts. Until the issue is clarified, the investigating authorities intend to adopt a broad interpretation and assume that anonymous disclosures can be protected disclosures under the Act.

(3) Can councillors or council employees make complaints about serious and substantial waste?

While the Act provides that disclosures about serious and substantial waste should be made to the Auditor-General, the Auditor-General has no authority in relation to a disclosures alleging serious and substantial waste within local government. Such disclosures will not show or tend to show that an "authority" or "officer of an authority" (as defined in section 12(2) of the *Protected Disclosures Act*) has seriously and substantially wasted public money. Disclosures to the Auditor-General about serious and substantial waste of public money by councils will therefore not be protected.

Protection could be obtained for disclosures concerning serious and substantial waste which are made to the general manager of a council or to another officer in accordance with an appropriate internal reporting system (see 4.3.3(1)(d)). Alternatively,

protection could be obtained where such matters involve:

- “maladministration” and are disclosed or referred to the Ombudsman; or
- “corrupt conduct” and are disclosed or referred to the ICAC.

(4) Can a police officer make a protected disclosure?

(a) What disclosures are protected?

A police officer can clearly make a protected disclosure to the ICAC or to the Auditor General.

While not free from doubt, the Crown Solicitor and Solicitor General are of the view that a disclosure by a police officer to the Ombudsman which shows or tends to show “maladministration” (as defined in the *Protected Disclosures Act*) would also be a protected disclosure, provided the other requirements of the Act are met.

NOTE: Where a disclosure by a police officer to the Ombudsman under the *Protected Disclosures Act* is also a complaint under section 123 of the *Police Service Act*, the Ombudsman is required by section 141 of that Act to furnish a full copy of the complaint to the Commissioner of Police in the relevant circumstances. The Ombudsman is not permitted to delete information from the complaint which might identify the complainant.

A police officer can make a protected disclosure to the Commissioner of Police, or to another officer in accordance with an internal procedure established by the Police Service for the reporting of allegations of corrupt conduct, maladministration, or serious and substantial waste of public money. However, any such disclosure must be made voluntarily and not in the exercise of a duty imposed on the police officer by or under the *Police Service Act 1990*, which presumably would include clauses 30 and 31 of the *Police Service Regulation 1990*.

In this regard, clause 30 of the Regulation places an obligation on police officers to report criminal offences and other misconduct. The clause provides:

“(1) If:

(a) an allegation is made to a police officer that another police officer has engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitute a criminal offence or other misconduct; or

(b) a police officer sincerely believes that another police officer has engaged in any conduct of that kind,

the officer is required to report the conduct or alleged conduct by the other officer to a senior police officer (being a police officer who is more senior in rank than the officer making the report).”

Clause 31 of the Regulation provides:

"A senior police officer to whom conduct (or alleged conduct) by a police officer is reported as referred to in clause 30 is required to report it promptly to the Officer-in-Charge of the Internal Affairs Branch if the senior police officer believes that conduct (or alleged conduct):

- (a) constitutes or would constitute a criminal offence by the officer; or*
- (b) would provide sufficient grounds for preferring a departmental charge against the officer".*

Theoretically there is nothing to prevent an officer complying with the requirements of clauses 30 and 31 of the *Police Service Regulation* and at the same time making a voluntary disclosure of corrupt conduct, maladministration or serious and substantial waste of public money to the Auditor-General, the ICAC or to the Ombudsman (as appropriate).

(b) What other protections are available?

It is also relevant to note that clause 32 of the *Police Service Regulation* provides protection to police officers against victimisation in certain circumstances. That clause provides:

"A police officer must not, in relation to any other police officer:

- (a) fail to approve or recommend the promotion of that other officer; or*
- (b) take, approve or recommend disciplinary action against that other officer; or*
- (c) direct, approve or recommend the transfer of that other officer to another position in the Police Service; or*
- (d) make, approve or recommend a decision which detrimentally affects the benefits or awards of that other officer;*
- (e) fail to approve or recommend that other officer receive educational training which could reasonably be expected to improve the officer's opportunities for promotion or to confer some other advantage on the officer; or*
- (f) change the duties of that officer so that they are not appropriate to the officer's salary or position or approve or recommend such a change; or*
- (g) otherwise act to the detriment of that other officer, in retaliation against that other officer because he or she has acted in accordance with clause 30 or 31, has made a complaint with the Police Regulation (Allegations of Misconduct) Act 1978 [since repealed and replaced by the Part 8A of the Police Service Act 1990] or has disclosed information relating to conduct contrary to law to any other officer".*

The Police Service has a draft *Internal Witness Support Policy* setting out policies and procedures for providing support and protection to internal witnesses within the Police Service. The aim of the policy is stated to be to:

- *ensure all police personnel are aware of, and have access to, the support processes available for Internal witnesses;*
- *ensure all Police Service personnel and commanders are aware of their responsibilities with regard to Internal Witnesses.*
- *improve the understanding of the need for Police Service personnel to be aware of the conduct of their colleagues and to take positive action."*

Allegations that an internal witness has been victimised or harassed can be made the subject of a complaint under the *Police Service Act 1990* which can be investigated by the Ombudsman or by the Police Service at the direction of the Ombudsman.

Allegations of victimisation relating to a person having made a protected disclosure to the Ombudsman under the *Protected Disclosures Act*, or having made a disclosure otherwise in accordance with that Act that has been referred to the Ombudsman under Part 4 of that Act for investigation or other action, are also to be brought within the jurisdiction of the Ombudsman. In this regard clause 12 of Schedule 1 to the *Ombudsman Act* is to be revised to specifically bring such conduct within the jurisdiction of the Ombudsman. The taking of "*detrimental action*" (as defined in section 20(2)) is an offence under the *Protected Disclosures Act* and any such action would constitute maladministration and could therefore be made the subject of an investigation by the Ombudsman.

4.3.3 To whom can protected disclosures be made?

(1) What are the alternative avenues for making disclosures?

In summary, to be protected under the Act, a disclosure must be made to:

- one of the investigating authorities, ie:
 - NSW Ombudsman; or
 - ICAC; or
 - Auditor- General; OR
- the principal officer of a public authority or investigating authority (which under this Act presumably means the CEO of the organisation, which would include the general manager of a council) or officer who constitutes a public authority; OR
- a person (being another public official of that public authority) so nominated within an adopted internal procedure established by a public authority for the reporting of allegations under the *Protected Disclosures Act*; OR

- a member of Parliament or a journalist, provided the applicable conditions in the Act are met (see section 19 and (2) below).

(a) If to the ICAC the disclosure must:

- be made in accordance with the *ICAC Act 1988*;
- be a disclosure of information that shows or tends to show that a public authority or another public official has or is engaged, or proposes to engage, in "*corrupt conduct*", which has the meaning given to it in the *ICAC Act* (see section 10).

Corruption is defined in sections 8 and 9 of the *ICAC Act*. The definition used in the Act is intentionally quite broad - "*corrupt conduct*" is defined to include the dishonest or partial exercise of official functions by a public official, and conduct of a person when it adversely affects the impartial or honest exercise of official functions by a public official.

For the ICAC to become involved, generally speaking the disclosure will concern conduct which could constitute or involve a criminal or disciplinary offence or be reasonable grounds for dismissal.

Recent amendments to the *ICAC Act* relate to allegations of corrupt conduct concerning a Minister of the Crown or a member of a House of Parliament. Such allegations can only be investigated by the ICAC if the conduct could constitute or involve a breach of an applicable code of conduct (section 9(1)(d)). This change will not become effective until the codes of conduct are prepared. Conduct which would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious dispute may also be investigated by the ICAC (sections 9(4) and 9(5)). The ICAC has reported its opinion that the amendments do not apply to conduct prior to the commencement of the amendments on 20 January, 1995 (see *Report on Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr P M Smiles*, February, 1995).

Corruption can take many forms - taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are just some examples. The following all fall within the realm of corrupt behaviour:

- a company wants to do business with Government and pays a public official to choose that company for the job.
- a driver is "over the limit" but the police let him go because he is a well known sportsman.
- a public official uses public resources for private purposes.

(b) If to the Ombudsman, the disclosure must:

- be made in accordance with the *Ombudsman Act*, which the Crown Solicitor and Solicitor General take to mean that the disclosure is in writing and in accordance with the time limits spelt out in that Act; and
- be a disclosure of information that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a public authority or another public official, the public authority or public official has or is engaged, or proposes to engage, in conduct of a kind that amounts to “maladministration” (section 11)

“Maladministration” is defined in the *Protected Disclosures Act* as conduct that involves action or inaction of a serious nature that is:

- contrary to law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based wholly or partly on improper motives (section 11).

It needs to be kept in mind that to be protected under the *Protected Disclosures Act*, disclosures to the Ombudsman must comply with the definition of maladministration in that Act (which refers to only part of the conduct which falls within the jurisdiction of the Ombudsman under the *Ombudsman Act*).

Maladministration can include conduct considered “corrupt” under the *ICAC Act*. Dishonest or partial exercise of official functions by a public official falls into this category. This is obviously conduct at the more serious end of the maladministration spectrum, as it must also involve criminal or disciplinary offences.

It can also include cases of serious and substantial waste if it is conduct that is contrary to law or unreasonable. This is particularly relevant to external disclosures of serious and substantial waste involving authorities not the subject of the *Public Finance and Audit Act*, such as councils.

The Ombudsman refers complaints concerning corrupt conduct to the ICAC. Such complaints may still be investigated by the Ombudsman - the Office of the Ombudsman and the ICAC coordinate their activities to ensure there is no duplication of effort.

The Ombudsman also refers appropriate matters to the Royal Commission into the Police Service.

(c) If to the Auditor-General, the disclosure must:

- be in accordance with the *Public Finance and Audit Act 1983* (it is important to be aware that certain public authorities and public officials who are subject to the *Protected Disclosures Act* do not fall within the jurisdiction of the Auditor-General under the *Public Finance and Audit Act*, eg. local councils); and
- be a disclosure of information that shows or tends to show that an authority or officer of an authority (having the meanings given to these expressions in the *Public Finance and Audit Act 1983*) has seriously and substantially wasted public money (section 12).

Disclosures to the Auditor-General must relate to past or current actions, not to proposed actions.

The term "*serious and substantial waste*" is not defined in the *Protected Disclosures Act*. The Auditor-General provides the following working definition:

"Serious and substantial waste refers to any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had, for example, to the dollar value, the potential for savings, the public interest etc."

The Auditor-General has no authority to investigate serious and substantial waste in local government. Disclosures concerning serious and substantial waste in local government should be examined by the person seeking to make a disclosure as to whether the waste is the result of maladministration. If so, the disclosure should be made to the Ombudsman. Similarly, the Commission may deal with matters of serious and substantial waste which involve corruption. Local government public officers contemplating making a disclosure concerning serious and substantial waste should be advised to make an appropriate complaint to the Ombudsman or ICAC.

(d) If internally to the authority (eg to the principal officer or officer who constitutes a public authority, or to another officer of an authority to which the public official belongs in accordance with an appropriate internal procedure), the disclosure must:

- be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers; and

- if made to another officer of the public authority to which the public official belongs, be in accordance with an internal procedure established by the authority for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of money by the authority or any of its officers (section 14).

The Ombudsman, Auditor-General and ICAC have produced a booklet entitled *Internal Reporting Systems*, aimed at helping organisations develop effective internal reporting systems which make available the protections of the *Protected Disclosures Act*.

NOTE: A disclosure which is made by a public official that principally involves questioning the merits of government policy is not protected (section 17). In relation to the meaning of "government policy" see 4.3.9(2) below.

(2) When can a disclosure be made to an MP or journalist?

A disclosure to a member of Parliament or journalist can only be protected if the following circumstances apply:

- the public official must have reasonable grounds for believing that the disclosure is substantially true and the disclosure must in fact be substantially true (a fact the public official would have to be able to prove in the relevant tribunal or court to be able to obtain the protection of the Act or for a successful prosecution for an offence under the Act if detrimental action is taken after a disclosure is made to an MP or a journalist);
- the public official must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of Part 2 of the Act;
- the investigating authority, public authority or officer to whom the original disclosure was made or, if the matter was referred the investigating authority, public authority or other officer to whom the matter is referred:
 - "(a) must have decided not to investigate the matter; or*
 - (b) must have decided to investigate the matter but not completed the investigation within six months of the original disclosure being made; or*
 - (c) must have investigated the matter but not recommended the taking of any action in respect of the matter; or*
 - (d) must have failed to notify the person making the disclosure within six months of the disclosure being made, of whether or not the matter is to be investigated"* (section 19).

It should be noted that where an investigating authority, or principal officer of or officer constituting a public authority has declined to investigate or discontinues the investigation of any matter raised by a disclosure on the basis of an opinion that the disclosure was made frivolously or vexatiously, the disclosure is not protected by the Act (section 16).

(3) Is a disclosure made to the Minister responsible for an agency protected?

It can be assumed that the Minister responsible for an agency is not the principal officer of the agency for the purposes of section 14 of the Act. Ministers would, however, be "*public officials*" for the purposes of the Act.

To be protected, a disclosure to a Minister would therefore need to comply with the requirements of section 19 (where the disclosure is made with the Minister in his or her capacity as a MP).

(4) To whom should disclosures be made concerning a decision made by a Minister?

Should a person wish to make a disclosure about a Minister, while not precluded by the Act, it may be inappropriate for that disclosure to be made to the principal officer of any public authority falling under the portfolio of that Minister, or in accordance with any internal reporting system of any such public authority. Such disclosures could however be made directly to the appropriate investigating authority which has jurisdiction to investigate, ie either the ICAC or Auditor-General, as appropriate. In this regard it should be noted that the Ombudsman has no jurisdiction to investigate the conduct of Ministers, but could investigate advice given to Ministers.

The attention of any persons contemplating making a disclosure concerning a Minister should be particularly drawn to section 17 of the Act which provides that a disclosure made by a public official that principally involves questioning the merits of government policy is not protected by that Act.

4.3.4 What are the preconditions for a disclosure to be protected?

To be protected under the Act, a disclosure must:

- be voluntary:
 - including, but not limited to, disclosures made in accordance with an adopted code of conduct setting out rules and guidelines for reporting corrupt conduct, maladministration, or serious and substantial waste of public money; but
 - not including disclosures made in the exercise of a duty imposed on the public official by or under an Act, for example the duty of the principal officer of a public

authority to disclose corrupt conduct to the ICAC under section 11 of the *ICAC Act*, or the duty of police officers to report certain matters under clauses 30 and 31 of the *Police Service Regulation* (section 9);

- be made by a public official, even if the person who made the protected disclosure has since ceased to be a public official (section 8(3));
- be made to one of the authorities or officers specified in the Act (see the answer to 4.3.3(1) above); or
- if made to a member of Parliament or to a journalist, comply with certain limitations set out in section 19 (see section 19 and 4.3.3(2) above); and
- be a disclosure of information which shows or tends to show (see 4.3.5 below) corrupt conduct, maladministration, or serious and substantial waste of public money (sections 10 to 12).

4.3.5 What does “shows or tends to show” mean in practice?

To be protected, a disclosure must disclose information which “shows or tends to show” certain things.

The definition of “show” in the Macquarie Dictionary includes:

“5. to prove; demonstrate . . . 7. to allege, as in a legal document; plead as a reason or cause. 8. to produce, as facts in an affidavit or at a hearing. 9. to make evident by appearance, behaviour, etc.”

To comply with this requirement it is most likely that it is necessary to do more than merely allege. Matters must be stated which, if substantiated, amount to the relevant conduct, or tend to do so. It is necessary to assess the supporting material provided with a disclosure to determine its adequacy for the purpose of the Act before a decision is made as to whether it appears that a disclosure is protected.

4.3.6 Can a disclosure be only partly protected?

It is to be expected that disclosures will often include information which does not show or tend to show corrupt conduct, maladministration or serious and substantial waste of public money. However, the Act does not say in express terms that only so much of a disclosure as shows or tends to show those matters is protected. It may be difficult to make a distinction between parts of a disclosure in a particular case and that possibility may be a deterrent to the making of protected disclosures which Parliament would not have intended.

4.3.7 Once a disclosure is protected can the protection be lost?

As a general rule it can be said that a person making a disclosure is protected if a disclosure is made in accordance with the requirements of the Act. This would apply no matter what action is taken as a consequence by the person or body to whom the disclosure was made.

There are exceptions to this general rule. A disclosure is not protected where:

- the investigation of matter raised by a disclosure is declined or discontinued by the investigating authority, or principal officer of or officer constituting a public authority, on the basis of an opinion that the disclosure was made frivolously or vexatiously (section 16); or
- the disclosure was made solely or substantially with the motive of avoiding dismissal or other disciplinary action (section 18).

The principles of procedural fairness would apply to any such decision (see also 4.3.9(4) below).

Where a disclosure is made to a member of Parliament or a journalist which is substantially the same as a disclosure that was previously made by that public official to an investigating authority, principal officer and so on, in breach of requirements set out in section 19 of the Act, while the initial disclosure is still protected, the subsequent disclosure is not.

Where the two disclosures regard the same matter, only one of which attracts the Act's protection, in practice it may be extremely difficult, for example, to determine whether "reprisal action" is being taken in respect of the protected or unprotected disclosure. However, the protection against actions in section 21 would clearly not be available.

4.3.8 What protections are available for persons who make protected disclosures?

(1) What protections are potentially available under the Act?

The *Protected Disclosures Act* protects a person who makes a protected disclosure against any liability for making such disclosure, and no action, claim or demand may be taken or made of or against the person for making the disclosure (section 21(1)). This protection applies no matter whether the person is subject to any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by an Act. Examples given in the Act of the ways in which persons who make protected disclosures are protected include:

- a defence of absolute privilege in respect of the publication to the relevant investigating authority, public authority, public

official, member of Parliament or journalist of the disclosure and proceedings for defamation (see also sections 17A, 17K, 17Q and 17QA of the *Defamation Act 1974*);

- the person is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed;
- where a person is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect of the disclosure, the person is taken not to have breached the oath, rule or law or practice or a law relevant to the oath, rule or practice;
- the person is not liable to any disciplinary action because of the disclosure (section 21(3)).

(2) What penalties can be imposed for reprisals?

The Act provides for penalties to be imposed on persons who take “*detrimental action*” against other persons substantially in reprisal for protected disclosures made by those other persons (section 20).

“*Detrimental action*” is action that can cause, comprise or involve any of the following:

- (a) *injury, damage or loss;*
- (b) *intimidation or harassment;*
- (c) *discrimination, disadvantage, or adverse treatment in relation to employment;*
- (d) *dismissal from, or prejudice in employment;*
- (e) *disciplinary proceedings”*

The *Protected Disclosures Act* also amends the *Public Sector Management Act 1988* to make it a breach of discipline to take detrimental action or disciplinary action substantially in reprisal against a person who makes a protected disclosure, or to take disciplinary proceedings or disciplinary action against another officer that is substantially in reprisal for an internal disclosure made by that officer. Of course this only applies to public servants employed under the *Public Sector Management Act*.

Following amendments introduced by the *Protected Disclosures Act*, those who have a right of appeal under the *Government and Related Employees Tribunal Act 1988* (the *GREAT Act*) may appeal decisions of the employer in relation to certain disciplinary matters on the ground that the decision appealed against was made substantially in reprisal for a protected disclosure (see section 23(1) of the *GREAT Act*).

It is important to remember that in relation to local government neither the *Public Sector Management Act* nor the *GREAT Act* apply. Limited non-statutory protection may be available under council policy. In relation to local government, cases of alleged reprisal should be reported to the relevant investigating authority or to the Department of Local Government.

Action by investigating authorities

As the taking of any “*detrimental action*” (as defined in section 20(2)) is an offence under the Act, any such action would constitute corrupt conduct and could be made the subject of a complaint to the ICAC. Such matters could be investigated directly by the ICAC or referred by the ICAC for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances, which could include the public authority concerned (see section 53 of the *ICAC Act*).

The Ombudsman Act is to be amended to enable the Ombudsman to investigate allegations of “*detrimental action*” against persons arising out of a protected disclosures made directly to the Ombudsman or disclosures referred to the Ombudsman under Part 4 of the Act for investigation or other action.

(3) How can a person prove that their disclosure is protected?

To be able to claim protection under the Act there will be circumstances where a person who made a disclosure will need to be able to prove that their disclosure is a protected disclosure. Whether a disclosure attracts the protections and other provisions of the Act is a question of law to be determined by a court (where necessary) and therefore the views of an investigating authority on this issue cannot be determinative.

This issue will be particularly important where the person who made a disclosure needs to prove that he or she made the disclosure in circumstances where his or her identity has been kept confidential by the investigating authority or official to whom the disclosure was made.

4.3.9 What are some of the limits on the protection available under the Act?

(1) What disclosures are not protected under the Act?

A disclosure will not be protected under the Act if it is:

- a disclosure concerning the merits of government policy (see section 17 and (2) below); or
- a disclosure made frivolously or vexatiously (see section 16 and (3), (6)-(7) below); or

- a disclosure motivated by the object of **avoiding** disciplinary action, not being disciplinary action taken in reprisal for the making of a protected disclosure (section 18), which would not include a disclosure otherwise motivated by disciplinary action; or
- a disclosure that was not made voluntarily, including a disclosure made in the exercise of a duty imposed on the public official by or under an Act (section 9).

Generally speaking, whether or not a disclosure is protected under this Act, publications to or by the NSW Ombudsman, the ICAC and the Auditor-General (in relation to complaints by public officials) still attract the defence of absolute privilege (under sections 17A, 17K, 17Q and 17QA of the *Defamation Act*). In such circumstances, no action can be taken for defamation even if a statement is false or the motives of the person who made it are improper.

It is relevant to note that it is an offence for a public official, in making a disclosure to an investigating authority, public authority or public official, to wilfully make any false statement to or mislead or attempt to mislead (section 28). The maximum penalty is \$5,000 or imprisonment for 12 months or both.

(2) What does “government policy” mean?

The Act does not provide a definition for this phrase. It is worth noting that the Explanatory Note to the Draft First Print of the *Protected Disclosures Bill* states that under clause 17, a disclosure will not be protected if it “*principally involves questioning the merits of a policy decision of Cabinet or of a Minister*”. Its use in section 17 is, therefore, to exclude from the protection of the Act any “disclosures” which, at their core, criticise the decisions and directives of the executive arm of government - eg Cabinet.

“Government policy” should not be confused with departmental or administrative policy, which concern procedural issues or routine practices of an organisation. Such matters do not set the agenda for the workings of the department or body, but provide the mechanisms for the achievement of the agenda which is set by the elected representatives.

A disclosure may relate to government policy and attract the protection of the Act if the disclosure focuses on the adequacy of the advice given by a public official or public authority and does not principally involve questioning the merits of adopted government policy.

The intent of the Act is to provide protection to allow disclosures to be made concerning corrupt conduct, maladministration, or serious and substantial waste in the public sector. Questions of the relative merit of government policy are more appropriately dealt with in the political arena, rather than by the investigation authorities.

(3) Are frivolous and vexatious disclosures protected?

The Act provides that certain authorities or officers may decline to investigate or discontinue the investigation of any matter raised by a disclosure of a kind referred to in Part 2 of the Act if that authority or officer is of the opinion that the disclosure is made frivolously or vexatiously (section 16).

(4) Who can determine that a disclosure was made frivolously or vexatiously?

Section 16 provides that a decision that a disclosure was made frivolously or vexatiously may only be made by:

- an investigating authority; or
- the principal officer of a public authority; or
- an officer constituting a public authority.

It therefore appears that where a disclosure is made to another officer of a public authority to which a public official belongs (in accordance with an internal reporting procedure which complies with the requirements of section 14), that other officer is not empowered to decline to investigate or discontinue an investigation on the basis of an opinion that the disclosure is made frivolously or vexatiously.

(5) What procedures must be followed before determining that a complaint was made frivolously or vexatiously?

Firstly, the relevant investigating authority or officer must form a preliminary opinion as to whether the disclosure was made frivolously or vexatiously. These terms are not defined in the Act, although the Macquarie Dictionary contains the following definitions:

"vexatious. . . 1. causing vexation; vexing; annoying. 2. Law (of legal actions) instituted without sufficient grounds, and serving only to cause annoyance. . ."

"frivolous. . . 1. of little or no weight, worth, or importance; not worthy of serious notice: a frivolous objection. 2. characterised by lack of seriousness or sense: frivolous conduct. 3. given to trifling or levity, as persons. . ."

If consideration is given to whether a complaint has been made vexatiously, it is necessary to consider the mental element in

relation to the person who made the disclosure. Intention is a crucial element.

Secondly, before a decision is made to decline to investigate or discontinue an investigation on this basis, the person who made the disclosure should be accorded procedural fairness (ie natural justice). A decision to discontinue an investigation or decline to investigate on the basis that the disclosure was made frivolously or vexatiously will affect the rights and interests of the person who made the disclosure. If an investigating authority or official is of the opinion that a disclosure has been made frivolously and vexatiously the rules of natural justice require that the person making the disclosure be given an opportunity to be heard before the final decision is made (whether by a hearing, or in writing)

(6) Is a disclosure protected if made to two relevant authorities, one of which determines it was made frivolously or vexatiously?

Where the same material is disclosed in accordance with the Act to two separate relevant authorities or officers, the fact that one may determine that the disclosure was made frivolously or vexatiously does not prevent the other disclosure from being protected.

Firstly, what is protected is a "disclosure", not necessarily the particular matter raised by or specific information contained in the disclosure. Secondly, as there is no statutory obligation for all disclosures to be reported to a single source or for all potential recipients of disclosures to advise all other potential recipients of disclosures received and decisions made, it must be expected that multiple disclosures will be made in various circumstances and that these could be dealt with differently by different recipients.

While in the circumstances referred to above one disclosure would be protected by the Act and the other would not, it can be expected that in practice this would have little practical effect.

(7) Where a disclosure is determined to be frivolous or vexatious, can the same disclosure to a MP or journalist be protected?

In relation to disclosures determined to be frivolous or vexatious under section 16, the Act provides that:

"(2) A disclosure is not (despite any other provision of this Part) protected by this Act if an investigating authority or officer declines to investigate or discontinues the investigation of a matter under this section" (emphasis added)

As the provision concerning disclosures to members of Parliament and journalists is contained in the same Part as section 16 (2), it is clear that the same disclosure would not be

protected under section 19, particularly as a decision by an investigating authority or officer under section 16 does not fit any of the criteria listed in section 19 (3) (a) - (d).

There is therefore a clear obligation on investigating authorities to inform persons making disclosures if they are declined on this basis.

4.3.10 What protections are available where a disclosure is not protected under the Act?

Where a disclosure is not protected under the Act (for whatever reason), certain protections will still be available to the person who made the disclosure. In this regard section 24 of the Act provides that the Act does not limit the protection given by any other Act or law to a person who makes a disclosure of any kind (section 24).

Generally speaking, a person who makes a disclosure which is not protected under the Act could still have the defence of absolute privilege for a communication to the NSW Ombudsman, the ICAC or the Auditor-General under sections 17A, 17K and 17Q of the *Defamation Act*. It is possible that this defence could also be available in relation to a publication to a public official or public authority referred to in section 8(1)(b) or (c) of the *Protected Disclosures Act* of a disclosure made to the public official or public authority under section 17 QA of the *Defamation Act*. However, this is stated to be limited to circumstances where the publication is for the purpose of investigation of that allegation. It is unclear whether the protection would be available where such a disclosure is not protected under the *Protected Disclosures Act*.

4.3.11 Can disclosures be referred to other bodies?

(1) When are disclosures likely to be referred to another person or body?

The Ombudsman and the ICAC regularly liaise to coordinate their activities and prevent duplication. This could result in disclosures being referred from one body to the other where this is appropriate.

The Act empowers investigating authorities and public officials to refer any disclosures concerning an allegation of corrupt conduct, maladministration or serious and substantial waste made to them by a public official in certain circumstances (sections 15, 25 and 26).

Investigating authorities may refer disclosures to another investigating authority or to a public official or public authority considered by the investigating authority to be appropriate in the circumstances for investigation or other action. An investigating authority must refer such a disclosure if:

(a) it is not authorised to investigate the matter concerned under the relevant investigation Act; and

(b) it is of the opinion that another investigating authority or some public official or public authority may appropriately deal with the matter concerned” (section 25 (2)).

A public official to whom a disclosure is made may refer disclosures to an investigating authority or to another public official or a public authority considered by the public official to be appropriate in the circumstances for investigation or other action (section 26 (1)).

Where such a referral is made, the referring authority or official may communicate to the authority or official to whom the referral is made any information the authority or public official has obtained during the investigation (if any) of the matter concerned (sections 25 (4) and 26 (2)) .

A referral by an investigating authority may be made before or after the matter concerned has been investigated and whether or not an investigation of the matter is complete or any findings have been made by the investigated authority (section 25 (3)).

A protected disclosure is still protected even if it is referred to another authority or public official (section 15).

(2) Are referred disclosures still protected?

A disclosure is protected by the Act if it is made:

- to an investigating authority and it is referred by the investigating authority to another investigating authority or to a public official or public authority considered by the investigating authority to be appropriate in the circumstances, for investigation or other action (section 25); or
- to a public official and it is referred by that public official to an investigating authority, another public official or a public authority considered by the public official to be appropriate in the circumstances, for investigation or other action (section 26).

Section 15 indicates that a disclosure referred by one investigating authority to another investigating authority, a public official or a public authority, or by a public official to an investigating authority, another public official or a public authority, will still be protected if the disclosure shows or tends to show corrupt conduct, maladministration, or serious and substantial waste of public money, and complies with other requirements of the Act.

Given the clear terms of section 15, which refers to disclosures which an investigating authority is not authorised to investigate

under its legislation, it can be assumed that a disclosure can be protected no matter which investigating authority it is initially sent to, provided:

- the disclosure shows or tends to show either corrupt conduct, maladministration or serious and substantial waste of public money; and
- it is made to one of the investigating authorities (or to an appropriate public official) and is then referred to an investigating authority, public official or public authority which has jurisdiction to investigate or otherwise deal with the matter.

The person making a disclosure is protected if the disclosure is made (or appropriately referred) in accordance with the Act no matter what action is then taken in relation to the disclosure, for example, whether declined, the investigation is discontinued, the disclosure is referred to some other body for appropriate action, and so on.

4.3.12 Is the identity of the person making the disclosure confidential?

The Act requires investigating authorities and public authorities (and officers of those authorities), and public officials, to whom protected disclosures are made or referred not to disclose information that "*might identify or tend to identify*" the person who made the disclosures.

The phrase "*might identify or tend to identify*" is very broad and should be interpreted liberally.

The exceptions to the confidentiality requirement are where:

- *the person consents in writing to the disclosure of that information;*
- *it is essential, having regard to the principles of natural justice that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or*
- *the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.*" (section 22)

A further exception recognised by section 22 is where a disclosure is referred to an investigating authority, public authority or public official pursuant to the Act.

Under the *Freedom of Information Act 1989*, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the *Protected Disclosures Act 1994* (clause 20(d) of

Schedule 1 to the *FOI Act*). A government department, public authority, council and the holder of a public office may refuse access to a document under FOI if it is an exempt document (section 25(1) of the *FOI Act*). It is important to note that this exemption is framed in very wide terms (ie. "relating to") and goes further than merely the name of the person who made the disclosure and the actual information which is the subject of a protected disclosure.

4.3.13 What notification must be given to people who make protected disclosures as to action taken or proposed?

Where a disclosure is made under the Act, the investigating authority, public authority or officer to whom the disclosure was made or, if the disclosure was referred under the Act, the person or body to whom the disclosure was referred, is required to notify the person who made the disclosure within 6 months of the date on which the disclosure was made of the action taken or proposed to be taken in respect of the disclosure (section 27).

4.3.14 Contact details for investigating authorities:

NSW Ombudsman

Chris Wheeler, Deputy Ombudsman
(02) 286 1004 (1800-451 524 at cost of a local call).

ICAC

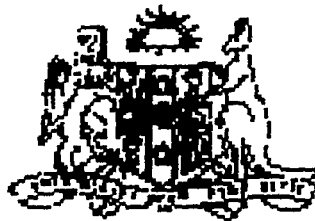
Mark Hummerston, Manager, Assessments
(02) 318 5802 (008 463 909 toll free number)

Auditor-General

Denis Streater, Director of Audit
(02) 285 0075

PROTECTED DISCLOSURES ACT 1994 No. 92

NEW SOUTH WALES



Act No. 92. 1994

An Act to provide protection for public officials disclosing corrupt conduct, maladministration and waste in the public sector; and for related purposes. [Assented to 12 December 1994]

PROTECTED DISCLOSURES ACT 1994 No. 92

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Object
4. Definitions
5. Relationship of this Act and other Acts
6. Act binds the Crown

PART 2—PROTECTED DISCLOSURES

7. Effect of Part
8. Disclosers must be made by public officials
9. Disclosures must be made voluntarily
10. Disclosure to Commission concerning corrupt conduct
11. Disclosure to Ombudsman concerning maladministration
12. Disclosure to Auditor-General concerning serious and substantial waste
13. Disclosures about investigating authorities
14. Disclosures to public officials
15. Referred disclosures protected
16. Disclosures made on frivolous or other grounds
17. Disclosures concerning merits of government policy
18. Disclosures motivated by object of avoiding disciplinary action
19. Disclosure to a member of Parliament or journalist

PART 3—PROTECTIONS

20. Protection against reprisals
21. Protection against actions etc.
22. Confidentiality guideline
23. Rights and privileges of Parliament
24. Other protection preserved

PART 4 - MISCELLANEOUS

- 25. Referral of disclosures by investigating authorities
- 26. Referral of disclosers by public officials
- 27. Notification to person making disclosure
- 28. False or misleading disclosures
- 29. Proceedings for offences
- 30. Regulations
- 31. Amendment of Acts
- 32. Review

SCHEDULE 1—AMENDMENT OF ACTS

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Protected Disclosures Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object

3. (1) The object of this Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector by:
 - (a) enhancing and augmenting established procedures for making disclosures concerning such matters; and
 - (b) protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures; and
 - (c) providing for those disclosures to be properly investigated and dealt with.
- (2) Nothing in this Act is intended to affect the proper administration and management of an investigating authority or public authority (including action that may or is required to be taken in respect of the salary, wages, conditions of employment or discipline of a public official), subject to the following:
 - (a) detrimental action is not to be taken against a person if to do so would be in contravention of this Act; and
 - (b) beneficial treatment is not to be given in favour of a person if the purpose (or one of the purposes) for doing so is to influence the person to make, to refrain from making, or to withdraw a disclosure.

Definitions**4. In this Act:**

- “**Commission**” means the Independent Commission Against Corruption;
“**corrupt conduct**” has the meaning given to it by the Independent Commission Against Corruption Act 1988;
“**detrimental action**” is defined in section 20;

“disciplinary proceeding” includes a disciplinary inquiry within the meaning of the Public Sector Management Act 1988;

“exercise” of a function includes, where the function is a duty, the performance of the duty;

“function” includes power, authority or duty;

“investigate” includes inquire or audit;

“investigating authority” means:

- (a) the Auditor-General; or
- (b) the Commission; or
- (c) the Ombudsman;

“investigation Act” means:

- (a) the Independent Commission Against Corruption Act 1988; or (b) the Ombudsman Act 1974; or
- (c) the Public Finance and Audit Act 1983;

“journalist” means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media;

“maladministration” is defined in section 11 (2);

“protected disclosure” means a disclosure satisfying the applicable requirements of Part 2;

“public authority” means any public authority whose conduct or activities may be investigated by an investigating authority;

“public official” means a person employed under the Public Sector Management Act 1988, an employee of a local government authority or any other individual having public official functions or acting in a public official capacity, whose conduct and activities may be investigated by an investigating authority;

“relevant investigation Act”, in relation to an investigating authority, means the Act that appoints or constitutes the investigating authority.

Relationship of this Act and other Acts

5. (1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.

(2) However, nothing in this Act otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.

(3) Nothing in this Act (except section 13 (2) and (4)) authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.

Act binds the Crown

6. This Act binds the Crown in right of New South Wales.

PART 2—PROTECTED DISCLOSURES

Effect of Part

7. A disclosure is protected by this Act if it satisfies the applicable requirements of this Part.

Disclosures must be made by public officials

8. (1) To be protected by this Act, a disclosure must be made by a public official:

- (a) to an investigating authority; or
- (b) to the principal officer of a public authority or investigating authority or officer who constitutes a public authority; or
- (c) to another officer of the public authority or investigating authority to which the public official belongs in accordance with an internal procedure established by the authority for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers; or
- (d) to a member of Parliament or to a journalist.

(2) A disclosure is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of this section.

(3) A disclosure made while a person was a public official is protected by this Act even if the person who made it is no longer a public official.

(4) A disclosure made about the conduct of a person while the person was a public official is protected by this Act even if the person is no longer a public official.

Disclosures must be made voluntarily

9. (1) To be protected by this Act, a disclosure must be made voluntarily.

- (2) A disclosure is not made voluntarily for the purposes of this section if it is made by a public official in the exercise of a duty imposed on the public official by or under an Act.
- (3) A disclosure is made voluntarily for the purposes of this section if it is made by a public official in accordance with a code of conduct (however described) adopted by an investigating authority or public authority and setting out rules or guidelines to be observed by public officials for reporting corrupt conduct, maladministration or serious and substantial waste of public money by investigating authorities, public authorities or public officials.

Disclosure to Commission concerning corrupt conduct

10. To be protected by this Act, a disclosure by a public official to the Commission must:

- (a) be made in accordance with the Independent Commission Against Corruption Act 1988; and
- (b) be a disclosure of information that shows or tends to show that a public authority or another public official has engaged, is engaged or proposes to engage in corrupt conduct.

Disclosure to Ombudsman concerning maladministration

11. (1) To be protected by this Act, a disclosure by a public official to the Ombudsman must:

- (a) be made in accordance with the Ombudsman Act 1974; and
 - (b) be a disclosure of information that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a public authority or another public official, the public authority or public official has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration .
- (2) For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:
- (a) contrary to law; or
 - (b) unreasonable, unjust, oppressive or improperly discriminatory; or
 - (c) based wholly or partly on improper motives.

Disclosure to Auditor-General concerning serious and substantial waste

12. (1) To be protected by this Act, a disclosure by a public official to the Auditor-General must:

- (a) be made in accordance with the Public Finance and Audit Act 1983; and
 - (b) be a disclosure of information that shows or tends to show that an authority or officer of an authority has seriously and substantially wasted public money.
- (2) In this section, “authority” and “officer of an authority” have the meanings given to those expressions in the Public Finance and Audit Act 1983.

Disclosures about investigating authorities

13. (1) Despite section 10, a disclosure by a public official to the Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Ombudsman, the Ombudsman or an officer of the Ombudsman has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration is protected by this Act.

- (2) The Commission may investigate, and report, in accordance with the Independent Commission Against Corruption Act 1988 on any matter raised by a disclosure made to it that is of a kind referred to in subsection (1).
- (3) Despite section 11, a disclosure by a public official to the Ombudsman that shows or tends to show:
- (a) that the Commission or an officer of the Commission has engaged, is engaged, or proposes to engage, in corrupt conduct; or
 - (b) in the exercise of a function relating to a matter of administration conferred or imposed on the Commission, the Commission or an officer of the Commission has engaged, is engaged, or proposes to engage, in conduct of a kind that amounts to maladministration; or
 - (c) that the Auditor-General or a member of the staff of the Auditor-General has seriously and substantially wasted public money,
- is protected by this Act.
- (4) The Ombudsman may investigate, and report, in accordance with the Ombudsman Act 1974 on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3). For the purposes of such an

investigation the Ombudsman may engage consultants or other persons for the purpose of getting expert assistance.

(5) An investigating authority may decline to investigate or may discontinue the investigation of any matter referred to in this section.

(6) A disclosure referred to in this section is protected by this Act only if it satisfies all other applicable requirements of this Part.

Disclosures to public officials

14. (1) To be protected by this Act, a disclosure by a public official to the principal officer of, or officer who constitutes, a public authority must be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers.

(2) To be protected by this Act, a disclosure by a public official to another officer of the public authority to which the public official belongs in accordance with an internal procedure established by the authority for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers must be a disclosure of information that shows or tends to show such corrupt conduct, maladministration or serious and substantial waste.

(3) In this section:

“**public authority**” includes an investigating authority.

Referred disclosures protected

15. (1) A disclosure is protected by this Act if it is made by a public official to an investigating authority and is referred (whether because it is not authorised to investigate the matter under the relevant investigation Act or otherwise) by the investigating authority under Part 4 to another investigating authority or to a public official or public authority.

(2) A disclosure is protected by this Act if it is made by a public official to another public official in accordance with section 8 (1) (b) or (c) and is referred under Part 4 by the other public official to an investigating authority or to another public official or public authority.

Disclosures made on frivolous or other grounds

16. (1) An investigating authority, or principal officer of or officer constituting a public authority, may decline to investigate or may discontinue the investigation of any matter raised by a disclosure made to the authority or officer of a kind referred to in this Part if the

investigating authority or officer is of the opinion that the disclosure was made frivolously or vexatiously.

- (2) A disclosure is not (despite any other provision of this Part) protected by this Act if an investigating authority or officer declines to investigate or discontinues the investigation of a matter under this section.
- (3) Nothing in this section limits any discretion an investigating authority has to decline to investigate or to discontinue the investigation of a matter under the relevant investigation Act.

Disclosures concerning merits of government policy

17. A disclosure made by a public official that principally involves questioning the merits of government policy is not (despite any other provision of this Part) protected by this Act.

Disclosures motivated by object of avoiding disciplinary action

18. A disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, not being disciplinary action taken in reprisal for the making of a protected disclosure, is not (despite any other provision of this Part) a protected disclosure.

Disclosure to a member of Parliament or journalist

19. (1) A disclosure by a public official to a member of Parliament, or to a journalist, is protected by this Act if the following subsections apply.
- (2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.
- (3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred:
- (a) must have decided not to investigate the matter; or
 - (b) must have decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made; or
 - (c) must have investigated the matter but not recommended the taking of any action in respect of the matter; or
 - (d) must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.

- (4) The public official must have reasonable grounds for believing that the disclosure is substantially true.
- (5) The disclosure must be substantially true.

PART 3—PROTECTIONS

Protection against reprisals

20. (1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) In this Act, “detrimental action” means action causing, comprising or involving any of the following:
- (a) injury, damage or loss;
 - (b) intimidation or harassment;
 - (c) discrimination, disadvantage or adverse treatment in relation to employment;
 - (d) dismissal from, or prejudice in, employment;
 - (e) disciplinary proceeding.

Protection against actions etc.

21. (1) A person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.
- (3) The following are examples of the ways in which this section protects persons who make protected disclosures. A person who has made a protected disclosure:
- has a defence of absolute privilege in respect of the publication to the relevant investigating authority, public authority, public official, member of Parliament or journalist of the disclosure in proceedings for defamation
 - on whom a provision of an Act (other than this Act) imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against the Act

- who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice
- is not liable to disciplinary action because of the disclosure.

Confidential guideline

22. An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:

- (a) the person consents in writing to the disclosure of that information; or
- (b) it is essential having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

Rights and privileges of Parliament

23. Nothing in this Act affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

Other protection preserved

24. This Act does not limit the protection given by any other Act or law to a person who makes disclosures of any kind.

PART 4—MISCELLANEOUS**Referral of disclosures by investigating authorities**

25. (1) An investigating authority may refer any disclosure concerning an allegation of corrupt conduct, maladministration or serious and substantial waste that is made to it by a public official to another investigating authority or to a public official or public authority considered by the authority to be appropriate in the circumstances, for investigation or other action.

- (2) The investigating authority must refer such a disclosure if:
- (a) it is not authorised to investigate the matter concerned under the relevant investigation Act; and
 - (b) it is of the opinion that another investigating authority or some public official or public authority may appropriately deal with the matter concerned.
- (3) A disclosure may be referred before or after the matter concerned has been investigated and whether or not any investigation of the matter is complete or any findings have been made by the investigating authority.
- (4) The investigating authority may communicate to the other investigating authority or to the public official or public authority any information the investigating authority has obtained during the investigation (if any) of the matter concerned.
- (5) The investigating authority may recommend what action should be taken by the other investigating authority or the public official or public authority.
- (6) The investigating authority is not to refer the disclosure to another investigating authority, or to a public official or public authority, except after taking into consideration the views of the authority, public official or public authority.
- (7) An investigating authority referring a matter to another investigating authority may enter into arrangements with the other authority:
- (a) to avoid duplication of action; and
 - (b) to allow the resources of both authorities to be efficiently and economically used to take action; and
 - (c) to ensure that action is taken in a manner providing the most effective result.

Referral of disclosures by public officials

26. (1) A public official may refer any disclosure concerning an allegation of corrupt conduct, maladministration or serious and substantial waste made to the public official under Part 2 to an investigating authority or to another public official or a public authority considered by the public official to be appropriate in the circumstances, for investigation or other action.
- (2) The public official may communicate to the investigating authority, the other public official or the public authority any information the public official has obtained during investigation (if any) of the matter concerned.

Notification to person making disclosure

27. The investigating authority, public authority or officer to whom a disclosure is made under this Act or, if the disclosure is referred, the investigating authority, public authority or officer to whom the disclosure is referred must notify the person who made the disclosure, within 6 months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

False or misleading disclosures

28. A public official must not, in making a disclosure to an investigating authority, public authority or public official, wilfully make any false statement to, or mislead or attempt to mislead, the investigating authority, public authority or public official.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Proceedings for offences

29. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

30. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of Acts

31. The Acts specified in Schedule 1 are amended as set out in that Schedule.

Review

32. (1) A joint committee of members of Parliament is to review this Act.
- (2) The review is to be undertaken as soon as practicable after the expiration of one year after the date of assent to this Act, and after the expiration of each following period of 2 years.
- (3) The committee is to report to both Houses of Parliament as soon as practicable after the completion of each review.
-

SCHEDULE 1—AMENDMENT OF ACTS

(Sec. 31)

Defamation Act 1974 No. 18

Sections 17Q, 170A:

After section 17P, insert:

Matters arising under the Public Finance and Audit Act 1983

17Q. There is a defence of absolute privilege for a publication to or by the Auditor-General or a member of the Auditor-General's Office as such a member of a disclosure made in relation to a complaint under section 38B (1A) of the Public Finance and Audit Act 1983.

Matters relating to the Protected Disclosures Act 1994

17QA. There is a defence of absolute privilege for a publication to or by a public official or public authority referred to in section 8 (1) (b) or (c) of the Protected Disclosures Act 1994 of a disclosure made to the public official or public authority in relation to an allegation of corrupt conduct, maladministration or serious and substantial waste of public money if the publication is for the purpose of investigating that allegation.

Freedom of Information Act 1989 No. 5

Schedule 1 (Exempt documents):

At the end of clause 20, insert:

; or

(d) matter relating to a protected disclosure within the meaning of the Protected Disclosures Act 1994.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Section 24 (Right of appeal):

At the end of section 24, insert:

(2) Such an appeal may be made on the ground that the decision appealed against was made substantially in reprisal for a protected disclosure within the meaning of the Protected Disclosures Act 1994.

SCHEDULE 1—AMENDMENT OF ACTS - *continued***Public Finance and Audit Act 1983 No. 152**

Section 38B (Special audit by Auditor-General):

After section 38B (1), insert:

(1A) A public official within the meaning of the Protected Disclosures Act 1994 may complain to the Auditor-General (whether orally or in writing) that public money has been seriously and substantially wasted by an authority or an officer of an authority. When a public official makes such a complaint the Auditor-General may conduct an audit under this section.

Public Sector Management Act 1988 No. 33

Section 66 (Breaches of discipline):

(a) At the end of section 66 (f), insert:

; or

(g) takes any detrimental action (within the meaning of the Protected Disclosures Act 1994) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act; or

(h) takes any disciplinary proceedings or disciplinary action against another officer that is substantially in reprisal for an internal disclosure made by that officer.

(b) At the end of section 66, insert:

(2) In this section, "internal disclosure" means a disclosure made by an officer regarding an alleged breach of discipline by another officer belonging to the same Department as that to which the officer belongs.

[Minister's second reading speech made in—

Legislative Assembly on 21 April 1994

Legislative Council on 23 November 1994]

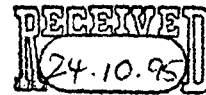
BY AUTHORITY

APPENDIX 3
Ombudsman's Answers to Questions on Notice taken
during the General Meeting on 9 October, 1995
(letter dated 19/10/95)

Our Reference:

Your Reference:

19 October 1995



Mr Bryce Gaudry, MP, BA
Chairman
Joint Committee on the Office of the Ombudsman
Room 813
Parliament House
Macquarie Street
SYDNEY NSW 2000
By facsimile: 230 3309

Dear Mr Gaudry

I refer to the various questions that were taken on notice during the general meeting of the Joint Committee on Monday 9 October 1995.

- (1) On pages 10 and 11 of the transcript Mr Kinross, MP, asked whether there are any other inquiries that we have been asked to undertake that have not been provided for in terms of funding. Set out below is a list of all matters that I am aware of where the Office has been asked to undertake an inquiry or to make a major submission:
 - (a) as mentioned on page 10 of the transcript, the Office is carrying out an intensive investigation of Juvenile Justice Centres at the request of the Minister for Community Services, at a provisional cost of \$110,000 to be provided by the Minister;
 - (b) the Office is preparing a detailed submission to the Standing Committee on Social Issues inquiry into childrens advocacy. This Office is referred to in the terms of reference of that inquiry and therefore has no option but to be involved. No funding has been provided;
 - (c) the Office has prepared a detailed submission to the Joint Parliamentary Committee for its inquiry into the police complaints system. No funding has been provided.
 - (d) the Office is preparing a detailed submission to the Royal Commission into the Police Service in relation to the oversight of police conduct. The Royal Commission called for submissions in relation to this topic, which is to be the subject of an interim report to be handed down in January 1996. No funding has been provided;
 - (e) the Office has prepared a detailed submission to a review team established by the Premier to report to a subcommittee of Cabinet in relation to the oversight of police conduct. No funding has been provided;

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improved public
administration*

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- (f) numerous requests are made to the Office for comment on procedures and systems being introduced by government agencies, particularly in relation to new complaint handling systems. No funding has been provided.
- (2) On page 12 of the transcript of the general meeting The Hon. S B Metch, MP, asked for figures on Members of Parliament who refer complaints to the Office. In 1994/95 Members of Parliament referred 93 formal written complaints about police and 40 formal written complaints about other public authorities or officials.
- (3) On page 14 of the transcript, Mr Kinross, MP, asked a question about the publicity received by the Office in country areas as a consequence of reports in the media when there is a "scandal", as opposed to public notices of regional visits.

This is a particularly difficult question to answer. Speaking in general terms in relation to rural areas on a State wide basis it would be fair to say that the Office gets more publicity through public notices of forthcoming visits than through any reports that may appear in the local media arising out of the work of the Office. One reason for this is that such reports only appear in the local media where the issue relates to a local matter and the information is released by the complainant or public authority concerned. This Office is extremely limited in the options available to it to publicise individual cases.

However, in specific instances where there are reports in the local media arising out of the work of this Office, this generates far more publicity than any public notice by this Office prior to a visit to that area.

- (4) On page 30 of the transcript, Mr Kinross, MP, asked for an update on the progress of an investigation into a complaint about the conduct of police made by Mr K Bruce. I refer to my previous letter to you on this topic dated 21 August 1995 which enclosed a copy of relevant correspondence to the Police Service in this matter. As the letter indicates, the Police Service has been directed to carry out further investigation into the complaint. I shall be in contact with you again on this issue once the result of the further investigation becomes available.

Please contact me should you wish any further information or clarification on the above information.

Yours sincerely



Irene Moss
NSW OMBUDSMAN