



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE OMBUDSMAN, THE POLICE  
INTEGRITY COMMISSION AND THE  
CRIME COMMISSION

REPORT ON THE 17TH GENERAL MEETING WITH THE  
NSW OMBUDSMAN

REPORT 4/55 – DECEMBER 2012

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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# Terms of Reference

The Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the Ombudsman Act are set out in s.31B(1) 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.

Section 31B(2) of the Ombudsman Act specifies that 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.

# Chair's Foreword

The general meetings between the Committee and the Ombudsman provide the Committee with an opportunity to review the exercise by the Ombudsman of his legislative functions and discuss issues of public interest that are relevant to the Committee's functions.

This year the Committee reviewed the past two annual reports of the NSW Ombudsman and discussed several matters of interest to the Committee. As in previous years, the Ombudsman communicated to the Committee his ongoing concern with respect to the level of resources available to him and the impact this has on his work. The Ombudsman reported that although there has been a substantial growth in the responsibilities of his office over the past two years, the allocated budget has not kept pace. The Committee recognises the fiscal restraint exercised by the Office of the Ombudsman during the reporting period.

Other important issues discussed during the general meeting included the Ombudsman's investigations into asbestos in schools and taser use by the NSW Police. The Committee looks forward to the Ombudsman's finalisation of these investigations.

In reviewing the processes utilised by the Ombudsman in the performance of his duties, the Committee was particularly interested in the use by the Ombudsman's office of a software supplied by the NSW Police and discussed this issue in detail as well as examining various licensing agreements.

The Committee thanks the Ombudsman and the Deputy Ombudsman for their time during the general meetings and commends them for the achievements of their office in circumstances of limited resources.

The Hon. Catherine Cusack MLC  
**Chair**

## Chapter One – Commentary

- 1.1 On 18 June 2012 the Committee conducted a general meeting with Mr Bruce Barbour, New South Wales Ombudsman and Ms Linda Waugh and Mr Christopher Wheeler as Deputy Ombudsman.
- 1.2 As part of the preparation for the general meeting, the Committee sent the Ombudsman a series of questions on notice about matters raised in his Annual Reports for 2009-10 and 2010-11. The answers to these questions on notice can be found at Chapter Two of this report. The Committee also considered the Child Death Review Team Annual Report as part of this process. This is the subject of separate report by the Committee, being Report 1/55 of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission.
- 1.3 The Ombudsman has responsibility for a large jurisdiction and the Annual Reports for 2009-10 and 2010-11 reported on a wide variety of issues. Given the breadth of these issues, the Committee focused on areas of particular interest and concern, as outlined below.
- 1.4 Evidence was taken at the general meeting in relation to the Annual Reports as well as current issues relevant to the Ombudsman's jurisdiction. The commentary that follows focuses on a number of issues including governance and funding matters, concerns in relation to the use of tasers and recent litigation involving several public sector agencies.

### GOVERNANCE AND FUNDING

- 1.5 The Ombudsman expressed concern to the Committee, both in writing and in oral evidence at the Inquiry, about the effectiveness of the Ombudsman's governance structure and the interrelated concerns relating to ongoing budgetary constraints.
- 1.6 The Ombudsman told the Committee that since the public sector was restructured into super agencies, he has been concerned over the possible lack, or perceived lack, of independence on the part of the Ombudsman.<sup>1</sup>
- 1.7 He noted that while it is essential for the Ombudsman to maintain impartiality and integrity in order to do its job, this is difficult to do if it is treated the same as other agencies in the Premier and Cabinet portfolio. In giving evidence to the Committee he stated:

I bring this situation to the Committee's attention due to my concerns about the potential impact on my office and its reputation. It is essential that integrity agencies are both independent of Government and are seen to be so. Inappropriate inclusion of my office in the super agency structure for budgetary, financial or indeed any

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<sup>1</sup> Mr Bruce Barbour, Ombudsman, NSW Ombudsman, *Transcript of evidence*, 18 June 2012, p. 3.

other purpose poses a significant risk to this fundamental principle and will cause us to be viewed as part and not separate of the broader public sector.<sup>2</sup>

- 1.8 It is particularly important for the Ombudsman to maintain his integrity with regard to financial issues. He made the point that it could be problematic for the Director General of the Department of Premier and Cabinet to be making budget decisions that concern the Ombudsman when the Department of Premier and Cabinet falls within the Ombudsman's jurisdiction.

Apart from the fact that I think it is inappropriate, given the nature of what my organisation does and where it sits in terms of the integrity landscape within the State, it is just inappropriate for an agency that is technically within my jurisdiction to potentially be making decisions about my budget and other matters and then for that to be compounded and be taken up by other central agencies who then want to treat us as part of the cluster.<sup>3</sup>

- 1.9 The heightened risk to the independent reputation of the Ombudsman is ongoing and may be managed through the development of appropriate governance mechanisms, which will be an ongoing area of interest to the Committee during the 55<sup>th</sup> Parliament.

- 1.10 A continuing concern of the Ombudsman, which is compounded by the lack of clear and appropriate governance structures, relates to budgetary constraints. This has been raised in past meetings with the Committee and the Ombudsman has indicated that this issue has the potential to detrimentally affect the work of his office.

- 1.11 He noted that since the last meeting with the Committee, his Office has gained several new functions and responsibilities, including establishing the Public Interest Disclosure unit, conducting new legislative reviews and taking over responsibility for the Child Death Review Team.<sup>4</sup>

- 1.12 He emphasised the difficulties in providing accurate budget and staffing figures to the Committee due to the nature of the many discreet projects that receive separate and finite funding and staff. He informed the Committee that the efficiency dividend for 2011-12 is \$316,000 and this will increase another \$210,000 next year.<sup>5</sup> The Ombudsman described the impact of cuts to the base level of funding as follows:

Essentially budget cuts to me mean I have to get rid of staff. If I have to get rid of staff I cannot do as much work. The challenge of course is that much of my work now is statutory based, so I must do it, which means what I have got to do is I have to look at what is discretionary. So important project work or our general complaint handling work where we have got discretion about what we take up, they are the things that we need to cut yet they are the things that the people of New South Wales really expect the Ombudsman to be dealing with.<sup>6</sup>

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<sup>2</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 3.

<sup>3</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 8.

<sup>4</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 4.

<sup>5</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 8.

<sup>6</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 8.



- 1.13 Another way that the office manages a reduced budget is by not filling positions as they become vacant or filling them only on a temporary basis. The Ombudsman highlighted that since the absorption of new functions, it may appear as if total staff levels have increased, but this does not accurately reflect the actual impact on the work of the office.<sup>7</sup>
- 1.14 The Ombudsman detailed to the Committee his work in progressing discussions on the role of the Ombudsman and its budgetary issues:
- I received a letter from the head of Treasury recently indicating that he and the Director General of Premier and Cabinet were meeting to discuss our role and budgetary issues. I am hopeful that my protestations are starting to pay some dividends. However, I would like to see there being a recognition of the integrity arm of government. It is not just my agency, it is also the independent Commission Against Corruption, the Police Integrity Commission, the Auditor-General's office and the Independent Pricing and Regulatory Tribunal.<sup>8</sup>
- 1.15 The Ombudsman would like to see 'all of the independent integrity agencies joined together and treated in the same way and independently'. This would involve direct negotiations with Treasury for budget matters.<sup>9</sup>
- 1.16 The Committee acknowledges these concerns and the effect that funding has on the Ombudsman's work and will continue to examine the impact of funding on the work of the Ombudsman as part of the Committee's future work programme.

## LICENSING

- 1.17 The Committee sought clarification from the Ombudsman on a recent media story about the use and distribution of software in the NSW public service where concerns had been raised in relation to the licensing of that software. The Ombudsman confirmed that his office, as well as the Police Integrity Commission and the Department of Attorney General and Justice, had all reached confidential settlements with the software company that raised concerns in relation to the use of its software. The Ombudsman also confirmed that there is ongoing litigation between the company and the NSW Police Force.

As a result of various negotiations and discussions, we entered into a confidential settlement in relation to the matter. My primary concern was that my organisation is an organisation that must at all times represent integrity and ethical behaviour. I did not want anybody to be in a position to suggest otherwise. Secondly, from a practical perspective, we wanted to be able to use all of our licences and, thirdly, the legal cost associated with continuing to be involved would have been far and away greater than the cost of settling the matter.<sup>10</sup>

- 1.18 The Ombudsman reiterated his position during the general meeting that he was not able to comment further on the case as it was before the courts and was a matter for the NSW Police Force.

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<sup>7</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p.8.

<sup>8</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 13.

<sup>9</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 13.

<sup>10</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 14.

- 1.19 Following the general meeting the Committee requested further information about the court case and subsequent private settlement from the Ombudsman, which he duly supplied to the Committee.
- 1.20 The Committee appreciates that technology is developing rapidly and has an important role to play in assisting NSW public sector agencies to carry out their statutory functions and responsibilities. As such, the Committee intends to continue to scrutinise the use of technology by the agencies it monitors and reviews – including the Office of the Ombudsman - on an ongoing basis.

## TASERS

- 1.21 The Committee sought further information on the Ombudsman's recent work examining the use of tasers by the NSW Police Force. The use of tasers by NSW Police has been an issue of particular public interest, with some high profile incidents being reported in the media.<sup>11</sup>
- 1.22 The investigation into taser use is significant for the Ombudsman and an investigation that required significant resources. The investigation has analysed over 1600 incidents where tasers were used and involved a detailed review of a further 632 of those.<sup>12</sup>
- 1.23 The Ombudsman describes the investigation:
- In relation to this project, I see it as being a very significant one and so I have not pulled away resources from this, and the time that this is taking is more as a result of the breadth of the work and pulling all of the information together and making sure that the information is accurate. I think in one of the questions on notice we provided some of the details, but the period that we are looking at involves analysing over, I think, 1,600 taser incidents and we have viewed the footage of over 600 TaserCam videos of specific uses. So it will be, when we table it, probably the most comprehensive review of taser use in Australasia.<sup>13</sup>
- 1.24 The Ombudsman has indicated an intention to table this report in Parliament in the months following the general meeting. The Ombudsman indicated that the report will contain recommendations on particular issues that the Ombudsman has raised with the NSW Police Force and the Ombudsman informed the Committee that the NSW Police Force response so far has been largely favourable.<sup>14</sup>

## COMPLAINT HANDLING

- 1.25 From correspondence it receives, the Committee is aware of the numerous complaints that the Ombudsman's office deals with, and the fact that some of

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<sup>11</sup> G Kwek, 'Death After Taser: Brazilian who died in Sydney named', *Sydney Morning Herald*, 20 March 2012, viewed 23 August 2012, <<http://www.smh.com.au/nsw/death.after.tasering-brazilian-who-died-in-sydney-named-20120320-1vh0o.html>>and Staff writers, 'Kings Cross shooting - how the drama unfolded', *news.com.au*, 23 April 2012, viewed 23 August 2012, <<http://www.news.com.au/national-old/kings-cross-shooting-how-the-drama-unfolded/story-e6frfkvr-1226336162893>>.

<sup>12</sup> NSW Ombudsman, *Answers to Questions on Notice*, p. 15, question 16.

<sup>13</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 7.

<sup>14</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 7.

these complainants provide significant disturbance to Ombudsman staff, or in some cases, present actual threats.

- 1.26 The Committee recognises the effective internal policies that the Ombudsman has in place for dealing with dangerous and unusually difficult situations.<sup>15</sup> This is demonstrated by the Ombudsman's contribution to various reviews of complaint handling practices in Australia and New Zealand.<sup>16</sup> The insights gained through this process have been used to develop a methodology which has since been rolled out to all state Ombudsman offices and has also assisted the Commonwealth Ombudsman in a review of his work.<sup>17</sup>
- 1.27 The Committee is impressed with the standards that the NSW Ombudsman has helped to develop and the contribution he has made to developing best practice procedures and policies. The Committee commends the NSW Ombudsman for his work in this area.

## PUBLIC INTEREST DISCLOSURES UNIT

- 1.28 As a new responsibility for the agency, the Ombudsman outlined the establishment and the workload of Public Interest Disclosures Unit. The unit is responsible for raising awareness of the *Public Interest Disclosure Act 2003* and providing training and material to support the learning needs of public sector staff as well as monitoring and auditing the way in which agencies manage these disclosures.
- 1.29 To date the unit has produced a range of educational materials and delivered training to over 5,000 staff across New South Wales.<sup>18</sup>
- 1.30 The Ombudsman noted in his responses to the Committee's questions on notice that his original estimate of the funding that would be required for this unit was significantly underestimated.<sup>19</sup> He noted that the Ombudsman's office is in the unique position of being able to improve the way public interest disclosures are handled by NSW public sector agencies, but it needs adequate funding to do so.<sup>20</sup>

## ASBESTOS

- 1.31 The Committee expressed concern to the Ombudsman about the current program for asbestos removal in schools as well as addressing asbestos-related concerns in mines.
- 1.32 The Ombudsman responded to a question on notice about asbestos removal in schools, explaining that a report, including a summary of recommendations, was due for release in April 2012.<sup>21</sup>

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<sup>15</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 10.

<sup>16</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 3.

<sup>17</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 4.

<sup>18</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 4.

<sup>19</sup> NSW Ombudsman, *Answers to Questions on Notice*, 7 May 2012, p. 5, question 6.

<sup>20</sup> NSW Ombudsman, *Answers to Questions on Notice*, 7 May 2012, p. 6, question 6.

<sup>21</sup> NSW Ombudsman, *Answers to Questions on Notice*, 7 May 2012, p. 10, question 9.

- 1.33 These recommendations were to include: an independent review of the adequacy of Department of Finance and Service procedures for ensuring compliance with contract conditions; re-auditing those school sites that had been assessed by unqualified or inexperienced people; and an independent review of the information in the asbestos surveys and registers to determine if it is reliable for the Department of Education and Communities to use in meeting the needs of the school communities.<sup>22</sup>
- 1.34 The Ombudsman noted during the general meeting that the Government has established a new entity called the Heads of Asbestos Coordination Authorities and that the Ombudsman observes and monitors the meetings and activity undertaken by this entity.<sup>23</sup>
- 1.35 The Committee expressed particular concern for the cleanup of the Woodsreef asbestos mine. During discussion at the general meeting the Ombudsman explained that while there has been money allocated to this site, it is for making it secure rather than remediating the land.<sup>24</sup> The site is the subject of ongoing discussion between the government and the local council and the best approaches to manage the site in the future.<sup>25</sup>

## CONCLUSION

- 1.36 The Committee understands that the Ombudsman's office deals with a wide range of important issues and that the Ombudsman's responsibilities need to be prioritised and managed within the available budget.
- 1.37 In addition to the general work of the Committee in monitoring and reviewing the exercise by the Ombudsman of his legislative functions, the Committee will continue to monitor with interest areas of particular public concern with which the Ombudsman is involved, including the investigation into taser use by the NSW Police Force, the investigation into asbestos and the use of software and other technology to conduct its duties.
- 1.38 The Committee will be closely monitoring and reviewing the resources available to the Ombudsman in his acquittal of his legislative functions.

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<sup>22</sup> NSW Ombudsman, *Answers to Questions on Notice*, 7 May 2012, p. 10, question 9.

<sup>23</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 9.

<sup>24</sup> Mr Chris Wheeler, *Transcript of evidence*, 18 June 2012, p. 10.

<sup>25</sup> Mr Bruce Barbour, *Transcript of evidence*, 18 June 2012, p. 10.

## Chapter Two – Answers to Questions on Notice

ANNUAL REPORT 2010 – 2011

### QUESTION ONE:

*You have now completed your first year operating under your new structure. Have you noticed any issues that have arisen during this time, either anticipated or not? Are there any further issues that have been identified through the new structure as needing attention?*

### RESPONSE:

There have been many benefits to the restructure, including but not limited to:

- Better co-ordination of external training including the development of new fee for service training courses which has substantially increased our revenue
- Improved work practices and a more co-ordinated approach to dealing with agencies and issues, particularly in our human service branch
- Better internal co-ordination and a greater focus on internal consistency of work processes and benchmarks
- Expanded delegations and responsibilities to cost centre managers (level below statutory officers) resulting in better ownership of issues and improved decision making.

There have been some unexpected issues following the restructure.

Our decision to move complaints about Juvenile Justice, Housing NSW and NSW Health from our Public Administration Division to the Human Services Branch was reviewed and changed. Although there were some benefits of having all human service matters in the one branch, it was more practical and efficient for the work to be done by our Public Administration Division.

The better co-ordination of our training and the development of new training courses identified the need to have experienced trainers available rather than use existing staff to deliver courses. Over time we have built up a pool of trainers, available on a fee for service basis, to meet the increasing demand for our courses.

Continual changes to the public sector structure has also been an issue for us, however this would have been an issue whether or not we restructured. Our case management system is based on the public sector structure and any changes have an impact on our data collection and reporting.

The reduction of senior staff positions, although necessary for budgetary reasons, has also had an impact on not only staff but on the remaining senior officers who took on greater responsibility. It has taken time for these changes to be embedded, but higher levels of delegation and responsibility to cost centre managers have minimised the risks associated with deleting senior officer positions.

## QUESTION TWO:

*You note in the earlier Annual Report that two senior positions were lost as part of the restructure. In this Annual Report you mention that two new senior positions have been created - do these effectively replace the ones lost last year?*

## RESPONSE:

Ongoing financial pressures was one reason we undertook a major restructure of the office in 2009-2010. With the planned departure of a number of statutory officers we took the opportunity to streamline our structure, better aligning our work and processes to the public sector 'super agency' structure.

We deleted two statutory officer positions – the Assistant Ombudsman (General) and the Assistant Ombudsman (Children and Young People). As the roles and responsibilities of these two deleted positions were allocated to two existing Deputy Ombudsman positions, the Ombudsman sought an external evaluation of these Deputy Ombudsman positions. This external evaluation determined that both positions should be SES Level 5, rather than the then grading of SES Level 4. The third Deputy Ombudsman position remained at SES level 4.

In answer to the question, the Ombudsman has not replaced the two deleted statutory (or senior) positions. Two existing positions underwent re-evaluation, due to the increase in work and responsibilities assigned to those positions following the restructure of the office in 2009-2010

## QUESTION THREE:

*In the Sixteenth General Meeting with the Committee you anticipated that there would be reductions in staff which would impact greatly on the amount of work the office was able to complete. Has this been your experience?*

## RESPONSE:

New roles and responsibilities that we are given by Parliament and the subsequent funding for staff to undertake these roles can mask the reduction of staff numbers in our complaint handling and in the other established areas of the office.

In figure 11 of our 2010-2011 Annual Report we advised that as at 30 June 2011 we had an effective full-time staff number of 185.19. This figure includes staff employed to undertake our public interest disclosures role as well as additional staff employed following the transfer of the child death review team to the office. In addition, we have a number of staff employed specifically to undertake legislative reviews in our police area or to work on our audit of the interagency agreement to tackle Aboriginal child sexual assault (ACSA). Funding for the legislative reviews and ACSA audit is temporary as are the staff employed to undertake these roles.

The average monthly staff number for this financial year is 183.88, a slight reduction from June 2010. However, this figure includes additional staff we have employed following Parliament's recent decision to have the Ombudsman review new police powers.

**QUESTION FOUR:**

*You mention that you have developed a new set of cross office KPIs and this project is currently in stage two of its implementation. How many stages are there and when do you expect the process to be complete and when will you commence reporting against these KPIs?*

**RESPONSE:**

Our Key Performance Indicator (KPI) project has two stages.

In stage 1 we examined how we collect, record and report complaint information from our case management system (RESOLVE). A significant amount of work was done on aligning, where possible, the like work processes of all our divisions so that we could compare performance statistics and set consistent internal benchmarks. In undertaking this review/alignment, we needed to ensure that all legislative requirements were considered.

We monitor and report our performance against these KPIs, with senior staff receiving reports monthly. We will also be reporting some of the measures in our annual report.

Stage 2 involves the non-complaints area of our work. This is more challenging as we have a number of different data capturing systems that will need to be reviewed and if possible integrated. Our small Business Improvement team is managing this project, working with the division managers and reporting to the senior officer group. A project plan, including a timeframe, will be developed following the initial scoping stage which is expected to be completed in June 2012.

**QUESTION FIVE:**

*The 2010-2011 Annual Report indicates that there has been a significant decrease in some complaint statistics compared with 2009-2010 (notably Departments and Authorities, Freedom of Information and employment related child protection). Do you have an explanation for this?*

**RESPONSE:**

Following the restructure in 2009-2010, some of the work previously undertaken by the now Public Administration Division was transferred to the Human Services Division. These matters, which related to complaints about Housing NSW and NSW Health, were reported separately in 2010-2011 but were included in the Department and authorities subject area in previous annual reports.

As can be seen from figure 2 in the 2010-2011 Annual Report, there were 386 human services agencies matters finalised in 2010-2011. If this figure was included with Department and Authorities, as it was in previous years, the total finalised figure for Departments and authorities would be 1,768 an increase of 354 matters or 25% over the previous year.

Freedom of Information (FOI) complaints reduced in 2010-2011 as a consequence of changes to the access to information regime in NSW. Following the commencement of the

*Government Information (Public Access) Act 2009*, the Information Commissioner is responsible for dealing with these types of complaints.

The reduction in the number of matters finalised in our employment related child protection division (figure 2 in the 2010-2011 report) is directly related to the reduction in the number of matters received. This reduction was expected and resulted from the office entering into agreements (known as class and kind agreements) with certain agencies who have demonstrated that their investigative practices have reached an acceptable standard and we are confident that these practices will continue. There are legislative provisions that allow us to do this. We are able to focus our resources on the more critical matters, giving greater priority to serious allegations. Our direct investigations in the employment related child protection division increased from four in 2009-2010 to ten the following year.

#### QUESTION SIX:

*How has the establishment of the Public Interest Disclosures Unit affected your operations, in terms of both staff and financial resourcing as well as overall business outcomes?*

#### RESPONSE:

The NSW Ombudsman has been an investigating authority under the former *Protected Disclosures Act 1994*, now the *Public Interest Disclosures Act 1994* (PID Act) since it came into force in 1995.

Amendments to the PID Act in 2011 saw the statutory role of the Ombudsman expand to include the following functions:

- promoting public awareness and understanding of this Act and promoting the object of this Act,
- providing information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to this Act,
- issuing guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under this Act,
- issuing guidelines and other publications for the assistance of public officials in connection with the protections afforded to them under this Act,
- monitoring and providing reports (monitoring reports) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities,
- auditing and providing reports (audit reports) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities,
- providing reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act
- acting as Chair of, providing secretariat support to and reporting on the work of the Public Interest Disclosures Steering Committee.



The Ombudsman has established the Public Interest Disclosures Unit (PID Unit) within the Public Administration Division of the Office of the Ombudsman to perform these functions.

To date, the PID Unit has:

- acted as secretariat to the Public Interest Disclosures Steering Committee, which recently met for the third time.
- developed and published over 40 hard copy and on-line publications;
- delivered specialist training, including targeted e-Learning, to thousands of public sector employees;
- delivered promotional material, addresses at forums and workshops;
- developed programs for monitoring and auditing compliance with the Act;
- established a global research program to deliver best practice in legislation, policy, publications, investigation methodology, evaluation, promotions and training and
- developed an on-line reporting tool for agencies.

Post the initial implementation; we are now moving into the auditing, monitoring and reporting phase, as well as providing the on-going advice, training and guidance to agencies and staff and providing support to the PID Steering Committee.

In 2010-11 funding was provided for the establishment of the Unit. In our initial funding application the Ombudsman flagged that he was submitting a conservative estimate and he was likely to seek additional resources for this important role. Due to the demands of agencies for greater support and the increasing number of complex and serious disclosures being made to this office, additional funding was sought as an enhancement in our 2012– 2013 budget allocation. However, our supplementation request was denied.

It is now this office's view that the original budget estimates were significantly underestimated when considering the scope of the new role and the resources required to effectively perform the new functions and the extra work arising out of these functions. Some of the change drivers and hidden costs that have impacted on the office's original Public Interest Disclosures function budget estimate are:

- As a result of the greater awareness of the objects of the Public Interest Disclosures Act 1994, there appears to be more confidence in the system of reporting wrongdoings in public authorities. Early trends indicate a significant increase in the seriousness and complexity of disclosures made to this office. Many of these disclosures have been made by more senior staff of agencies. This was our previous experience
- The increase in disclosures to the office has meant that additional resources are required for dealing with these disclosures, including conducting investigations. This has impacted on our complaint handling staff in all divisions and branches. The office is also proposing to provide conciliation services, as envisaged by recent legislative amendments. To be able to establishing this service will require an initial investment of funds to recruit appropriately skilled conciliators.

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- The changes to the legislation have increased obligations imposed on heads of agencies and their staff. This has been further complicated by the former Super Agency now Principal Agency bureaucratic structure. The PID Unit has supported public authorities by establishing a framework including model policies, guidelines, fact sheets, etc. However, it is evident that authorities require significant support in embedding the framework into their organisations. Without this support, agencies will suffer significant costs including industrial/staffing dislocation, particularly if disclosures are not managed effectively.
- There is an increasing call for the provision of e-learning modules as an alternative and cost effective method of reaching broader audiences unable to attend facilitated sessions in the short term. This type of learning will enable public servants to view material at convenient times and reduces lost time due to having to attend structured training, etc. We are currently in the process of releasing our second and third e-learning modules but had planned to enhance these modules with video clips.
- Training feedback and enquiries to date have highlighted a significant deficit in terms of agency investigative capacity and capability. Research has shown a correlation between an agency's investigative capability and higher rates of serious and repeat reporting, reinforcing the crucial importance of good investigation practice and capacity. There is an existing need for the development of an accredited administrative investigations course in collaboration with an external learning facility.

This office is in a unique position to assist agencies to improve NSW public administration by dealing effectively with public interest disclosures. However, we do not have the resources to do so.

**QUESTION SEVEN:**

*You note that one of the goals you did not meet over the 2009-10 year was the review of internal procedures manuals. Can you provide a progress update of when you expect this review to be completed?*

**RESPONSE:**

Procedure manuals have been developed over the years for each area of the office and are used by staff to guide them in their work.

Following the restructure and other reviews of work processes and practices (for example the review undertaken for the key performance indicator project) it was decided that a comprehensive review of our procedure manuals was required.

Each division is tasked with keeping its manuals up to date, with most conducting reviews on a set basis eg each year. Some however undertake progressive reviews eg a section at a time or ad hoc reviews when a policy or procedure changes.

## QUESTION EIGHT:

*Can you explain your understanding as to why complaints from public housing tenants have substantially increased this year (up 39% on the previous year)?*

## RESPONSE:

Complaints to this office about Housing NSW have steadily increased over the last 5 years. The proportionality of the issues, however, remains generally stable. The top 5 issues are:

- contractual issues, such as maintenance
- customer service
- complaint handling
- approvals (applications)
- charges and fees (rent and utility calculations)

Changes over the last 5 years that likely contribute to the increase in contact with us are:

- Changes in tenancy contracts from lifelong to defined terms. This was in recognition that circumstances change and a tenant may not always require housing assistance.
- Introduction of tenant water charges for public housing tenants.
- National Building Economic Stimulus Program including forced relocation of longstanding tenants to allow redevelopment of outdated properties.

Housing NSW has undergone significant change in recent times:

- Moving into the Department of Human Services.
- Introducing Housing Pathways, including the reallocation of assets under management (tenancies) from Housing NSW to community housing providers
- Upgrades in technology, e.g. new database HOMES.
- Outsourcing of property maintenance.

The identified complaint increase from 2009/10 to 2010/11 is approximately 3 times the overall rate of increase in contact with the Ombudsman's office during this period. Including informal complaints, Housing NSW tenants contacted us 1167 times in 2009/10 and 1324 times in 2010/11, an increase of just over 13%. The increase from 2008/09 to 2009/10 was just over 14% and current year to date we are looking at an increase of around 5%.

We have seen an increase around application approvals and customer service, with the former seemingly a 2010/11 spike as it has returned to more normal levels to date this year. We are aware that the introduction of the HOMES database caused some teething problems in processing applications. Another factor in complaints about applications is refusal for the type of assistance applicants want because Housing believes the applicant can satisfy their own housing needs. In short, Housing believes they can obtain private rentals.

There does not appear any one single identifiable cause for an increase in customer service complaints, however, anecdotally our complaints and inquiries indicate a level of dissatisfaction with the Housing Contact Centre (HCC) and clarity between the reporting of problems, communication and the resolution of the reported problem. We are currently unclear who takes responsibility for the 'management' of an issue when reported to the HCC

and have contacted Housing NSW to arrange a visit to the HCC and a branch office to understand practically how this process works.

One of the internal factors impacting on the number of complaints we record is the 2005 amendment to our legislation enabling us to accept complaints orally. We exercise this power regularly in relation to Housing matters where we assess that an imminent impact on a complainant may be unreasonable, such as an alleged failure by Housing to complete urgent maintenance to a property, like securing a property or repair plumbing etc.

We also exercise this power where we believe the person is vulnerable and/or unable to pursue the matter sufficiently themselves, such as youth complainants or those with mental illness, cognitive disabilities or personality disorders.

In 2006/07 we accepted about 50 complaints this way, last year that number was over 70 and this year's forecast is over 90. Our Annual Reports often include case studies of complaints taken this way.

We are committed to maintaining regular direct liaison with senior Housing NSW staff to resolve informal complaints and to exchange information that assists both us and them in our work, including discussion around systemic change that enables our complaint handling staff to respond to public housing tenants' complaints.

We have commented in our last two annual reports about the transfer of public housing assets, and their respective tenants, to community housing providers and our lack of jurisdiction. Housing NSW published in its last year's annual report (to 30 June 2011) that community housing organisations manage 48,680 social housing tenants, which is just under 15% of all social housing tenants in NSW. This is an increase of over 25% in the last 4 reporting years alone.

These tenants cannot complain to this office under the Ombudsman Act 1974 about the community housing provider, like a public housing tenant can about Housing NSW, because such providers do not meet the definition of a public authority. While certain aspects of community housing providers work falls under Community Services (Complaints, Review and Monitoring) Act, it is a very small group and for very specific functions. The issues we handle about Housing NSW, including the top 5 listed above, are not matters that we can independently review and informally resolve in relation to community housing providers.

This is an ongoing concern. In 2006/07 we recorded 8 contacts about community housing organisations. This has increased over time to 72 in 2010/11 and 59 so far this reporting period.

Section 67B(c) of the Housing Act 2001 sets out that the Registrar of Community Housing is to '...investigate complaints and other matters in respect of registered community housing providers'. The registrar to date appears to exercise this function through its regulatory role of ensuring compliance with the Housing Act, and specifically the regulatory code set out in Schedule 1 of the Housing Regulation 2009.

It is reasonable to expect that the sorts of issues Housing NSW's tenants currently contact us about exist with community housing providers. Considering the increases we have

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experienced, we believe it would be unlikely that the registrar's existing resources could manage the related complaint load from community housing tenants, let alone an expected increase. However, many of the matters are suitable for informal resolution, like the matters we current resolve with Housing NSW.

We will continue to refer such complaints to the registrar and monitor their handling, however we hope this issue can be resolved so that all social housing tenants in NSW have direct access to the complaint and resolution processes of this office.

The tables on the following page show the breakdown of issues over the last 5 years, the number of contacts (both Complaints and Enquiries) and the growing contact form social housing tenants about Community Housing providers:

Issue/year	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12*	total
APPROVALS	20	31	25	21	70	34	201
CHARGES/FEEES	19	28	23	29	32	17	148
COMPLAINT HANDLING	44	44	41	42	41	59	271
CONTRACTUAL ISSUES	52	81	85	95	95	94	502
CUSTOMER SERVICE	50	86	86	67	101	108	498
ENFORCEMENT	6	4	7	6	11	11	45
INFORMATION	13	17	9	10	16	14	79
MANAGEMENT	1	2	8	13	9	11	44
MISCONDUCT	8	4	2	4	5	0	23
NATURAL JUSTICE	0	3	1	1	4	1	10
NJ->CONDUCT NJ	3	2	6	2	0	0	13
OBJECT TO DECISION	12	23	20	17	33	20	125
OTHER	0	0	1	9	11	0	21
POLICY/LAW	6	2	7	3	4	7	29
	234	327	321	319	432	376	

**5 year contacts about Housing NSW comparison**

Year	E	C	Oral <sup>^</sup>	Total	% ch yr/yr
2006/07	699	155	52	854	3.02%
2007/08	877	224	60	1101	28.92%
2008/09	829	187	51	1016	-7.72%
2009/10	930	237	46	1167	14.86%
2010/11	1015	309	72	1324	13.45%
2011/12*	1084	300	97	1384	4.53%

**5 yr contact about Community Housing**

2006/07	8
2007/08	20
2008/09	52
2009/10	42
2010/11	72
2011/12*	59

**\*forecasted on complaints rec'd year to date**

**^oral complaint numbers are included in the Complaint and Total numbers**

**QUESTION NINE:**

*You conducted an investigation into the management of a contract by the Department of Services, Technology and Administration for asbestos surveys in schools. Have you completed this investigation and what were the outcomes?*

**RESPONSE:**

Our final report is due to be released to the Minister for Finance and Services by the end of April 2012. We found that a large number of asbestos surveys of schools in 2007/2008 were conducted by unqualified and inexperienced persons and that this did not comply with the contract conditions for the project. We will be recommending:

- An independent review be conducted of the adequacy of the Department of Finance and Services procedures for monitoring and ensuring compliance with contract conditions.
- An independent review be conducted to ascertain if information from the school asbestos surveys and in asbestos registers enables the Department of Education and Communities to be satisfied it is meeting its OH&S and common law duty of care obligations to students, staff, people who conduct work on school premises and other users of schools.
- School sites assessed by unqualified/inexperienced persons be re-audited.

**QUESTION TEN:**

*You mention the difficulties involved in correctly assessing complaints made through phone calls by inmates in the correctional system. Do you have any data that would help assess the value and outcomes of these calls? Are you able to identify any improvements or changes that could be made to the way the system operates?*

**RESPONSE:**

Assessing an inquiry or complaint within a 10 minute phone call can sometimes be difficult. The most important strategy we have in place to address this is having expert staff available to take the calls, make the assessment and provide relevant advice/information. We discussed

this issue in the annual report to inform the Parliament, the Committee and the community generally about how we do our work, and to highlight the importance of having specialist staff working in this area. As would be expected many of our contacts in the custodial services area can be adequately dealt with in the 10 minutes and so our real challenge is devising strategies to deal with those which cannot. To this end we also discussed a little further into this part of the report some of the other challenges of working with those in a closed environment and noted that each of these challenges contribute to the ongoing need for - and relevance of - our regular visits to correctional centres. This part of the annual report chapter was designed to demonstrate the need for a 'whole' approach to oversight of the custodial environment – experienced staff, knowledge of the custodial system, visible presence in the custodial environment.

The value of the contacts we receive over the phone, and the outcomes we achieve, is easily reviewed using information extracted from our complaints database. Before that, however, a brief explanation is needed - we classify our contacts (whether they are received by phone, on a visit or in writing) as either formal or informal. Formal contacts are those on which we take some action, informal contacts are those where we provide advice or referral to another agency or some more appropriate way of dealing with the issue.

During the 2010/2011 reporting year we received 865 formal contacts, 440 by phone (50%) and a total of 3352 informal contacts, 2830 by phone (84%). Apart from speaking to our staff on visits, the phone is the preferred method of contact for those in custody. This is unsurprising given the generally acknowledged low literacy levels of the inmate population and that complaints about custodial matters often require an immediate intervention as the consequences are not always easily mitigated at some later time.

In terms of the formal phone contacts on which we took direct action there was a positive outcome in 74% of the issues. Details are as follows:

- 193 Resolved outright
  - 1 Suggestion made to agency to resolve issue
- 184 Inquires made and substantial advice given but no evidence of wrong conduct
- 15 Inquiries made and advice to complainant, no formal finding of wrong conduct
- 4 Inquiries made and no further action was required

It would of course be simple to suggest that the time limit on calls to our office from correctional centres be lifted but we do recognise that for all the challenges it presents us, the 10 minute limit is a practical response to managing access to phones, as well as the cost of calls. We also need to consider that we are one of several 'freecall' agencies inmates need to contact. An ability to easily make arrangements for specific inmates to have access to an untimed phone location to receive a call from our staff would improve the situation on some occasions.

Overall, however, experience has shown our best strategies for managing these challenges is to maintain a group of specialist staff to respond to the calls we receive, and to continue to regularly visit correctional centres where we can talk to inmates about their issues, identify

further systemic issues and generally observe the operations within the custodial environments.

**QUESTION ELEVEN:**

*You express serious concern about the beds in Grafton Correctional Institution and the fact that they provide hanging points for inmates. You note that the Commissioner has implemented some harm minimisation procedures but you wish to see more. Can you update us on what progress has been made on this issue?*

**RESPONSE:**

We are not aware of any further progress on this issue – we are visiting Grafton Correctional Centre on 2 May 2012 and will once again review the accommodation areas. As the Committee would have noted from the discussion in the 2010-2011 Annual Report, this is not the first time we have raised concerns with the Commissioner of Corrective Services about accommodation at Grafton. While on this occasion (ie following our visit of February 2011) it was a concern about the ‘hang points’ some beds presented, in a previous report (2006-2007 p108) we wrote about the privacy and dignity issues when adult men must live in dormitory style accommodation in the minimum security units at Grafton.

Each time we have raised these issues with Corrective Services NSW we have been told the accommodation is ‘fit for purpose’. In response to our concerns about hanging points, we were referred to the overall policies and procedures they have in place for managing offenders at risk of self harm. We acknowledge these policies and procedures are generally comprehensive but maintain the view that no measurement of risk can totally remove the potential for self harm, including spur of the moment decisions made by inmates who are not generally considered to be at risk, in the way that removing the opportunity to hang themselves can.

Grafton Correctional Centre was built in 1893 and much of the current accommodation was gradually constructed over the ensuing century. None of it is recently built. The changes required at Grafton are wholesale. Several years ago the government of the day identified Grafton as a centre which would be replaced by a new regional centre. We understand a feasibility study and business case was submitted to the then Cabinet but no approval or funding was given for the proposal to proceed. It is important to the overall effective operation of the correctional system for a correctional centre to be maintained in the Grafton area and unfortunately the current centre continues to struggle with existing facilities.

**QUESTION TWELVE:**

*You refer to a report you previously conducted into Manly Council’s poor administrative practices and indicate that the Council only partially acted on your recommendations. In your continued monitoring of their actions have you been satisfied that there is a significant improvement?*

**RESPONSE:**

24 recommendations were made to Manly Council in relation to the investigation we reported in our Annual Report. Some related to redress to the complainants both in the form of



apologies and compensation. Many of the recommendations related to improving administrative policies and practices. Council declined to comply with two of our recommendations that related to apologising to one of the complainants, and to providing them with compensation.

Throughout the reporting process, the Council has provided this office with substantial detail relating to a number of new and amended policies to improve the consistency and quality of their decision making. In conjunction with these new and amended policies, Council provided evidence of the rolling out of these policies with Council-wide staff and councillor training.

We conducted an audit in September 2011 to determine how the roll out of these policies and training programs has affected the Council's administrative practices. This involved attending Council's office, viewing Council's complaint handling files and talking about these processes with the on-ground staff involved with these issues. It became clear to us that the staff were quite positive about the new policies and the training they received, and consistently agreed that they felt their decisions were more reliable and they were confident in the way they made decisions with clearer processes in place.

Concurrently with our own monitoring, and in accordance with another recommendation made by us, the DLG conducted a promoting better practice audit at the Council, and their report about Council's governance, policies and procedures further provided reassurance of the improvements at the Council.

We continue to monitor the Council's performance through the complaints we receive. Each complaint is assessed on its merits and the evidence available. To date, there has been no further evidence that would warrant our further investigation of the Council's performance.

#### QUESTION THIRTEEN:

*You describe the Professional Standards Command as often investigating police misconduct complaints in an informal manner, an approach you do not agree with. Do you have data supporting the use of one type of investigative method over the other, or that indicates higher rates of satisfactory resolution?*

#### RESPONSE:

Since last year's annual report we have had further consultation with the Professional Standards Command (the PSC) about this issue. In December 2011 the PSC published a revised edition of the *Complaint Handling Guidelines* which made it clear that commanders have discretion to determine an appropriate level of investigation for complaints. This is a positive change that may address some of our concerns.

In our annual report 2011- 2012 we reported the number of complaints investigated formally and informally by the NSWPF. This table indicates the increased use of informal resolution over the last three reporting years.

**Figure 41: Action taken in response to formal complaints about police that have been finalised**

Action taken	08/09	09/10	10/11
Investigated by police and oversighted by us	1,395	1,145	1002
Resolved by police through informal resolution and oversighted by us	443	751	979
Assessed by us as local management issues and referred to local commands for direct action	468	340	398
Assessed by us as requiring no action (eg alternate redress available or too remote in time)	788	857	899
<b>Total complaints finalised</b>	<b>3,094</b>	<b>3,093</b>	<b>3,278</b>

In our annual report 2011- 2012 we also reported the overall number of complaints that were not investigated or resolved in a satisfactory manner:

*We closely reviewed the quality of the way police investigated or resolved complaints, and found that 1,645 (83%) had been handled satisfactorily. However in 333 matters (17%) we considered the handling of the complaint to be deficient. Of these, 157 matters were deficient only because there were unreasonable delays in investigating or resolving them.*

We are aiming to enhance our data collection about unsatisfactory informal resolutions so that we can analyse this issue in more detail.

#### QUESTION FOURTEEN:

*You mention 100 matters that you discovered through audits of police records which the Ombudsman was not notified about and should have been. Have you been able to follow up on the outcomes of these issues? Is this number of complaints being improperly registered acceptable?*

#### RESPONSE:

Every year the Ombudsman undertakes audits of police complaint records to inspect and check for compliance with the complaints legislation, policy and our class or kind agreement.

Section 160 of the Police Act continues to be an effective tool for the purpose of scrutinizing the complaint handling system to identify complaints about serious police misconduct which have not been accurately assessed and registered onto C@tsi, the police complaint database by NSWPF (for whatever reason).

The 100 complaint matters referenced in our 2010/2011 annual report includes the results from internal audits of the police and Ombudsman complaint databases and our visits to identified commands where Ombudsman officers are able to physically interrogate and inspect the command's complaint management recording systems. The audit process also gives us

opportunity to share good practice examples, identify poor practices and emerging patterns and concerning trends.

In our view the 100 complaint matters identified during our audits over the financial year is proportionately insignificant when measured against the 5,000 odd complaints received (at over 100 commands) about the alleged misconduct of police officers during a year. At this time we have no concerns and consider the number (and percentage) acceptable, particularly when allowing for human/administrative error at the local level. Overall there is very good compliance by NSWPF however the findings do highlight the importance of having a continuing audit program.

We provide formal written advice to NSWPF of our assessment decisions (that a complaint appears to be of a type which requires the oversight of this office) and the reasons why we consider the police complaints database needs to be amended and further inquiries to be conducted. We follow up with each of the commands and provide a final report on the agreed outcomes.

The auditing process allows for NSWPF to disagree with our assessment decision however in the vast majority of matters are reclassified and notified to this office without further negotiation or disagreement.

#### QUESTION FIFTEEN

*You provided your audit report to NSW Police on the PoliceLink Command in June 2011. Have you received a response to this report yet?*

#### RESPONSE:

We have received a response from NSW Police. We have met with Police recently regarding their response and will finalise this audit report in the near future. We have experienced two delays in finalising this report due to unexpected staffing absences.

#### QUESTION SIXTEEN:

*The use of tasers by the Police Force has been an issue you have been monitoring over the past few years. In this Annual Report you provide detail of a substantial review into the use of tasers, drawing on both the international experience and domestic records. Can you provide an update to the Committee on the status of this research?*

#### RESPONSE:

Our investigation into the use of tasers by general duties police is ongoing. In October 2011, after considering 1668 taser incidents (which occurred between 1 October 2008 and 20 November 2010) and conducting a detailed review of 632 incidents, we wrote to NSW Police regarding some issues and queries, and the application of the Standard Operating Procedures. We have received a response from NSW Police and are currently finalising our investigation report.

#### QUESTION SEVENTEEN:

*You have reporting responsibilities in relation to the Terrorism (Police Powers) Act 2002 the Law Enforcement (Powers & Responsibilities) Act 2002 and the Crimes (Criminal Organisations Control) Act 2009. Could you provide the Committee with an overview of your activities in relation to this, any conclusions you have reached and any recommendations you have made.*

#### RESPONSE:

The Ombudsman reported to the Minister for Police and the Attorney General about the operation of Parts 2A (Preventative Detention Orders) and Part 3 (Covert Search Warrants) of the *Terrorism (Police Powers) Act 2002* in August 2011. The recommendations made by the Ombudsman are set out in the report which is available on the Ombudsman's website. Our next report is due in December 2013. We will continue to monitor the implementation of recommendations from the August 2011 report and keep under scrutiny any use of the powers by police under Part 2A and Part 3. The Commissioner must notify the Ombudsman of any preventative detention orders made under Part 2A.

The Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers under Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002* which relates to Emergency Powers- Public Disorder. The Ombudsman includes a report about these activities in the annual report.

Section 39 of the *Crimes (Criminal Organisations Control) Act 2012* requires the Ombudsman to review and report on the operation of the powers conferred on police under this Act. The Ombudsman is to report to the Minister as soon as practicable following 4 years of the operation of Act which commenced 21 March 2012. We have not made any recommendations as the review has only recently commenced. We have started consultation with the NSWPF about an information agreement for the review and are recruiting project review staff.

#### QUESTION EIGHTEEN:

*You mention a draft policy released by Community Services for unaccompanied children in homeless services and several concerns you have in relation to this policy. Have you had any feedback on the development of the policy or your concerns?*

#### RESPONSE:

In September 2010, Community Services provided us with a copy of its draft policy, '*Assisting unaccompanied children under 16 years who are in SAAP youth accommodation services*'. We reviewed the draft policy and provided feedback to Community Services, noting that overall, the policy was largely equivocal about when the agency will offer support and the nature of financial and casework support that will be provided.

We also raised specific concerns about whether the draft policy provided adequate guidance to staff in assessing the individual needs and circumstances of children presenting to homelessness services and whether it adequately promoted the sharing of information to promote the safety, welfare and wellbeing of young people.

Following receipt of our feedback, Community Services committed to revise the draft to take account of the concerns we had raised.

In April 2011, Community Services provided us with a copy of its revised draft policy, however, we remained concerned that it too narrowly defined the circumstances in which homelessness services could contact Community Services for support, that is, only to children under the parental responsibility of the Minister, or with an open case plan at Community Services. In the context of an increased emphasis on shared responsibility, we argued that specialist homelessness services should be encouraged to contact Community Services where contact is appropriate, including, but not limited to the following circumstances:

- when risks are apparent and the service requires information and/or advice from Community Services to inform their risk assessment and related decisions about how best to provide support;
- when the presenting risks are so high that the service is unable to meet the child's needs and the service determines, on reasonable grounds, that Community Services may be best placed to meet all (or some) of these needs; and
- when children are residing at the service without parental knowledge or consent, and consistent with s.122 of the *Children and Young Persons (Care and Protection) Act 1998*, the service need advice and/or assistance from Community Services in determining the nature of the contact which should be made with the parent.

In addition, we were also concerned that the draft policy required children to have been residing in a specialist homelessness service for three months before they were deemed abandoned and at risk of significant harm. We said any assessment of risk should be based on a child's individual circumstances.

In August 2011 and in response to the issues we identified, Community Services undertook to make further revisions.

In addition, our August 2011 special report to Parliament, *Keep Them Safe?* stressed the critical importance of developing a policy and practice framework for supporting vulnerable older children and adolescents— particularly where there is evidence of serious physical or sexual abuse; significant risk of death from abuse, neglect or suicide; or a lack of the basic necessities of life.

Following the tabling of *Keep Them Safe?* a Ministerial Adolescent Working Group has been formed to look at how service systems and supports for “at risk” adolescents and their families can be strengthened and improved.

We will continue to monitor the actions taken by relevant agencies to address the issues we identified in our *Keep Them Safe?* report, including actions to improve responses to vulnerable young people such as those residing in homelessness services. In this regard, we are currently reviewing a number of matters that are illustrative of our concerns and will refer our findings to Community Services and Minister's Adolescent Working Group to inform their work.

## QUESTION NINETEEN:

*In the Sixteenth General Meeting with the Committee you stated that you would actively monitor issues arising from a review of large Department of Ageing, Disability and Home Care residential centres. What outcomes have you seen as a result of this?*

## RESPONSE:

Since 2009, we have been monitoring ADHC's actions to address the issues raised in our review of 60 individuals living in the agency's large residential centres. In August 2010, we tabled a report in Parliament, *People with disabilities and the closure of residential centres*, which highlighted evidence from our work that showed that the existing residential centre model restricts the rights and opportunities of the people with disabilities who live there. We emphasised the critical need to progress the devolution of large residential centres, and made recommendations aimed at achieving this outcome.

Subsequent to our report, the second phase of *Stronger Together* included the commitment to close all ADHC operated and funded residential centres by 2017/18. We are monitoring ADHC's actions to progress the closure of the remaining centres, and will continue to do so until the work is completed.

A key element we are monitoring is ADHC's actions to ensure that people with disabilities living in the residential centres, their families, and other representatives, have meaningful and direct involvement in the planning for the closure of those centres. As part of this work, we have had involvement with the Metro Residences Family and Friends Group, and have provided independent scrutiny and analysis of consultation surveys undertaken by ADHC and the Family and Friends Group.

We are currently reviewing ADHC's most recent report to us on its actions to progress devolution and to ensure that residents and families are partners in this work. Our assessment will include consideration of the extent to which ADHC and funded services have:

- advanced the planning for closure and transition to community-based accommodation options;
- developed clear strategies for working in partnership with residents, families and other stakeholders in this process;
- identified the need for, and facilitated access to, independent advocates to support residents to have meaningful involvement as early as possible; and
- ensured that person-centred and flexible approaches to support are reflected in the planning process.

**QUESTION TWENTY:**

*Regarding the shift in responsibilities that has seen you take over as the Convenor of the Child Death Review Team, are you confident that you are able to perform the associated functions effectively?*

**RESPONSE:**

Yes. We have fully established the function within the Ombudsman's office, properly constituted the Team, produced a statutory annual report and have commenced work on a number of projects to further the capacity of the team to undertake relevant research.

**QUESTION TWENTY ONE:**

*Is the funding you have received for the Child Death Review Team component of your work sufficient?*

**RESPONSE:**

In September 2009, we provided an estimate of what we believed would be the minimum level of funding to perform the CDRT functions. We estimated this to be \$539,000 per annum. As we have progressed the work however, it has become apparent that this level of funding is not sufficient to meet necessary staffing and infrastructure costs.

Staffing

Our initial view was that the work could be undertaken with the addition to the existing reviewable death staff team of:

- One grade 9/10 position to supervise review staff and manage the research / reporting process
- Two grade 7/8 review officers, to undertake reviews
- One grade 3/4 position to manage correspondence, records and resource CDRT members

In addition, we estimated a cost of approximately \$150,000 for expert coding of cause of death and collation and analysis of data for reporting.

We have now had the CDRT function for over a year.

Since the transfer, we identified a need to upgrade positions, particularly in relation to research needs. We have created two senior positions of Principal Review Officer and Principal Research Officer, and increased the number of substantive review officer positions to five, with an additional temporary position.

Our establishment staff costs for CDRT related work are approximately \$800 000. Not all positions are filled.

Team members have proposed a range of valid research priorities that, to properly undertake and promote resulting prevention initiatives, will require strong staff support in addition to the buy-in of relevant high level expertise.

Infrastructure

In addition, we have identified significant infrastructure needs.

Of critical importance is the need to review and likely rebuild the Child Death Register.

The register has outgrown its original platform and does not provide a system that has the maturity to meet the longer-term needs of the CDRT. The database became unwieldy due to size, and to address this in the interim, it has been separated into two parts. The system has limited reporting and analytic capability, and no workload management function. Aside from technical issues, the data capture is also inconsistent and new well constructed specifications are required.

We have recently completed stage one of a proposed three-stage process to determine business requirements and implement an electronic solution that supports the current and future needs of the CDRT and reviewable deaths. Stage one has produced a requirements specification. Stage two and three are at present, unfunded. The costs of building a new and effective technology solution are likely to be substantial.

#### Forward plans

We have been able to meet additional staff costs, and costs associated with using external experts to undertake required developmental work through enhancement funding provided by the government. This funding is a temporary allocation to 2014/15 of \$500,000 per annum to support our work relating to children at risk and child deaths. Part of this funding has been allocated to CDRT work.

Given the resourcing needs described above, particularly related to technology solutions, we will be seeking additional funding as part of the 2013-2014 budget cycle.

#### QUESTION TWENTY TWO:

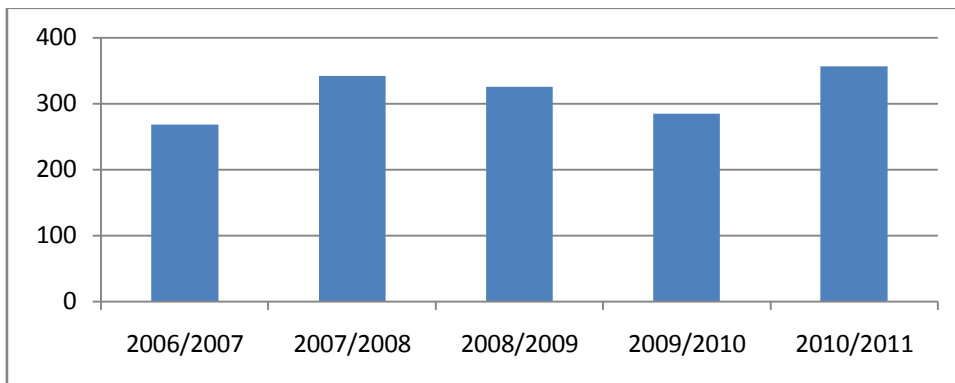
*You note a 25% increase in complaints on behalf of young people in juvenile justice centres for this year compared to the previous. Do you have any explanations for this?*

#### RESPONSE:

It is often difficult to speculate on why complaints increase – or decrease – over any given reporting period. In custodial environments there are occasionally significant systemic issues, such as overcrowding, reduced access to amenities and the like, which can account for an upward trend. In areas where the overall numbers are comparatively small – such as Juvenile Justice - one significant decision in one centre could potentially lead to many young people contacting us about the one problem causing an apparent spike.

A review of complaint/contacts from young people in Juvenile Justice Centres over a range of recent years provides some evidence of variable complaint trends.





While the increase between 2009/2010 and 2010/2011 was 25%, the actual difference was only 72 contacts. It is our view the increase was not a result of any specific problems within the juvenile justice system and conversely seems to have been a return to similar levels for previous years, with the low level in 2009/2010 being the anomaly. For the four years up until 2009 we had consistently held concerns, and reported on, the serious levels of overcrowding in the juvenile justice system. By 2009/2010 this had been addressed by the opening of the Emu Plains Juvenile Justice Centre which had given the system a small amount of additional space and reduced the pressure on bed availability.

Of course it is also important to note that contacts received from and on behalf of young people in the juvenile justice system is only one way in which we keep the system under scrutiny. Our visits to the centres also play an important part in keeping abreast of issues, as does our legislated role of reviewing notifications of all young people segregated over 24 hours to ensure these young people are appropriately managed.

### QUESTION TWENTY THREE

*The Young People in Custody Health Survey 2009 highlights many social and environmental risk factors for young people. You state that you are keen to monitor the actions and strategies that relevant agencies are implementing to support these young people. Have you been able to actively monitor or assess any such strategies? How do you plan to do so?*

We are always keen to monitor the impact of significant reports about how government could best provide comprehensive and complementary services to vulnerable members of our community. In regard to the Young People in Custody Health Survey 2009 we reviewed our ability to formally monitor the way in which the various agencies involved would take account of the key findings outlined in the survey report. Our priorities must of course match our resources and with the office already heavily involved in other significant wide ranging reviews, such as our work on Aboriginal child sexual assault, and other specific investigations in the custodial services area, we have not been in a position to undertake a formal review. During our visits to juvenile justice centres we routinely discuss ways Juvenile Justice links young people into services they require, including those undertaken in conjunction with other agencies.

#### QUESTION TWENTY FOUR:

*You anticipated a considerable impact on your office from the changes to children's care services regulations (particularly those relating to day care) at the beginning of 2012. Can you elaborate on the impact this is having and how you are coping with it?*

#### RESPONSE:

On 1 January 2012 the new national regulatory framework for education and care services (formerly known as children's services) came into operation.

One of the key changes arising from the introduction of this framework is the inclusion of out-of-school hours services (OOSH) within national regulation. This means that the 1,400 services providing out-of-school hours care now fall within our employment-related child protection jurisdiction.

We anticipated that the knowledge base for OOSH services coming into our jurisdiction for the first time would be minimal. Since the national regulations commenced in January 2012, we have received only two notifications of reportable conduct from OOSH services, reinforcing our view that there is a real need for targeted education and training for this large and disparate group of services.

Unfortunately, this office has not been resourced to manage the potentially significant demand that is likely to arise as child protection awareness within the sector increases.

Under the *Education and Care Services National Regulations*, approved providers are required to ensure that staff are informed about current child protection law. We are keen to see the development of strategies to promote enhanced awareness amongst the education and care services sector in relation to their child protection responsibilities. We have liaised with the Department of Education and Communities about potential opportunities for us to work with them to promote this awareness and to raise the knowledge and skills of approved providers so that they are equipped to respond appropriately to reportable allegations and other child protection concerns. We will continue to promote the need for initiatives in this area.

#### QUESTION TWENTY FIVE:

*The 2010-2011 Annual Report makes particular mention of reports into 'Restoration of Children on short term care orders' and 'Deaths of people with disabilities in care' Could you provide the Committee with an update on the implementation of your recommendations and any strategies that may have been adopted to address the issues highlighted in the reports.*

#### RESPONSE:

##### ***Restoration of children on Short Term Care Orders***

We provided our final report of the group review of children on short term care orders with a view to restoration to the Minister and agencies in April 2011. We made the following recommendations:

1. Community Services' review of its restoration practice should ensure the advice/guidelines and training available to caseworkers ensures that relevant staff have key competencies to:
  - a. Prepare care plans where the goal is restoration that:
    - i. include minimum outcomes that are appropriate to the child's circumstances and needs and address the issues that led to the child entering care;
    - ii. detail the services and supports required to support restoration;
    - iii. specify how the changes required of parents will be assessed.
  - b. Adequately present to the Children's Court the rationale for the permanency plan.
  - c. Know when it is appropriate to seek supervision orders following care orders.
  - d. Know when it is appropriate to include what supports are required, not just to facilitate the child going home but also after the child has gone home.
2. By 30 June 2012, Community Services should:
  - a. Provide this office with a progress report on its Restoration/Preservation and Family Supervision project.
  - b. Advise this office of the agency's progress to review the restoration advice/guidelines and training available to caseworkers and other relevant staff.
3. By 30 July 2011, Community Services should advise this office of the outcome of the agency's Legislative Review Unit's consideration of whether an amendment to section 76 of the *Children and Young Persons (Care and Protection) Act 1998* is warranted.

In July 2011, Community Services provided the first of two required progress reports. Community Services agreed that a review of policy, procedure and guidance is needed to support sound restoration practice and advised that this is being addressed in ongoing projects. The agency intends to update its out-of-home care policies and procedures in line with the outcomes of the pilot 'Short Term Court Order, Restoration/Preservation and Family Supervision project'<sup>26</sup> and its out-of-home care accreditation project.

The agency advised that as at July 2011, progress on the out-of home care accreditation project included:

- implementation of a revised case planning framework and template commenced in May 2011

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<sup>26</sup> A pilot project in five Community Service Centres that is subject to external evaluation over two years. The aim of the project is to enhance the agency's focus 'on more timely work with families, including collaboration with relevant non government and community partners to keep children, where it is safe and appropriate, with their families or restore them to their immediate or extended families after a period of intensive intervention' through the use of dedicated and trained family preservation and restoration teams.

- revised casework practice procedures had been drafted for further consultation within the agency
- feedback on a draft record keeping framework had been received and would be considered prior to implementation/publication
- practitioner teams were to commence in four networks to support practice and cultural change.

In relation to recommendation 3, Community Services advised that it was considering seeking amendment to section 76 of the *Children and Young Persons (Care and Protection) Act 1998*, with a view to extending the period supervision orders may be made for. The agency advised it was consulting with the President of the Children's Court and with other key stakeholders, including the NSW Law Society and the Legal Aid Commission on this issue, and will advise this office of the outcome as soon as it is available.

The second progress report from Community Services is due by 30 June 2012. Community Services is expected to report on the progress of the 'Short Term Court Order, Restoration/Preservation and Family Supervision project' and on the agency's progress to review the restoration advice/guidelines and training available to caseworkers and other relevant staff.

#### ***Deaths of people with disabilities in care***

We tabled our last biennial report on the deaths of people with disabilities in care in Parliament in September 2011. The report included 15 recommendations targeted at ADHC and/or NSW Health, aimed at improving the health outcomes of people with disabilities in care and reducing preventable deaths. These included the need to:

- Improve the work of disability and health services to identify and minimise the risks faced by individuals, including nutrition, swallowing and respiratory risks.
- Enable equitable access to community-based health programs, including chronic disease management and other out-of-hospital programs.
- Review the use of antipsychotic medications for people with disabilities in care.
- Improve the support for people with disabilities in hospital.
- Improve the assessment and provision of health care to residents of licensed boarding houses.

ADHC and NSW Health were required to provide us with a response to the recommendations by 30 December 2011, and a progress report on implementation of the recommendations by 27 July 2012. The progress reports in July will provide a useful indication as to the adequacy of the agencies' actions to implement our recommendations. However, we are already aware of progress that has been made in key areas.

#### Access to out-of-hospital programs

Chronic disease management and other out-of-hospital programs enable the early detection and treatment of conditions to avoid emergency hospitalisation; management of long-term

health rather than just fixing immediate symptoms; and effective partnerships between health providers.

One of the important points in our report was that none of the people with disabilities in care with chronic illnesses whose deaths we reviewed had access to Health's chronic disease management program or other out-of-hospital programs. This included at least 49 people who died in 2008-09, many of whom had multiple hospital presentations in relation to their chronic illnesses.

NSW Health has provided advice to us on the actions it will take to identify people with disabilities in care who need this support, facilitate their access to these programs, and meet their needs. This includes consultation with ADHC, GP peak organisations, and the Agency for Clinical Innovation, and the development of a proactive engagement and enrolment strategy.

#### Health service framework for people with intellectual disability

NSW Health has advised that two additional specialised clinical service pilots would commence in January 2012: one at Sydney Children's Hospital Network and Sydney South West Local Health District; and one at Northern Sydney Local Health District and the Developmental Disability Health Unit.

#### Access to health services for people with dual diagnosis

NSW Health and ADHC have developed an implementation plan for the *Memorandum of Understanding and Guidelines for the provision of services to people with an intellectual disability and mental illness*, and have established clear reporting structures to enable monitoring and oversight of local implementation.

We are also examining implementation of the MOU across Local Health Districts/ ADHC regions as part of our current inquiry into the access of mental health inpatients to services and support under the *Disability Services Act 1993*.

#### Other relevant work

We are in the process of developing accessible and targeted factsheets for disability services, licensed boarding houses, and medical practitioners, on the key messages from our work in reviewing the deaths of people with disabilities in care. The factsheets will be aimed at direct care staff and their managers, Boarding House Reform Program staff, and GPs, as the practice of these individuals can directly assist in reducing preventable deaths.

We are currently consulting with key staff and other stakeholders to identify the best ways to communicate this information, engage the intended audience, and facilitate their adoption of the critical messages and required actions.

## QUESTION TWENTY SIX:

*A key outcome of the 2011 Annual Meeting of the Pacific Ombudsman Alliance was to develop five year action plans. Can you update on the progress of this and your office's obligations under it?*

## RESPONSE:

Development of the five year action plans was driven by the resolution of Pacific Ombudsman Alliance (POA) members to coordinate regionally on strategically important goals. The plans would support or draw upon pre-existing corporate plans, indicating the office's objectives over the next three to five years, and the areas where the POA can provide support to assist members to achieve these objectives.

In light of the resource constraints that restrict our colleagues from conducting in-depth, strategic analyses of their existing levels of capacity, the POA Secretariat<sup>27</sup> proposed developing the action plans in stages. The first stage was to develop a diagnostic tool that could be applied to elicit information to guide strategic planning decisions and develop assessments of existing capacity. Stage two will then utilise these assessments to create strategic action plans for POA members.

The first iteration of the diagnostic tool was presented to the POA Board at the September 2011 meeting. This first iteration set out a series of questions that support analysis of each office's strengths and challenges, structure and enabling legislation and management in operational and corporate areas.

The POA Board suggested further refinement and simplification of the tool before approving trials with two POA members. The Secretariat trialled the diagnostic tool with the Vanuatu Ombudsman's Office in March 2012 and has prepared a full report which will be submitted to the POA Board for consideration at the May 2012 Board meeting. A second trial is scheduled for late April 2012 with the Samoan Ombudsman's Office.

When the assessment tool is finalised, each member office will use it to assess its own capacity and form a country action plan. It is proposed to discuss or finalise these plans at the members' meeting in November 2012.

Although the application of the diagnostic tool and strategic planning process is facilitated by the POA Secretariat, the responsibility for creating action plans rests with each member. As such, the New South Wales (NSW) Ombudsman's Office does not have any obligations in relation to the development of these plans.

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<sup>27</sup> The POA Secretariat is hosted by the Commonwealth Ombudsman's Office and also includes an officer from the NSW Ombudsman's Office.

**QUESTION TWENTY SEVEN:**

*You identify a deficiency in cross-agency reporting of adults working with children checks, in that there is no national system of reporting or register which increases the chance that high risk cases will not be managed appropriately. Have you given any consideration to how this issue might be addressed?*

**RESPONSE:**

Following on from the 2010 statutory review of the *Commission for Children and Young People Act 1998*, the Commission for Children and Young People (CCYP) is proposing to introduce an accreditation system for working with children checks that will provide five year accreditation to people working with children in NSW. Legislation to effect this change is anticipated to be introduced this year.

In our submission to the statutory review and subsequent correspondence to the Minister for Citizenship and Communities following the release of the review report in June 2011, we supported the objective of moving towards a nationally consistent approach to working with children checks. However, we urged that any such move should not simply consider employment screening in isolation, but have a broad ambit that includes detailed consideration of the need to ensure that high risk allegations are consistently identified, competently investigated, and where relevant, the outcomes are factored into employment screening systems.

In addition, we argued that adopting a nationally consistent approach to working with children checks must be conditional on demonstrating that it strengthens the ability of employers to identify and manage risks to children. It is therefore critical that a national approach does not weaken aspects of the NSW system that are superior to other jurisdictions.

We also expressed our view, based on 12 years of experience in overseeing child employment-related investigations, that it is essential for a national approach to guarantee that findings from significant relevant employment proceedings are taken into account as part of the screening process. This currently occurs in NSW and is critical as it allows employers to give due consideration to the actions or behaviours of prospective employees that do not meet the threshold for police investigation or criminal charges, but nevertheless provide critical information relating to potential risks to children.

**QUESTION TWENTY EIGHT:**

*You mention discussions you have held with Police about the release of relevant information to prospective employers when conducting working with children checks, and instances where this has not occurred. Have you made any progress on this issue?*

**RESPONSE:**

In our 2010-11 Annual Report we indicated that we had facilitated discussions with police early in 2011 about the use of police intelligence holdings to help protect children.

Our discussions focussed on when it might be appropriate for police to release information arising from credible and relevant intelligence holdings to prospective employers in certain

circumstances – particularly where the potential risk to children is very high. We indicated at that stage, we were keen to further explore with police how a fair and rigorous system could be established to ensure critical police intelligence of this type is identified, and only used in circumstances that are justified.

We undertook to record additional case examples identified through our child-related employment oversight which provide evidence that provision of available police intelligence would have been useful, or in some cases pivotal, to the process that responsible agencies undertake when conducting risk assessments and making informed decisions as to whether certain people should be employed in a child-related position. A number of cases were subsequently identified and provided to the NSW Police Force.

In March this year, we facilitated a meeting with the Acting Deputy Commissioner (Field Operations) and senior police personnel from the child protection and sex crimes area, to discuss the best way to progress this important issue in the context of changes taking place in relation to the working with children check process.

Under the new system, approval will be given to suitable people accredited to work with children for up to five years, and relevant details will also be recorded on the NSWPF COPS system. The COPS system will send up an ‘identification flag’ if people approved to work with children come to the attention of police in relation to certain offences when their details are entered into the system. This will trigger a notification by police to the relevant body. However, these systems improvements will not deal with risks posed to children identified by police through credible intelligence, as this type of information is currently not required to be shared with potential employers.

Police highlighted in their discussions with us that there will be a substantial resource impost on their organisation to enter the details of relevant people who are entering the system for the first time, as well as the details of those people changing positions –which also triggers a new check. The NSW Police Force has not been provided with extra resourcing to carry out this critical work despite the fact that it is likely to involve entering the details for a very significant number of people.

Against this background, we acknowledged that in order for police to be in a position to conduct the necessary checking of credible intelligence holdings, additional resourcing would be required together with appropriate information technology solutions to create an efficient system for flagging ‘potential’ child sex offenders. We also emphasised that an identification system of this type would need to be supported by a process where relevant intelligence is put through a quality assurance process.

The Acting Deputy Commissioner indicated he would discuss the issue further with senior police personnel to gain a better understanding of the potential impacts of such a checking process on police resourcing and the organisational implications of sharing sensitive information of this type with external bodies. We will make contact with the A/Deputy Commissioner shortly to ascertain the NSW Police Force’s views in this regard.



## QUESTION TWENTY NINE:

*You state that there are significant differences in the way that Aboriginal and non-Aboriginal inmates are treated at Goulburn and you are waiting on a decision by the Administrative Decisions Tribunal in relation to this. Have you heard this outcome or made any further inquiries into this situation?*

## RESPONSE:

The Committee may be aware that inmates in the maximum security sector at Goulburn Correctional Centre are segregated in their accommodation units and their 'yards' by cultural background/race. The groups generally are: Aboriginal; Anglo-Australian; Asian; Islamic/Middle Eastern; Polynesian. Aboriginal inmates are generally accommodated on the bottom landing of 4 or "D" wing (remandees of various cultural backgrounds are accommodated on the upper landing), though some Aboriginal inmates with specific needs may also be accommodated in other areas of the centre, primarily those areas where inmate association is limited for various reasons.

Racial segregation within Goulburn has been in place since the mid 1990s when the centre experienced unprecedented inmate violence including several murders. Several other practices for managing Aboriginal inmates at Goulburn were also adopted by Corrective Services NSW in response to a serious incident which occurred in April 2002 when Aboriginal inmates rioted and several officers were very seriously injured, and a large amount of damage was caused to the buildings.

A decade later many of these practices are either still in place, or are only slowly being revised. Since late 2003 we have consistently raised with various Governors/General Managers at Goulburn the importance of reducing these restrictive practices.

When an inmate complained to us about these practices, we became aware that he and several others had already complained to the Anti-Discrimination Board (ADB), and their matter had been referred to the Administrative Decisions Tribunal (ADT). The complaints made to the ADT/ADB were similar to the issues we had been raising and included:

- limiting the number of Aboriginal inmates who can be accommodated in the wing to 25;
- removing access to work opportunities including not allowing Aboriginal inmates to take up "sweeper" (domestic worker) roles within their own wing which is the norm;
- providing limited (if any) access to education and program areas within the centre;
- requiring Aboriginal inmates to be placed in two out cells despite vacant one out cells being available;
- having security mesh welded to the doors and grills of the cells in the wing, which is not the case in other wings;
- Aboriginal inmates are mustered four at a time and other inmates are not
- Receiving their clinic service in their cells instead of being able to approach the "clinic window" in the main part of the centre as other inmates do.

As the ADT had scheduled the matter for a case conference we agreed to monitor the progress and outcome before deciding if any further action should be taken. During 2010 and 2011

several case conferences were scheduled but on a number of occasions were either missed because of administrative failures by CSNSW in not bringing the complainant/ inmate to an appropriate phone location to participate or stood over by either the Tribunal or the inmate's legal representative. In late November 2011 – and before the case conference could be held – the inmate was released to parole. As a result his case no longer had standing at the ADT as he was no longer subjected to the allegedly discriminatory treatment/management. On a side note this matter identified a lack of policy and procedure for inmates attending ADT case conferences. As a result of our intervention CSNSW have since introduced such policies and procedures.

There has been some minor progress at Goulburn in recent times – for approximately four years there had been plans to open a specific work area for Aboriginal inmates where they could work with Aboriginal overseers and mentors on culturally based work programs. When we visited Goulburn on 8 December 2011 we met with an Aboriginal delegate who told us that approximately 10 inmates were now working in the program. He also advised, however, there had been no changes to anything else in the wing, including not having an Aboriginal sweeper. We have constantly spoken with the various General Managers at Goulburn about the significance this would have with the Aboriginal inmates if this were to be allowed to happen. The consistent response has been that “union would never allow it”.

Unfortunately a decade later Aboriginal inmates continue to pay for the actions of those who were in Goulburn Correctional Centre and participated in the incident in 2002. We acknowledge that many staff who work at the Centre were there on the day, had family and friends who were involved and who were seriously injured. However, we do not see this as a reason to continue to discriminate against a group of people on the basis of their race. With the matter now not proceeding before the ADT we are reviewing what action we can take.

#### QUESTION THIRTY:

*You state that you “aim to be more responsive” when dealing with stakeholders who raise issues that are in the public interest. Can you give some detail about how you plan to implement this?*

#### RESPONSE:

Engaging stakeholders regularly is critical to successfully undertaking our oversight and review responsibilities. As outlined in our answer to question 8 above, we have identified the need to continually review our internal business practices to ensure that across our organisation we are systematically identifying which stakeholders we should be proactively engaging, which staff are best placed to provide advice about, or take part in, particular consultations, and ensuring that information obtained from our consultations is used to inform our current and future investigative and review work, and our community education and training programme.

Any significant outcomes from consultations are promptly brought to the attention of the Ombudsman and/or relevant statutory/senior officers and are also discussed at weekly executive team meetings. In addition, we have established a monthly meeting between senior officers engaged in systemic project and review work, and a quarterly projects and auditing steering committee meeting to share information and ideas between project managers from

each division. The overall aim is to encourage greater collaboration and strategic thinking at all levels of the organisation to ensure a greater level of responsiveness to significant public interest issues identified through stakeholder engagement.

We have also allocated portfolio responsibility to particular divisions and/or individuals for leading our work with specific agencies or target groups (for example, Aboriginal communities and people with disabilities) and in relation to particular issues (for example, the implementation of *Keep Them Safe* and the *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*). Although our jurisdiction is broad, it is also necessary for us to examine discrete issues often raised by individual complaints, therefore we must be careful to approach agencies and other stakeholders as 'one organisation' rather than as separate divisions to prevent duplicated effort (on both sides) and efficiently share information obtained from our stakeholders across our organisation – in other words avoiding the 'silos' approach.

Part of this responsibility involves regular and targeted engagement with agencies and stakeholders operating across various sectors to supplement long-standing processes such as convening child and disability death advisory committee meetings, regular agency liaison meetings, and hosting roundtable forums on specific practice issues. Our extensive regional visit programme brings us into contact with frontline agency managers and their staff, non-government organisations and community members who provide us with valuable insights into the particular service delivery challenges being faced by rural and remote communities. We regularly meet with senior agency personnel to provide feedback about our consultations.

This approach allows a group of senior personnel to build up a body of knowledge about issues of significant public interest and to keep pace with changes to the operating environment of government agencies, the non-government sector and peak interest groups. The relationships we build with key stakeholders allow us to better identify systemic problems and where appropriate, provide prompt and constructive advice to agencies to assist them to develop solutions.

Our consultations with stakeholders have also allowed us to identify critical areas where staff from government agencies and the non-government sector would benefit from Ombudsman training. Over the last 18 months, we have responded to identified gaps in knowledge by developing courses in relation to handling serious child-related employment allegations, disability awareness and Aboriginal cultural appreciation, and we will shortly be rolling out a training course on implementing a quality complaints system for the disability sector. Our training courses bring us into regular contact with a broad range of practitioners – at both a senior management and frontline level – providing us with additional opportunities to hear about issues facing organisations we oversight and how these issues impact on service delivery and customer service generally.

**QUESTION THIRTY ONE:**

*Could you explain the drop in the number of community education activities in 2010-2011 compared with 2009-2010?*

**RESPONSE:**

There has in fact been an increase in both the number of community education activities and training workshops conducted by our office during the 2010-2011 period. The perceived 'decrease' would appear to stem from the different way these activities were reported in our previous Annual Report.

In our 2009-2010 Annual Report we reported on the total amount of community education and training activities conducted for that year (see p.41). However, in the 2010-2011 Annual Report, we reported on our training and community education activities separately (see p.101 and p.103).

Year	# training workshops	# of community education activities	Total # of training and community education activities
2009-2010	144	127	271
2010-2011	156	140	296

Since forming our office-wide Community Education and Training (CET) Unit in late 2009, we have focussed on developing a number of new workshops and reviewing and updating existing training programs and related materials.

2011-2012 will again see a significant jump in the overall number of training workshops conducted due to our new public interest disclosures training function and the successful promotion of some of our new workshops.

## ANNUAL REPORT 2009 – 2010

### QUESTION ONE:

*Have you finalised the review of your sick leave policy?*

### RESPONSE:

In our 2009-2010 Annual Report we outlined the significant changes to the public sector award conditions and workforce reforms in a number of areas – including sick leave. These changes required a significant amount of work including making changes to our electronic leave management system and reconciling the sick leave and other entitlements of all staff.

It was our intent to develop a sick leave policy to outline the Ombudsman's views on a range of matters. In this regard however, it should be noted that the award provisions do not provide a lot of flexibility to the Ombudsman as the department head. With the release of the public sector managing sick leave policy in mid 2009, we felt that there was no longer a need for the office to develop its own policy immediately. We directed our resources to implementing the award changes.

The sick leave policy is again on the agenda and our internal joint consultative committee is currently negotiating its terms.

### QUESTION TWO:

*The number of people with a disability who are employed by the Ombudsman has remained unchanged, but significantly below the new target you set after the 2009-10 annual report. How did you decide on your target and do you have any plans to assist in meeting this figure?*

### RESPONSE:

Targets for the representation of different EEO groups in our staffing profile are set by the Government, through EEO and Anti-Discrimination policies. Up to and including the 2009-2010 reporting year the following two targets for employing people with disabilities had been set:

- 12% of staff have a disability
- 7% of staff with disabilities require work-related adjustments.

Changes to Government policy have removed the benchmark/target for employing people with disabilities. However, there is still a benchmark/target for people with disabilities requiring work-related adjustments. This revised benchmark is 1.5% of staff. From the 2010-2011 reporting year, we are reporting against the changed benchmarks/targets.

Our 2009-2010 Annual Report indicates that we had an increase in the number of staff with disabilities – up from 7% of staff to 12% (see performance indicator on page 19). Twenty three of our staff identified as having a disability (see figure 15 page 20), an increase of 10 from the previous reporting year. The number of staff requiring work-related adjustments increased from 2.6% of all staff to 3.7%.

### QUESTION THREE:

*In the 2009-10 Annual Report you mention that there were 42 Official Community Visitors working that year, although ten needed to be replaced as their terms had expired. In the 2010-11 Annual Report you state that there were 31 Official Community Visitors working. Can you explain why the numbers have not been replenished?*

### RESPONSE:

At the commencement of 2009-2010 there were 42 Official Community Visitors (OCVs). That year, 15 OCVs left the scheme because their term of appointment ended or because they resigned for personal reasons.

In June 2010, the Ombudsman undertook a targeted recruitment for OCVs in the mid and far north coast of NSW. An OCV was recruited and appointed in the mid north coast area in August 2010. The Ombudsman was not able to recruit an OCV in the far north coast area but made arrangements for a Sydney-based OCV to visit key services pending recruitment of a suitable OCV.

The Ombudsman initiated a general recruitment for new OCVs in August 2010, and in November, recommended the appointment of 12 new OCVs to the Ministers for Disability Services and Community Services. The OCVs were appointed on 6 February 2011, inducted in March 2011 and began visiting in April 2011.

In 2010-2011 there were 27 OCVs at the beginning of the year. During the year 10 OCVs left because their term of appointment ended or because they resigned for personal reasons. As a result of the recruitment referred to above, 13 OCVs were appointed during the year.

We are currently recruiting for up to seven new OCVs, targeted to areas in NSW where OCV numbers are low, including the Far North Coast, the Hunter/Central Coast, the Central West and the western and northern areas of metropolitan Sydney.

OCVs have reported that a number of issues impact on their decisions to resign or not seek re-appointment, including the unique nature and conditions of the appointment, the level of remuneration, and changes in personal circumstances. The unpredictability of OCV retention affects the Ombudsman's ability to maintain a consistent number of OCVs.

When OCV numbers decrease, the Ombudsman negotiates with relevant OCVs a temporary increase in their visiting allocation pending recruitment and appointment of new OCVs. This enables a continuation of visits to as many services as possible, within budget.

### QUESTION FOUR:

*The Official Community Visitors in 2009-10 report averaged an allocation of .95 of an hour per resident they visited. In the 2010-11 report this has decreased to an average of .79 of an hour spent with each client. Can you provide some more detail on this?*

### RESPONSE:

The number of visitable services and residents of visitable services has increased throughout the life of the OCV scheme. In recent years there has been significant growth in the disability

services sector under *Stronger Together 1 and 2* and a parallel growth in the number of residents in visitable services.

The decrease in the average number of hours per resident in visitable services relates to the increase in the number of residents within services without a concomitant increase in the budget allocated to the OCV scheme.

The Ombudsman allocates funds for the OCV scheme from within the overall Ombudsman budget and allocates visits to services within the OCV scheme budget allocation.

Between 2000 and 2011 there has been an overall increase of 43% in the number of visitable services, (from 1,014 in 2000-2001 to 1,452 at 1 July 2011). During this period, there was a one-off funding increase of \$100,000 in 2010-2011 to cover a 14% increase in OCV remuneration. The funding did not increase the capacity of the scheme.

In November 2011 the Ombudsman submitted a budget maintenance proposal to Treasury to address both the past increase, and the additional projected 20% increase in the number of visitable services by 2015-2016. This proposal was not successful.

#### QUESTION FIVE:

*You noted that you intended to review the independent education sector over the next year. Did you conduct this review and what were the findings?*

#### RESPONSE:

Following the publication of our 2009 – 2010 annual report, we conducted extensive work with the Association of Independent Schools NSW (AISNSW) in relation to their child protection responsibilities.

In early 2011 the Association of Independent Schools NSW (AISNSW) informed us that they wished to limit the application of their class or kind determination to member schools of AIS, which meant that Christian Schools Australia (CSA) and Christian Education National (CEN) member schools no longer had access to the employment-related child protection training and advice provided by the AIS, or to exemptions provided by the Ombudsman under the class or kind determination.

In response, we entered into extensive negotiations with AISNSW, CSA and CEN in relation to strengthening child protection knowledge and practice amongst their respective member schools, supported by class or kind determinations. CSA and CEN subsequently developed proposals to provide comprehensive systems for outsourced child protection advice, training and support to their members. As a result, we finalised class or kind determinations with CSA and CEN in late 2011.

We proposed to review child protection practice in AISNSW member schools once the new class or kind determination with AISNSW was implemented. Following extensive negotiations, the revised class or kind determination with AISNSW was finalised in March 2012.

**QUESTION SIX:**

*The Department of Aging, Disability and Homecare received a report into an assault that occurred in respite care. The report made over 180 recommendations which you resolved to monitor. Can you provide an update on this?*

**RESPONSE:**

We have continued to monitor ADHC's actions to implement the recommendations from the independent review that was conducted following the assault of a 15-year-old girl in an ADHC respite service. The recommendations were extensive, and related to practice in the ADHC Region in which the service was located, and more broadly across the organisation.

ADHC developed detailed action plans to implement the recommendations, and provided progress reports to us in May and October 2011 that included detailed reporting against those plans. The progress reports indicated that considerable work had been undertaken by ADHC staff to implement its Safety and Quality Improvement Plan, including actions to facilitate necessary cultural change in the Region, and to ensure staff compliance with ADHC policy and practice requirements.

ADHC has appointed an independent consultant to undertake another external review, to review progress and the delivery of real change for clients and families in the Region. We will continue to monitor ADHC's actions in relation to this matter, and will obtain a briefing from ADHC on the external review in the near future.

More broadly, this case reinforces the need for more rigorous systems for reporting serious matters across the disability sector. We consider that there would be considerable benefit in establishing systems for reporting serious complaints and incidents in disability services and licensed boarding houses; including allegations of serious abuse, assaults and neglect, and other critical incidents.

In relation to serious incidents, we note that there are robust systems in place for reporting and overseeing the handling of serious incidents in the employment-related child protection area, as outlined in Part 3A of the *Ombudsman Act 1974*. However, no comparable system currently exists in relation to particularly vulnerable individuals with disabilities who receive disability support. We have written to the Chief Executive of ADHC in this regard, and have attached a copy of our correspondence for your information (see Attachment B).

**QUESTION SEVEN:**

Have you observed any improvements in the way young people with disabilities are being placed in nursing homes?

**RESPONSE:**

Our 2011 report on the deaths of people with disabilities in care includes recommendations aimed at improving the policy guidance for disability services on supporting people with disabilities as they age. In particular, our work indicates a strong need for clarity regarding ADHC's position on 'ageing in place', as we have found that the lack of clear guidance tends to result in inconsistent practice across disability services.



Through our reviewable deaths work, we continue to identify individuals under the age of 65 years who are referred by staff of disability services and/or hospitals for aged care assessments and placement in residential aged care. Typically, this is linked to an increase in the person's support needs due to ageing or other decline in their health, and has been noted with both ADHC and funded services. The practice continues to be inconsistent – some services go to considerable lengths to enable people with disabilities in care to 'age in place'; while others tend to seek aged care placement at an early point, and before they have adequately explored options for continuing to support the person at home.

We will continue to monitor ADHC's work in this area, and will be keen to see significant progress against this recommendation when the agency reports to us in July.

#### **QUESTION EIGHT:**

You mention that you established an internal working party to develop a stakeholder engagement strategy. Can you advise on the progress of this?

#### **RESPONSE:**

As part of implementing a new organisational structure in the 2009-2010 year we established a number of internal committees including a working party to examine how we could improve our engagement of our stakeholders. The stakeholder engagement working party's initial focus was to reach a common understanding about who our key stakeholders are and how best to engage with them across the organisation. Feedback from our consultations informs our strategic planning and ongoing decision-making about those issues most worthy of examination given our finite resources.

As a first step in developing a comprehensive engagement strategy the working party surveyed each division of the office to identify current engagement activities and document good practice in this area for broader promotion across the organisation. Internal consultations were held with project managers from across the organisation to gain a better understanding of successful engagement methods employed principally through our systemic review work, to ensure project managers are considering a broad suite of engagement 'tools' when planning their investigations/reviews.

A literature review was also conducted to identify successful techniques used by other similar organisations, and consultations were held with stakeholders who had recently been engaged by our office via formal investigations/reviews, to hear from them about how our interactions with them throughout the process either added value to their work, and where we could improve our engagement.

An implementation plan was developed as a result of the working group's findings.

Implementation included the stakeholder engagement strategy being reflected in our office wide strategic plan 2010-2012. The strategic plan includes a number of 'critical success factors' and one of these is 'engaging effectively with partners and stakeholders'. These critical success factors inform our business planning and are built into each branch/division's annual business plan as well as organisational policies and plans which outline our commitment to improving access to our services by key groups including young people, Aboriginal

communities and people with a disability. Project plans for major systemic and investigation work must also outline how affected stakeholders will be engaged throughout the process. Finally, staff performance agreements articulate individual responsibilities in relation to effectively engaging stakeholders.

In the past year we have focussed on streamlining the way we capture information about our stakeholder engagement through the development and implementation of an office-wide register for recording stakeholder engagement activities. Our new processes are designed to:

- Improve information sharing and consistency of recording about our engagement activities across our organisation.
- More readily identify opportunities for joint work with other agencies and oversight bodies
- Record the feedback from our stakeholders about how our work adds value.

The register includes guidance on the types of groups/entities that should regularly be engaged and provides a variety of methods for doing so. The fields are designed to capture information relating to the objective of the engagement activity, key outcomes and geographic and demographic data. Divisions record their activities throughout the year and report on them through their business plans and our annual report. Periodic review of the register is useful for creating future benchmarks, identifying gaps in our engagement and looking for ways to improve our practices in this area.

This enhanced stakeholder focus has improved our professional and cooperative relationships with a diverse group of stakeholders which is reflected in the number and variety of stakeholder engagement activities carried out across our organisation since the strategy was developed (for further details see the stakeholder engagement chapters contained in our 2009-2010, 2010-2011 Annual Reports).

Additionally, a number of the objectives of the working group were addressed through the establishment of a centralised Community Education and Training Unit (CET) located within our Strategic Projects Division – also a key outcome of our organisational restructure in late 2009.

The CET Unit plays a key role in promoting who we are and what we do through its broad training and education program. Through the CET Unit we have established improved systems for coordinating the various training, education and outreach activities carried out by each division leading to a more consistent and wider message being delivered about our various functions and how we can assist members of the public and peak interest groups.

The CET Unit has worked with various divisions to review and update existing training materials and develop new products. A project officer position was created to coordinate training and education activities across the office, and identify new ways to promote the Ombudsman's role to a wider range of stakeholders.

Other key activities undertaken to implement the stakeholder engagement strategy include the following:

- Broadening the focus of *Ombo Info*, our e-newsletter, previously targeted to the community services sector –as a result, *Ombo Info* now has a wider audience and circulation.
- Consolidating and expanding our contacts database.
- Developing a communications plan for marketing our training activities.
- Extending our Ombudsman outreach forums, Right Stuff workshops for consumers of disability services and our training programme.
- Ensuring that our Youth Liaison Officer and Aboriginal Unit regularly consult with key interest groups across the state.
- Dedicating a chapter in our Annual Report (since 2009-2010) to significant outcomes from our stakeholder engagement.
- Rebuilding our office website.

For further information about our stakeholder engagement see answer to question 30.

#### QUESTION NINE:

*You planned a review of police processes on complaint resolution and complainant satisfaction. What is the progress with this? (note: this was mentioned in the 2009 AR and again in the 2010 report as not having been done, but on the agenda for 2011-12)*

#### RESPONSE:

In our annual report 2009/2010 under the heading of 'Future Directions' we expressed our commitment to working with police to develop an effective and good complaints systems. We believed the current system is able to achieve this goal.

At the moment, the system achieves two important complaint handling functions. It provides a mechanism for the public to complain about the alleged wrong or unreasonable conduct of a police officer. The system also has adequate internal mechanisms to check that the conduct of its officers is proper, fair and lawful.

Our work in the coming years will be to focus on improving how the police respond to the less serious matters and developing a mechanism for redress and remedial action when it has been agreed that things have gone wrong (or could have been done better). An important part of improving the responsiveness of the complaints system also includes being able to collect data that can highlight the effectiveness of certain policies and potentially lead to systems and organisational improvement.

As it stands, police continue to spend time and resources on investigating the more serious matters with inadequate attention given to providing feedback or apologies to complainants (where it is legitimately warranted). There is also systemic failure to look for possible underlying causes of misconduct, or to patterns and trends which may lead to service and process improvements. Instead, the focus is to find fault or blame with the individual officers or complainants.

Since 2010 we have commenced work towards developing methodology and planning for a comprehensive review of how police survey and measure complainant satisfaction for both the

less serious informal resolutions and the evidence based investigations. The responsibility for this task currently sits with the grade 9/10 investigation officer (audit) position. This position is also responsible for conducting all our internal and external audits. As such the progress of this work is affected by existing resource limitations. The task of conducting such a review remains a priority.

The work we have undertaken so far includes closely monitoring an alternative dispute resolution pilot program (as an alternative to any form of investigation) being rolled out by police after a review of the complaints handling guidelines.

We also require police to comply with Condition 4 of the class and kind agreement and conduct a survey to measure the satisfaction of complainants in the handling of less serious resolution matters. The survey is conducted annually and (at a minimum) needs to include a random sample of contactable external complainants selected from the pool of complaints finalised in the preceding 6 month period. Survey results are reported to this office and we will be consulted on the survey instrument and methodology.

We have requested NSWPF provide a report for 2011 (as required under condition 4) with the relevant methodology details. It is timely to review this process now since police have piloted two surveys in 2009 and 2010.

#### QUESTION TEN:

You note that you have no general statutory power to require information about action taken by agencies in response to legislative review reports. Is this still the case?

#### RESPONSE:

Yes.

#### QUESTION ELEVEN:

*Can you provide an update on the Department of Education and Training's response to the issue of nitrogen dioxide and heating in schools?*

#### RESPONSE:

Following the Woolcock Institute's study of unflued gas heaters in schools conducted in 2010, the Department of Education and Communities arranged for an Environmental Health Risk Assessment to be conducted of school heating options. The Assessment reviewed the research, recommended a replacement program and conducted a health cost analysis. It was completed in October 2011 and made public on the department's website in November 2011.

Unflued gas heaters have already been replaced in around 100 schools in the coldest areas of the state in response to the Woolcock report. In addition, based on the advice in the ERM assessment, the government announced in February 2012 that unflued gas heaters would be replaced with flued gas heaters when the majority of unflued gas heaters in a school reached the end of their serviceable life. Flued gas heaters will be installed in new school buildings.

During one off maintenance, unflued gas heaters will continue to be replaced with unflued gas heaters.

ATTACHMENT

This is attachment 'B' referred to in the Ombudsman's answers to Questions on Notice relating to the 2009/2010 Annual Report, question 6.



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Our ref: 2012/018198

Mr Jim Moore  
Chief Executive  
Ageing, Disability and Home Care  
Level 5, 83 Clarence St  
SYDNEY NSW 2000

Attention: Coordinator, Client Relations  
Public Accountability Branch  
Office of the Chief Executive

Dear Mr Moore

**Development of systems for reporting complaints and serious incidents in disability services**

In response to my previous correspondence in relation to this matter, on 23 February I met with Samantha Taylor, Helene Orr, and Robert Wright to discuss options for strengthening the management and oversight of complaints and serious incidents. I appreciate the advice that they provided.

As discussed at the meeting, we consider that one of the goals in the current disability sector reforms should be to establish a complaints reporting system for ADHC provided and funded services that is compliant with Australian complaint handling standards and NSW disability services standards. In this regard, we expect that the work we are undertaking to develop a disability complaints training package for the sector will provide a useful framework for the development of a core industry complaints model.

As indicated in our previous correspondence, the Victorian complaints reporting system for disability services provides a useful starting point for consideration of a potential framework for NSW. As agreed at the meeting, we will liaise with the Victorian Disability Services Commissioner to facilitate a meeting with your staff to examine the scope and operation of the reporting system established by his office.

On a related note, there would also be considerable benefit in establishing a system for reporting serious incidents in disability services – this system would need to be integrated with any broader complaints system. Such incidents would need to include allegations of serious abuse, assaults and neglect, and other critical incidents.

We are of the view that, in developing systems for reporting complaints and serious incidents, there will also be a corresponding need to ensure that, at least, the handling of serious incidents is actively oversighted. In this regard, we believe that consideration needs to be given to the oversight arrangements in place under Part 3A of the *Ombudsman Act 1974*.

Related to the need to look at systems that could drive service improvement insofar as complaints and serious incidents are concerned, the meeting was also productive in enabling us to discuss the work we are currently undertaking to produce a number of factsheets on basic requirements relating to the management of, and effective response to, critical health and safety risks. This is an area that we have consistently raised in our reviewable disability deaths reports; particularly in relation to swallowing, falls, medication, and respiratory risks.

At this stage, it is our intention that the factsheets will be targeted to residential support staff in ADHC-operated and funded disability accommodation services; staff working with residents in licensed boarding houses; and health professionals.

After development of the factsheets, two further steps will need to be taken: development of a strategy for ensuring sector-wide education in relation to this material; and assessment of the level of 'coal-face' take-up of the key messages.

I am keen to get your views on the specific issues and proposals discussed in this letter. Given the significance of these issues, I believe that it is absolutely essential that there be a strong partnership between ADHC, the sector and this office around ensuring that we achieve significant improvements in these areas, consistent with person-centred support.

I would appreciate your early advice on these issues, either via a further meeting or through correspondence.

Please contact Kathryn McKenzie, Principal Project Officer, Disability, on 9286 0984 or email [kmckenzie@ombo.nsw.gov.au](mailto:kmckenzie@ombo.nsw.gov.au) if you have any queries or concerns.

Yours sincerely



Steve Kinmond  
Deputy Ombudsman  
Community and Disability Services Commissioner  
5 April 2012

cc: Minister for Disability Services

## Chapter Three – Answers to Further Questions on Notice

Note: Questions One and Two were not published following a resolution of the Committee based on the public interest.

### QUESTION THREE:

*Did the Ombudsman's Office ever utilise software owned by Software AG in order to access data on the police Mainframe Computer system? If so are you aware that legal action was taken by Software AG alleging that software had been pirated and the police were forced to settle that matter? Do you have details of that settlement and did it involve police conceding they had unlawfully exceeded the contracted number of licenses allowed for that software?*

### RESPONSE:

In answer to the first part of this question, the NSW Ombudsman is currently reviewing its information holdings to ascertain what, if any, use the office made of software owned by Software AG. This will take additional time, as it involves reviewing records which in some cases are ten years old. The Ombudsman will endeavour to provide this information to the Committee in due course.

The NSW Ombudsman is not aware of any litigation involving Software AG and the NSWPF. As such, the Ombudsman does not have any details of any settlement between NSWPF and Software AG. The additional parts of the question are matters that can only be answered by the NSWPF.

### QUESTION FOUR:

*What conclusions have been drawn to date concerning your reviews of the legislation concerning Consorting and Facial Identity?*

### RESPONSE:

The findings and recommendations arising from these reviews will form part of reports to Parliament at the conclusion of the review periods. The following is some information on work completed so far on both reviews.

#### **Removal of face coverings for identification purposes**

The Ombudsman is to keep under scrutiny the use of powers by police under Part 3 Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to officers requiring that a person remove a face covering for identification purposes. These new powers came into effect on 1 November 2011 and we will be reviewing how police exercise the powers between 1 November 2011 and 31 October 2012. We have finalised an Information Agreement with the NSWPF and begun our consultations with relevant community and representative organisations and the NSWPF. Our leaflet regarding the review has been translated into 7 languages and we will be releasing an Issues Paper for

comment in August 2012. Our final report regarding this review will be provided to the Minister by May 2013.

**Consorting**

The Ombudsman is to keep under scrutiny the use of powers by police under Division 7 Part 3A of the *Crimes Act 1900* relating to the offence of consorting for a period of two years. These powers came into effect on 9 April 2012. We have worked with police regarding the information requirements for this review, and have met on several occasions with NSWPF to discuss other aspects of the review.

**QUESTION FIVE:**

*In your submission to the review of the PIC you argued for the amalgamation of the PIC and ICAC. Is that still your view?*

**RESPONSE:**

The NSW Ombudsman's position has not changed from that expressed in the submission.

**QUESTION SIX:**

*Were you consulted on the establishment of the Inspector of Corrective Services? What is your view of the position?*

**RESPONSE:**

The NSW Ombudsman was contacted shortly before the Inspector of Custodial Services Bill 2012 was introduced into Parliament. The office's position on the creation of new oversight bodies has always been that one of the primary considerations should always be the need to avoid unnecessary duplication and proliferation of "watchdog" bodies. The NSW Ombudsman will work closely with the Inspector once appointed to avoid duplication and ensure appropriate communication and information exchange.

**QUESTION SEVEN:**

*In your answers to Questions on Notice you refer to the proposed closure of all ADHC operated and funded residential centres by 20/7/2018. What progress has been made to date on this commitment? Is ADHC on track to achieve that result by that date?*

**RESPONSE:**

Our monitoring indicates that there has been considerable progress with ADHC's work under Stronger Together 2 to close the residential centres. The agency's progress report to us in February 2012 indicated that:

- In 2010 and 2011, five residential centres had closed or been redeveloped, including two ADHC-operated centres, and three NGO centres. In total, 204 residents were relocated in that period.
- ADHC has commenced redevelopment, planning or consultation work in relation to four of the seven existing ADHC-operated centres, including one centre that is



scheduled to close by the end of June 2013. ADHC has also had preliminary discussions regarding the redevelopment of one of the other three centres.

- ADHC has had extensive consultations with the 14 funded services that operate the remaining NGO centres regarding their progressive redevelopment by June 2018.

We are mindful that this work is in its early stages and the closure of the centres is a large scale and significant project that is occurring in the midst of broader reform of the disability sector. We will continue to actively monitor progress.

#### QUESTION EIGHT:

*The Committee notes the Premier's memorandum M1997-26, entitled *Litigation Involving Government Authorities: Is the Office of the NSW Ombudsman aware of this memorandum, and did it have reference to this memorandum, during the MicroFocus dispute?**

#### RESPONSE:

The NSW Ombudsman is aware of the memorandum and had reference to it during the Micro Focus proceedings.

#### QUESTION NINE:

The Committee refers to your answer to Question on Notice number 9 with respect to asbestos surveys in schools. In your answer, you indicated that your final report was due to be released to the Minister for Finance and Services by the end of April 2012. Is this report complete, and do you anticipate that it will be made public? Are there any recommendations in the report, and if so - what are they?

The NSW Ombudsman is in the process of finalising the investigation, and is yet to make a decision as to whether to make the matter the subject of a report to Parliament.

### QUESTIONS TAKEN ON NOTICE DURING THE HEARING

#### QUESTION ONE:

*You refer (on page 5 of the transcript) to the need for the Ombudsman to be automatically informed of critical incidents so that your office can assess if there is a need for them to oversight the police investigation. Can you provide the details of what legislative amendment would be required to achieve this?*

#### RESPONSE:

As the Ombudsman observed in evidence before the Committee, the office is currently working with both NSW Police Force and the Coroner on the best method of dealing with this issue. There are a number of possible legislative methods of implementing such a system, and the Ombudsman does not wish to pre-empt future discussions by putting forward a single solution. The Ombudsman can provide the Committee with an update, including any draft legislative options that are prepared, in due course.

**QUESTION TWO:**

*You refer (on page 8 of the transcript) to funding cuts to your core budget. Can you provide a figure for this core budget?*

**RESPONSE:**

The Ombudsman, like all agencies, is allocated a total budget amount each year. This includes funding for the office's core services as well as funding for discrete responsibilities such as legislative reviews, supporting the Official Community Visitors and our work in relation to public interest disclosures. This total amount has been adjusted for budget cuts, or 'savings measures' or 'efficiency measures' prior to the budget announcement. As the Ombudsman noted in his evidence, in 2012-13, these cuts were \$865,000, and included efficiency dividends, procurement savings, program savings and the recent labour cost adjustment. The recurring cost of these measures is highlighted in the enclosed table for the Committee's information. This does not reflect the ongoing impact of unfunded pay increases.

## Chapter Four – Transcript of Proceedings

**NOTE:** The general meeting with the NSW Ombudsman was held at Parliament House, Macquarie Street, Sydney, on 18 June 2012.

**CHAIR:** Before the proceedings commence may I remind everybody to switch off their mobile phones as they can interfere with Hansard recording equipment. If your phone is on silent please switch it off completely. I now declare open the hearing in relation to the review of the NSW Ombudsman's annual report 2009-10 and the NSW Ombudsman's annual report 2010-11. It is a function of the Committee on the Office of the Ombudsman and the Police Integrity Commission to examine each annual report and other report of the NSW Ombudsman and report to both Houses of Parliament in accordance with section 31B (1) (c) of the Ombudsman Act 1974.

**BRUCE ALEXANDER BARBOUR**, Ombudsman, NSW Ombudsman, and

**LINDA MICHELLE WAUGH**, Deputy Ombudsman, Police and Compliance, NSW Ombudsman, affirmed and examined:

**CHRISTOPHER CHARLES WHEELER**, Deputy Ombudsman, Public Administration, NSW Ombudsman, sworn and examined:

**CHAIR:** The Committee has received detailed responses from you to its answers to questions on notice relating to the Ombudsman's annual report 2009-10 and the annual report 2010-11. I thank you for those answers. Do you wish those responses to form part of your evidence today and to be made public?

**Mr BARBOUR:** Yes. First, can I apologise? It was our intention to have Mr Steve Kinmond, Deputy Ombudsman, and Community and Disability Services Commissioner represent the office today. Unfortunately he has taken ill and was not able to attend. He and I both extend our apologies to the Committee for that. As this is the first formal meeting of the parliamentary committee since November 2009 my opening statement is a little longer than normal. I hope the Committee will indulge me. It is important for me to brief the Committee on major developments and some key activities undertaken by my office since the last meeting. Can I state at the outset how important the constructive and positive relationship we have with the Committee is to my office. I welcome the opportunity to provide information to the Committee about the work we do and our overall approach to that work. Many of the questions on notice were directed to our previous annual reports so I thought it would be useful to focus my opening statement on work currently being undertaken as well as some of the current challenges faced by my office.

As you well know, our work now encompasses a broad range of areas and significant issues. Perhaps this is best demonstrated by looking at some specific current examples of our work. We are involved in a number of matters that have attracted significant public interest including oversight in the investigation of a number of policing incidents: the NSW Police Force investigation into the death of Roberto Laudisio Curti, a young Brazilian man, in the Sydney central business district; as well as the shooting and surrounding events involving several

young aboriginal men in Kings Cross. This involves senior investigation officers from my office monitoring in real time the conduct of these extensive police investigations. We are also in the final stages of completing a large systemic review of the use by the NSW Police Force of tasers.

You will recall that in November 2010 I tabled a report in Parliament called "Responding to the asbestos problem: the need for significant reform in New South Wales." The issues of asbestos management in New South Wales continue to be of significant concern to me and my office. My office is currently completing two further large investigations; one into how asbestos identification in public schools has been managed and the other into how the NSW Police Force manages asbestos in police operational premises and also residents. Our recommendations are likely to include that a plan is developed to properly identify all asbestos containing materials in schools, that a new model is developed to manage police properties and that a review be conducted of New South Wales Government properties to ensure hazardous building materials are being properly managed.

We are also conducting a number of investigations into how well, or otherwise, the State is protecting and managing environmental issues, including water. We are particularly concerned about allegations appropriate enforcement action has not been taken in relation to pollution incidents and the unauthorised extraction of water. In October last year my office tabled a report in Parliament titled "Addressing Aboriginal disadvantage: the need to do things differently". The report was one of the most comprehensive from my office in recent years and it put forward a number of significant proposals as a blueprint or road map for consideration by the new Ministerial task force. It focused on many important issues, including improving education outcomes for Aboriginal children and building economic capacity. Unfortunately, it also highlighted major inadequacies in service delivery to Aboriginal families in crisis, particularly those in high need communities. We continue to do significant work in the area of Aboriginal disadvantage, including auditing the implementation of the New South Wales interagency plan to tackle child sexual assault in Aboriginal communities. We are due to report on the completion of that work at the end of this calendar year.

We are in the process of finalising an inquiry into the access of people in mental health facilities to accommodation and support services under the Disability Services Act. The key part of our inquiry consists of the review of the files of 95 mental health inpatients from 11 mental health facilities across New South Wales. Each of the individuals has been identified by the public guardian, the official visitors and/or the Mental Health Review Tribunal as someone who is continuing to live in hospital due to a lack of available community based accommodation and support options. This is only a very brief snapshot but it does demonstrate how our work has changed since the Ombudsman was established in the 1970s. Our core work has always been and will continue to be dealing with complaints from members of the public. As at the end of last month we have received 8,700 complaints which is an increase of 6 per cent over the same period last year. And, we have dealt with over 22,000 inquiries.

In addition to that we have an increased focus on conducting audits and large systemic investigations and projects. It is, however, in the nature of those that they are complex and resource intensive which brings me to the resources we have to do the work that we are charged to do. I recognise that all Government agencies are currently under considerable financial strain. The expectation on all public sector agencies is to do more with less. We are all subject to significant budget cuts. However, for my office decisions about funding are not just about work challenges; they are also tied to questions of independence.

When the previous government restructured the public sector into super agencies we were assured that we would continue to be treated independently. However, this has not consistently proved to be the case. For many issues, including some budgetary matters, we continue to be regarded as part of the Department of Premier and Cabinet cluster. I bring this situation to the Committee's attention due to my concerns about the potential impact on my office and its reputation. It is essential that integrity agencies are both independent of Government and are seen to be so. Inappropriate inclusion of my office in the super agency structure for budgetary, financial or indeed any other purpose poses a significant risk to this fundamental principle and will cause us to be viewed as part and not separate of the broader public sector.

More generally, what I find concerning is something that I have raised previously with the Committee and that is the continued blanket application and approach to budget reductions. I believe this approach is arbitrary, it is unsophisticated and an inappropriate method of finding savings. This is particularly true for smaller agencies such as mine where most of our budget is dedicated to staff related expenses and we have already done the hard yards of becoming effective, efficient and lean. In my view, consideration prior to making budget cuts should always be given to the size, the efficiency and the nature of work of each agency before decisions are made to cut; and application should not be made across all agencies of the same level of cut. These financial pressures make it more important than ever that we continue where possible to identify ways in which to improve how we do our business. We have already undertaken a number of initiatives in this regard.

The restructure in 2009-10 led to the deletion of two statutory officer positions. The increased workload that has resulted from this change for the remaining statutory officers and senior managers we have had to manage in a number of ways, including improving our work practices to ensure that we have a more coordinated approach to dealing with agencies and issues, particularly in our human services area. We now have a greater focus on internal consistency of work process and benchmarks. Stage one of the key performance indicator project has been included—in which we examined how we collect, record and report complaint information. We have aligned, where possible, like work processes across our division, so that we can compare performance statistics across common internal benchmarks. Scoping for stage two of the project is about to begin, and that deals with our non complaint handling work.

We have also carried an extensive review of our website. The new website will be launched soon. It will be more functional, and it will include a more user-friendly process to lodge a complaint online, and more easily accessible information, including links to our reports and publications. As well as extensive information about what we do and how we can help people, it will have tailored pages for some of the vulnerable residents of New South Wales, including separate areas for young people, people with disabilities and Aboriginal communities. Staff from my office have also been involved in developing an innovate review process with other Australian and New Zealand parliamentary ombudsman officers, recognising the value of sharing work in our various practices. I provided one of my officers to conduct a review of complaint handling practices in the Victorian Ombudsman's office. The Victorian Ombudsman then did the same, sending one of its officers to review the Public Administration Division in my office.

We found the benefits of participating to be two-fold: having an experienced independent colleague bringing a critical eye to how we do business, as well as the benefits of having one of our officers immersed for a number of days in the work practices of a nature similar to but different from our own. The process is efficient, as the degree of similarity between our work is sufficient for the reviewers to hit the ground running, as it were; but the differences in the detail of how we do our business is where a real opportunity arises for us to learn. The reviewing officers have now developed a methodology which has been shared with all ombudsmen offices, and they have recently assisted the Commonwealth's Ombudsman's office in a significant review of its work practices.

Since the last meeting, we have also gained a number of new functions and responsibilities. A little over a year ago we were given additional responsibilities for public interest disclosures. Our newly-established Public Interest Disclosures Unit is responsible for promoting public awareness and understanding of that legislation, providing advice and training to agencies, developing publications and guidelines, and monitoring and auditing agencies' handling of public interest disclosures. In its first year of operation, the unit has prepared model internal reporting policies for public authorities and councils, plus detailed fact sheets, checklists and guidelines to assist agencies and also public officials. To date, we have provided training to approximately 5,000 staff across New South Wales. The interest in training has been very encouraging, with a mix of regional and metropolitan councils as well as small agencies and principal departments taking it up.

We have also been given responsibility for conducting a number of new legislative reviews, to scrutinise a range of additional powers that have been provided to NSW Police. We are currently reviewing the operation of the Crimes Amendment (Consorting and Organised Crime) Act, removal of face covers for identification purposes under the Law Enforcement (Powers and Responsibilities) Act, the Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act, and the Crimes (Criminal Organisations Control) Act. We use, as the Committee knows, a variety of techniques to analyse the exercise of such new powers, including literature reviews, developing issues papers, data collection and analysis of focus groups. Finally, as the Committee is aware, I am now also the Convenor of the NSW Child Death Review Team; and responsibility for providing support and assistance to the team has been transferred to my office from the NSW Commission for Children and Young People. No doubt I will have an opportunity at our next hearing to talk about issues relating to that role. I thank the Committee very much for allowing me to make this opening. My staff and I are very happy to answer any questions that you have.

**Mr PAUL LYNCH:** You mentioned in your opening statement the role of the Ombudsman's Office in investigations into the death of Roberto Curti and the incident at Kings Cross with some Aboriginal teenagers. I think what you said was that the role of your office is to monitor in real time what the police are doing. What does that actually mean?

**Mr BARBOUR:** Can I perhaps start by saying there has been some tension around our role in relation to critical incident matters. As it stands at the moment, when a complaint is made about police conduct it must be notified to us, provided it meets the threshold set by the particular agreement in place with the Police Integrity Commission. Secondly, there is another avenue for complaint to be made, and that is under regulation 49, when police officers form a view that there has been misconduct. In the past critical incidents were often not referred to my office because there was, firstly, no complaint in existence and, secondly, because a police officer had not formed the necessary view to reach the threshold of it then being reported, as

they are obliged to do under the legislation. So, as a result, many critical incidents do not actually receive any independent oversight or scrutiny by my office in terms of the management of the investigation process. But, when there is a death, the cause of death obviously will be reviewed by the coronial process and an inquest.

In relation to these two particular matters, we are overlooking those because there was a view formed fairly early on that there was the possibility of police misconduct involved. In relation to the matter involving Mr Curti, we have been involved from the outset. By real-time monitoring we mean we have been provided with access to eagle.i, which is the primary computer system used by police for the purposes of high-level and significant investigations. We do not normally have access to that directly; it is normally only the Police Integrity Commission that has access to that. As information is put on that system—in other words, the moment it is complete and it goes on that system—that has allowed us access to that information. That has meant that our oversight and monitoring has been real-time, rather than towards the end of the process, when a report is completed and Police provide us with a 150 report under the legislation. So it has been a far more effective way of monitoring and oversight, and it is something that I have already had discussion with the commissioner about in terms of potentially extending our access to use of eagle.i for other matters.

Importantly, I have also proposed to the Commissioner of Police and the Minister for Police a new model, which would see my office having an automatic role in relation to all critical incidents that relate to or cause serious injury or a death, so that there is no longer a need for there to be a complaint in place, or for Police to reach a threshold and form an opinion that there is police misconduct present. As you can imagine, their focus is not usually on that in the first instance.

**Mr PAUL LYNCH:** I take it from that that, in the vast majority of investigations over which you have a review or oversight role, you normally do not have the capacity for real-time monitoring.

**Mr BARBOUR:** We can do real-time monitoring in different ways, but we do not have access to eagle.i. We have a breadth of powers and capacities provided to us under legislation, so we can initiate from the first time that we receive information about a complaint a process whereby we monitor more closely the investigation. That can include our staff being in attendance when witnesses are interviewed during the course of the investigation. We can get updated reports. But that is not normally the case. So it would generally be where we consider the matter to be one of a significant public interest or, alternatively, one of a significant potential abuse of power, or where the people involved are particularly vulnerable. Those are the sorts of criteria that we would look to actually involve ourselves on a more close-monitoring basis.

**Mr PAUL LYNCH:** Am I correct in assuming from what you have said that the vast majority of critical incidents do not have an oversight or a review role for the Ombudsman?

**Mr BARBOUR:** That is correct. Indeed, some matters that we believe ought to have been notified to us have not been notified to us. One particular notable matter we only became aware of once the Coroner made adverse comment about the police investigation of the matter.

**CHAIR:** Your annual report refers to 100 complaints that you believe should have been referred to you but were not referred to you by the police.

**Mr BARBOUR:** That would not include a figure for critical incidents. That would cover only those matters which are required to be notified to us under our class or kind agreement and/or as a result of Regulation 49 that have been identified during our audit processes. The dilemma around critical incidents is that arguably they do not have to be notified to us because unless there is a complaint in place or unless a police officer reviewing the circumstances of the matter concludes that there is misconduct then they do not have to be notified to us, and that is the problem with the current system.

**CHAIR:** How many complaints are you talking about? How many critical incidents?

**Mr BARBOUR:** At the moment we have seen a particular spike in critical incidents, particularly ones that have become very much the subject of public interest. Generally I would not think the number would be particularly high. I do not have a figure in front of me because we are not actually involved directly in that, but I would think serious injury and also death you would probably be looking at maybe somewhere in the order of 30 to 50 a year.

**Ms WAUGH:** Possibly higher.

**CHAIR:** If the police were to automatically refer to you it would be additional 30 or 40 cases a year?

**Mr BARBOUR:** It would, but, importantly, we would be able to identify fairly quickly with some of those matters whether there was any real likelihood or assumption of police misconduct, and in those cases we would be able to very quickly say to police we do not need to oversight this.

**CHAIR:** You want to do the assessment at the ombudsman's level rather than have the police do the assessment?

**Mr BARBOUR:** The police will still have to do the assessment but what we are recommending is that there is an automatic notification to the Ombudsman so that the Ombudsman can determine whether or not to formally oversight the matter, and that would require an amendment to the legislation so that it was not left up to police to decide whether they should notify us, it was automatic. We would be able to then do an assessment and if we could decide early on we could do so; if we need to wait and see what further information came out of the investigation process we could then follow and monitor the investigation.

**CHAIR:** Could I ask you to on notice give the committee details of what amendment would be required?

**Mr BARBOUR:** Certainly.

**Mr PAUL LYNCH:** I think you also indicated that you had had discussions with the Minister for Police or had made suggestions to the Minister for Police and the commissioner about this issue. Have you had any response or any preliminary indication of where it is likely to go?



**Mr BARBOUR:** The informal discussions I have had to date have been largely positive. Unfortunately, the Coroner was provided with some incomplete information about the process and raised some concerns about whether or not this would mean an inappropriate intrusion on the independence of the coronial process. I have subsequently written to the Coroner to assure her that that is not the case and that we see this being entirely independent of and running separately to the coronial process. But certainly that would be something that we would need to be conscious of.

In much of our work at the moment—child review deaths, for example, and also these critical incident matters—inevitably we are doing work overlooking police investigations that will ultimately also go before the Coroner and we have managed very successfully to ensure that there is no duplication, wherever possible, and also no interference in that process. So we have gained a lot of experience in relation to dealing effectively with the coronial process. I anticipate and I have asked the police commissioner to call a meeting with the Coroner and myself and himself so that we can further progress discussion about these issues.

**Mr PAUL LYNCH:** On the broader point there is some criticism that the police should not be investigating the police certainly in relation to critical incidents. Do you have a view about that? Is there a better way of doing this than currently exists?

**Mr BARBOUR:** There have been calls for there to be some additional powers provided to independent agencies to investigate critical incidents. I do not support that. What I do support is stronger and more effective independent oversight, and that is what the proposal I have put forward would achieve. The type of investigation that has to be undertaken, the extent of it and the experience and technical ability of those involved in the investigation do not reside in external agencies other than the police. Clearly, the police are the most appropriate agency to investigate those matters.

What I want to be concerned about and what I want to be able to deal to some extent with the public concern about is to be able to say in all of these matters there is some independent scrutiny over the investigation to make sure that the investigation is being conducted appropriately. Part of the problem with the existing process is if there is no death then it will not go to the Coroner and so often there will not be an independent scrutiny process and, secondly, even in matters that do go to the Coroner often the inquest is not held sometimes until one year or two years after the events in question. If there is police misconduct evident, that needs to be addressed much more quickly than two years down the track and that is, of course, only if the Coroner who is hearing the matter determines to actually look at police misconduct; it may not be necessarily relevant to the cause of death and so they may not necessarily look at it.

**CHAIR:** So unless the police are notifying you, you are basically finding out about these cases in the paper?

**Mr BARBOUR:** Sometimes, yes.

**Mr PAUL LYNCH:** As you have correctly noted, there has been an apparent spike in critical incidents. I wonder whether you think there is a role for you in a broader review, a broader oversight or a broader inquiry as to systemic issues that might have led to that spike in critical incidents?

**Mr BARBOUR:** I would welcome the resources to be able to do something like that. There are a number of very difficult issues because critical incidents arise in all sorts of different ways. They could arise as a result of a vehicle pursuit and an accident and injury or death as a result of a police chase. We have obviously already looked at those issues and we have reported on some of those issues in the past. The firing of weapons, the firing of some tasers, can lead to particular injuries. The Curti matter is an example where that has become a critical incident investigation.

So there are a wide range of reasons why a matter might constitute a critical incident. To look at them all in a way which would be able to address systemically issues that come up would be very challenging, but what one might be able to do is hive off particular areas and look at those much more closely, because I think many of the issues that are likely to lead to a critical incident are going to be quite discrete in terms of operational procedures of police.

**Mr PAUL LYNCH:** Have you given any thought as to doing that or as to how it might be done?

**Mr BARBOUR:** We have not. What I would like to do first is get the opportunity to oversight critical incidents; otherwise it is going to be rather challenging to be able to look at them in more detail.

**Mr PAUL LYNCH:** Just flowing from one of the comments you made, how is your work going with the review of the use of tasers?

**Mr BARBOUR:** It is going well but, unfortunately, it—like a number of our other big projects—has been somewhat a victim of our resourcing situation. Big projects require a considerable amount of resources and when you do need to make decisions about how you are going to get your work done sometimes those projects, unfortunately, need to suffer. In relation to this project, I see it as being a very significant one and so I have not pulled away resources from this, and the time that this is taking is more as a result of the breadth of the work and pulling all of the information together and making sure that the information is accurate. I think in one of the questions on notice we provided some of the details, but the period that we are looking at involves analysing over, I think, 1,600 taser incidents and we have viewed the footage of over 600 TaserCam videos of specific uses. So it will be, when we table it, probably the most comprehensive review of taser use in Australasia. At this stage I am hoping that it will be tabled in Parliament within the next few months.

**Mr RYAN PARK:** Will you be making recommendations as a result of that?

**Mr BARBOUR:** Absolutely, and what is interesting about that review is that we have been putting forward information as we identify particular issues to police for them to comment on so that we can include that in any final report that we do, and a number of the issues that we have raised with police have already led to police accepting changes to operating procedures and protocols. I am very pleased that the response of police to date has been quite positive in terms of many of those. Not all, but many.

**Mr PAUL LYNCH:** If it is such a large piece of work and taking up so many resources and you have elected to continue with it, what other sorts of things have you not been able to do as a result of the resources going into that bit of work?

**Mr BARBOUR:** Mainly some of the less important project work we have allowed to drift a little bit in terms of time. We have not actually made a decision to suspend anything completely or to cancel it, but what we have done is reprioritised things in terms of the order of work. There are a number of areas about which we provided answers to questions on notice which deal with some of the project work. The Committee quite rightly noted that in our previous reports we had said that we had planned on having those completed by a certain date. Some of those things have unfortunately drifted because of that.

**Mr RYAN PARK:** In terms of budgetary purposes you mentioned the problems of being a part of a super cluster or a large cluster, whatever bureaucratic term is floating around in this current Government. Why is that a problem? I accept the independent component of it, but can you give me a breakdown as to why you being a part of the DPC cluster, or whatever it is, is a particular problem? Is it because you are fighting for resources, or what is problematic about it?

**Mr BARBOUR:** Part of the problem is that we are then seen by the head of that agency as being just one of a number of agencies within a broader grouping. Secondly, many of the issues that need to be determined are determined on a discretionary basis by that individual rather than by me for my office, which I quite frankly believe is inappropriate. I think any decisions that are made on where cuts ought to rest and what work ought to be affected should rest with me.

What also happens is, because we are in some correspondence and in some materials linked in as part of a cluster, other central agencies when they deal with us propose to deal with us through that cluster. So sometimes we have had in the past Treasury correspondence coming via the Director General of Premier and Cabinet asking us for information and we are then to provide it back to the Director General so that the Director General can communicate it. I think that is problematic. In correspondence that we have received we have been advised that the Director General would resolve all budget issues relating to the cluster and that included the distribution of budget saving initiatives across the cluster, the approval of new capital works and any reprioritisation of existing programs, and prioritising requests for increased recurrent funding for existing programs.

The Department of Premier and Cabinet is within my jurisdiction. Apart from the fact that I think it is inappropriate, given the nature of what my organisation does and where it sits in terms of the integrity landscape within the State it is just inappropriate for an agency that is technically within my jurisdiction to potentially be making decisions about my budget and other matters and then for that to be compounded and be taken up by other central agencies who then want to treat us as part of the cluster.

**Mr RYAN PARK:** So what is it overall headline figure dollar cut that you have had to the budget?

**Mr BARBOUR:** The dollar cut is problematic because on the one hand we have received increases which are sometimes one-off increases over a period of time for new temporary functions or for new permanent functions that are built into our underlying budget. It is the core budget which is the one that is affected most. Then with the new programs it comes off the bottom of those. If I can give you an indication, the efficiency dividend which is being applied to us for this financial year is \$316,000. That will increase another \$210,000 in the following year.

Our program savings, which have been determined for this year, are \$123,000 and that will increase in future years. They all have nice titles. Our procurement savings for 2012-13 is \$112,000. Also we now have recently a labour cost adjustment which has been applied to all agencies and that is \$314,000 for this year, going up in 2015-16 to \$957,000. So the total for 2013 is \$865,000 and we estimate that at the moment it will go up in 2015-16 to a total of \$1.78 million.

**Mr RYAN PARK:** Out of what percentage of a total global budget that you have?

**Mr BARBOUR:** My budget at the moment is approximately \$24 million, which is an increased budget over the past few years but that is because of increased funding associated with new functions and temporary roles, so it is quite deceptive.

**Mr RYAN PARK:** Because you have increased workload but not exponentially in the same way you have increased funding. Okay.

**Mr BARBOUR:** There was a parliamentary Committee review undertaken in the Commonwealth sector about the impact of efficiency dividends and budget cuts across the public sector. What they determined was that for small agencies who have very little discretion about how they actually spend their money, the budget cut in an arbitrary way was a very blunt instrument and the impact on small agencies that were very efficient and very effective was a very, very onerous impact. That is the situation that we are in.

Essentially budget cuts to me mean I have to get rid of staff. If I have to get rid of staff I cannot do as much work. The challenge of course is that much of my work now is statutory based, so I must do it, which means what I have got to do is I have got to look at what is discretionary. So important project work or our general complaint handling work where we have got discretion about what we take up, they are the things that we need to cut yet they are the things that the people of New South Wales really expect the Ombudsman to be dealing with.

**Mr RYAN PARK:** In terms of total staff cuts, how many staff do you have and how many have you had to let go? You mentioned two senior people in your report that you had to let go. Is that going to continue? Given that you are facing significant pressures, where is that cut going to go to next?

**Mr BARBOUR:** We have a strategy at the moment of basically not filling positions as they become available. Any positions that we have got on temporary contract we need to review depending on where they are actually working in the office. If they are working on a project that has been specifically funded, like a legislative review, we are able to keep them on for the duration of the project because we have got funding. But if they are working in other areas of the office we need to get rid of them. The actual staffing levels do not disclose very easily the impact it has had on the office because with the introduction of the public interest disclosures responsibility, the moving over of the child death review team and the legislative reviews and other things staffing numbers have actually gone up a bit rather than down.

**CHAIR:** Perhaps if you could just give us a figure based on the core budget you referred to earlier.

**Mr BARBOUR:** I am happy to take that on notice and we can give you an indication of exactly what that means.

**CHAIR:** Is it fair to say that you are a demand driven agency, unlike some other government departments which are supply driven?

**Mr BARBOUR:** We are. We do have some inbuilt discretion in terms of what we do, and certainly how we do our business is very much up to us. But we are absolutely. I think what is potentially most disappointing for me is that we have established over the last decade the very real value that the Ombudsman can bring as a result of large projects, systemic work. What we are able to do, unlike many other oversight bodies, is look across the entire way in which government delivers services, for example to Aboriginal communities, and do very detailed work which has to be of significant benefit not only to the community but also to government. Those very issues are the ones that probably in future if we do not have the resources to do will be the ones that we are going to need to cut back on.

**CHAIR:** I just want to ask a few questions about that because it seems to me the Ombudsman, particularly with this training work and the systems reviews that you are doing, contributes to the efficiency of government overall and better value for dollar in the services if the services are functioning ethically and achieving outcomes, which is what you are reviewing. The work that you have done with other Ombudsmen around Australia, I understand that there is common computer software now for complaints management that all of the Ombudsmen around Australia are using. Is that correct?

**Mr BARBOUR:** I am not sure all of them but I think most of them are using Resolve, yes.

**CHAIR:** Is it possible to get some assessment of complaints management or the type of complaints that you are getting in New South Wales and their outcomes comparing that with other States?

**Mr BARBOUR:** That is partly what the review process was looking at. It was looking at the systems that were in place to deal with it and how we were actually identifying what was a success and what was not and what the systems were in place. That was why we were doing that. That is also partly why we have developed those new key performance indicators within the office so that we can get a better handle on that. There is still a challenge though from State to State because the only area of our work which is common is just the cross-government and local government area.

Other offices do not deal with police. Some deal with Community Services, some do not. Some have child death review functions, some do not. Some have functions over corrections, others do not. So although we can potentially do that for a small area of our work, the public administration area of our work, that probably would be the only area where we would be able to get those sorts of synergies. It is something we are working on. We now have regular meetings with deputy ombudsmen from across the country and also ombudsmen. We are looking at ways that we can assist each other to better improve and better perform.

**CHAIR:** It would assist the management of the State, I would have thought, to know.

**Mr BARBOUR:** Yes.

**CHAIR:** On the issue of asbestos, are you going to do a follow-up report on the actual recommendations you made in the initial review that you undertook of asbestos? I am particularly thinking of Woodsreef. I have actually been to see Woodsreef. Nothing is happening out there. I am just curious to know if you are going to take an ongoing interest in those outcomes?

**Mr BARBOUR:** We certainly will be taking an ongoing interest in those outcomes. The Government prepared a very detailed response as a result of the recommendations that we made. They tabled that publicly and they created a new entity that is called HACA, which stands for Heads of Asbestos Coordination Authorities. It chose to do that rather than set up a statutory body, as we recommended, to have oversight of asbestos issues and control of asbestos issues. We go along as an observer to those meetings and we are monitoring what is happening with those meetings. There was money provided for an initial remediation project for Woodsreef, consistent with the money that we had said should be provided. We have been monitoring that, but not as actively, but certainly we will be monitoring that.

**CHAIR:** What is your impression of how the money is being spent? When I looked at it, nothing had happened on the ground.

**Mr WHEELER:** As we understand it, the money was primarily to be spent on improving the security around the mine area. To actually remediate the whole site would be enormously expensive, but just to keep people out of it we had to do some initial remediation of the premises. Apparently, the premises, as I understood it, were to be removed—the large building that is there. There is also the issue of the road, the public road, that goes—

**Mr BARBOUR:** Through the middle of the mine.

**Mr WHEELER:** That was to be closed. Now there is a dispute. I think there are certain parties who are arguing that it should not be closed. We have seen correspondence between Ministers trying to get movement on the closure of the road. We have not been out to have a look at what has been done on the site as yet, but it is something that we do have in mind to do before we have finished our work in this area.

**CHAIR:** Sure. The funding that you recommended included the demolition of the major buildings. They have not been demolished.

**Mr WHEELER:** No.

**CHAIR:** I am just curious to know how it has been spent.

**Mr BARBOUR:** I think there is also—and Chris might be aware of this more fully than I—some tension with the local council around some of these issues. I gather that representatives on the council have mixed views about what ought to be happening and what should not be happening, and that is largely being driven by different views within the community about how to deal with those issues. That may have impacted on some of those aspects.

**CHAIR:** In relation to your office, our Committee received correspondence about a disgruntled complainant who came into your office at one stage and claimed that he happened to have a phial of acid in his pocket, which then developed into an incident in your office.

**Mr BARBOUR:** Yes.

**CHAIR:** The reason I raise it is that for our Committee it just highlighted the nature of some of the complainants that you deal with and also how effectively that matter was handled.

**Mr BARBOUR:** Yes.

**CHAIR:** Nobody was killed and nobody was injured in the incident.

**Mr BARBOUR:** Yes.

**CHAIR:** I wonder if you could talk us through about your management of those situations.

**Mr BARBOUR:** We have a very detailed risk and security policy, which is in place for all of our staff, and we have introduced particular measures in our entry portal for the office. I think most of you have visited the office and you would be aware that we do have limited access now to the reception area. We have redesigned the counter, but we have not put in, like some ombudsman's offices have done, security glass that somebody speaks from behind because we think that is inappropriate. We have also put a closed-circuit television [CCTV] camera into the reception area as well so that we can get footage, and we have a call button. So the moment anybody feels in danger they are able to alert the office. That sounds throughout the office and we have a response team that goes in response to it. Any incident which involves a threat or a safety issue to my staff, we always involve the police, and we have the police attend if somebody does not leave the premises.

**CHAIR:** How many of those sorts of incidents occur?

**Mr WHEELER:** If I could just add something to that: In the incident that you are referring to, the gentleman arrived with a bottle. It was an acid bottle. Whether it had acid inside it is open to question. He was not threatening our staff. He was threatening to drink it. He went into an interview room and he locked the door. We had a police response very quickly and they negotiated with him until he decided to give himself over to them. I also saw in his bag he had other things in there that were quite worrying.

**CHAIR:** What sorts of things?

**Mr WHEELER:** Generally speaking, the people who come to our office, if there is an incident, it is because of a lot of anger—yelling abuse, this sort of thing. We have very few occasions when people actually assault, very few. One occurred recently, but it was outside of our office. But on very few occasions do they actually attack. It is more expressions of extreme emotion.

**Ms WAUGH:** The other category is where they tell us on the phone that they are going to harm another person.

**Mr BARBOUR:** Or themselves.

**Mr WHEELER:** We always respond. We inform them that we are going to notify the police or the nearest mental health response team, whichever is relevant. We then do notify and we follow up to find if they have responded. In nearly every case they do respond very quickly and in most cases they know the person.

**CHAIR:** How many incidents would you have a year of that nature?

**Mr BARBOUR:** Not that many. I would think it would be less than five incidents in reception a year. We have other incidents where we become aware through a telephone contact or a letter. That is probably the more common occurrence. Interestingly, of course, this very much fits into the work that we have done on dealing with unreasonable complainant conduct, which we have to say has now internationally been recognised as being very, very significant work, and work that we are not only promoting through publications but also directly through training around the world. This particular issue is one that is increasingly common, not just for ombudsman's offices but really for any agencies that are dealing with people who are particularly difficult.

**CHAIR:** And that is part of your training rollout, is it?

**Mr BARBOUR:** Absolutely, yes.

**The Hon. SARAH MITCHELL:** I want to ask a question in relation to the Grafton Correctional Centre. You gave some information about that is in answer to one of the questions on notice and said that you were heading up there, or were planning to head up there, in May to have another look.

**Mr BARBOUR:** Yes.

**The Hon. SARAH MITCHELL:** Did that visit eventuate? Is there any update in terms of your concerns?

**Mr BARBOUR:** We did do the visit. There is nothing particularly to update the Committee on. In terms of that information, however, we still have the same concerns that we had before. Grafton, because it is such an old centre, has a range of problems which relate to health and amenity for the inmates. They are issues that we constantly raise. I think, really, in many respects they are only going to be resolved effectively if Grafton no longer is utilised. There was some decision to retire it some time ago, but I am not sure whether that is still an active matter under consideration. But certainly that, and many of the other prisons which are quite old, present problems.

**The Hon. SARAH MITCHELL:** In your opening statement you spoke about an inquiry or some work you are doing in relation to Aboriginal disadvantage and educational outcomes and economic limitations.

**Mr BARBOUR:** Yes.



**The Hon. SARAH MITCHELL:** Can you provide a bit more information about what you are undertaking in that area?

**Mr BARBOUR:** That report was tabled in Parliament last year. It came about as a result of very detailed work on a number of fronts: firstly, our Aboriginal unit and its relationship with Indigenous communities around a whole raft of complaints and work that came out of our police oversight functions, our child protection functions and the child death review functions and also broader reviews that are being undertaken as part of our ACSA review, the Aboriginal child sexual assault strategy that we are reporting on at the end of the year. It was a very detailed report and it tried to demonstrate that we believe failure to effectively address Aboriginal disadvantage in western New South Wales and vulnerable communities has largely been because government has failed to work as productively and collectively across agencies as it could. Different agencies trying to provide different models in those settings was not necessarily working in the best way. There was a lot of wasted money and duplication.

Educational neglect became a very critical issue because so many young Aboriginal children were not attending school. The systems in place for ensuring they attended were woefully inadequate. So, one of the areas we focused on was in relation to educational issues and strategies that could be adopted to improve that. I must say in a positive way the Department of Education and Communities has recently announced the new initiatives which relate to communities that we are speaking about in western New South Wales and changes to the way in which education will be delivered and strategies that will be in place to improve some of the problems that we identified. That is a positive step. The ministerial task force that is reviewing Aboriginal issues generally has also taken on board the issues we raised in that report. I believe a copy would have been sent to all Committee members but, please, if you have not received a copy let me know. I am more than happy to forward a copy to you.

**Mr PAUL LYNCH:** Have you had any meetings with the ministerial task force?

**Mr BARBOUR:** Yes. I was invited, along with the Auditor-General to address the very first meeting of the ministerial task force. Part of the recommendations we made in that report was for the task force to update us regularly on progress. Minister Dominello, who is the lead Minister, has kept up contact and provides information about that. My understanding is that work is progressing well in relation to that but this is an area where we have seen a lot of activity in the past so we will be looking very closely at what is proposed. One of the key differences of that task force, though, is that there are a number of very senior indigenous members on the committee, and I think it is probably the first time that has happened at a ministerial task force level. I think that is a very positive sign.

**Mr PAUL LYNCH:** Your focus on those issues seems to be very much on western New South Wales. Granted that the largest conglomeration of Aboriginal people in the country is in western Sydney, is there any focus on those issues in the urban areas and not just in remote areas?

**Mr BARBOUR:** Absolutely there is. We focus on indigenous issues wherever they arise. However, in our experience the quality and level of service provision in metropolitan areas that have fairly high Aboriginal populations are usually of a higher standard and tend to be working better in those locations. What we see there is not so much a direct link to those issues but more a failure across child protection issues generally to be dealt with effectively rather than more specifically in indigenous communities.

**Mr PAUL LYNCH:** But all those indicators from the Centre for Aboriginal Economic Policy Research suggest that the level of disadvantage is as huge in the city as it is in the country so it is not just about those sorts of issues.

**CHAIR:** We also have an unfortunate situation in the country where we seem to have the Aboriginal school and the white school in a town, which is not something I have picked up in Sydney but the Catholic or the government school in each town will be one or the other.

**Mr BARBOUR:** That very much is the case in western New South Wales. I also think a problem in western New South Wales is that it has been extremely difficult to attract staff. There is generally no difficulty in getting staff to meet particular positions across the human service providers, whether they are government or non-government agencies, in metropolitan regions. But in western New South Wales it is particularly difficult. One of the real challenges is not just the quality of programs but it is also whether there are people on the ground to make them work.

**Mr LEE EVANS:** In your preamble you were discussing the independence of the Ombudsman's office because it is within the Premier and Cabinet's stable, if you like. Where do you see the Ombudsman's office sitting if it was not going to be in the Premier's office to gain that independence?

**Mr BARBOUR:** Let me say firstly, we are seeing some progress. I received a letter from the head of Treasury recently indicating that he and the director general of Premier and Cabinet were meeting to discuss our role and budgetary issues. I am hopeful that my protestations are starting to pay some dividends. However, I would like to see there being a recognition of the integrity arm of government. It is not just my agency, it is also the Independent Commission Against Corruption, the Police Integrity Commission, the Auditor-General's office and the Independent Pricing and Regulatory Tribunal. I see no reason why those agencies cannot be seen as the integrity arm of government and that they be treated appropriately as such quite independently and that negotiations in relation to them be conducted directly by Treasury, by Parliament or by the responsible Minister. I have absolutely no problem at all being in the Premier's portfolio. It is clear that my organisation must sit, for the purpose of the way we do government and business, within a particular portfolio.

What has changed is as a result of the super agency creation, the creation of these clusters, and what is assumed is that the agencies that sit within a particular portfolio become part of that cluster. Despite assurances, as I said in my opening, that that would not happen with my office, that is happening. Not all the time, but it is happening and I continue to chip away at trying to fix that. I would like to see all of the independent integrity agencies joined together and be treated in the same way and independently. There is an enormous challenge for us, though, and that is we do not have champions around the Cabinet table or in financial committee discussions. Because of the nature of our work, despite the fact that I sit in the Premier's portfolio my day-to-day relationship with the Premier is a limited one. It is not like his agency head. So, I do not have a Minister who is able around the Cabinet table to argue for me as often agencies will have their Ministers argue. It is one of the disadvantages. It is a necessary disadvantage to maintain independence but it is one that causes some problems. That is why direct negotiations around things like budget cuts or budget enhancements or program delivery would be much better done directly.

**CHAIR:** I wonder whether our Committee should seek to meet with the Treasurer to discuss these issues particularly the reporting of the of the integrity agencies.

**Mr RYAN PARK:** I think it is valid. I think you raise the point, is not just for the Ombudsman. This is a problematic situation because a lot of the other oversight committees have the same issues. If you make an ambit cut to your budget, it is staff that go. I assume you do not have huge procurement issues, you do not have huge infrastructure or a lot of IT issues. There is only so much you can cut, so the only place generally in oversight agencies is staffing. The staffing means that projects go which means the whole fundamental tenure of your basis for being, which is the oversight of government projects.

**CHAIR:** We might at the conclusion of this meeting discuss that.

**Mr BARBOUR:** In the most recent budget papers that were released, Treasury did identify as independent agencies certain agencies. To our view, that was a positive step. The agencies that were listed were the Independent Commission Against Corruption, the Independent Pricing and Regulatory Tribunal, the Electoral Commission, the Ombudsman's Office, the Police Integrity Commission and the Public Service Commission. I think that is an excellent grouping and one I would certainly endorse. The only one that might also go in is the Auditor-General but it has a different budgetary framework because it is largely self-funding.

**CHAIR:** In the event that we resolve to meet with the Treasurer, we will certainly be in touch with you for assistance to prepare for that meeting. Has the office of the Ombudsman been provided with pirated software by the police?

**Mr BARBOUR:** That is not a question I would like to answer yes or no. I think you are referring to the Micro Focus issue?

**CHAIR:** Yes, but if there is any other pirated software we would be interested in that too.

**Mr BARBOUR:** No, I do not believe there is. Micro Focus owns the ViewNow software. The ViewNow software was provided to our office by police sometime ago under the clear agreement that police would be paying for the 25 licences. As a result of contact from legal representatives operating for Micro Focus we became aware that there was a dispute about whether or not those licence fees had been appropriately paid.

On the basis of that information we internally took a position to immediately minimise and mitigate our use. As you can imagine, direct access to COPS is essential for our work and that was the very reason we were provided with the software in the first place. Without it we cannot do our work effectively. As a result of information from that, we secured complete funding and support from the Treasury Management Fund, which provides to the State insurance in relation to legal issues and we retained independent legal counsel. As a result of various negotiations and discussions, we entered into a confidential settlement in relation to the matter. My primary concern was that my organisation is an organisation that must at all times represent integrity and ethical behaviour. I did not want anybody to be in a position to suggest otherwise. Secondly, from a practical perspective, we wanted to be able to use all of our licences and, thirdly, the legal cost associated with continuing to be involved would have been far and away greater than the cost of settling the matter.

**CHAIR:** Why is the settlement confidential?

**Mr BARBOUR:** That was what was agreed to between the parties.

**CHAIR:** I cannot imagine why it would be confidential.

**Mr BARBOUR:** That was what was agreed to between the parties because there is ongoing litigation involving New South Wales police.

**CHAIR:** Who would oversight allegations that software is being pirated in the public service?

**Mr BARBOUR:** Can I just say that police clearly deny that they have been pirating software. Their most recent public statement, which was provided to a journalist and ended up being referred to in this morning's *Sydney Morning Herald*, clearly sets out that they take a different view. So I am not in a position to confirm whether or not there is substance to the case that is being put forward by Micro Focus. That will be determined by the court. If that is substantiated and those allegations prove to have been the case by the court, then the obvious place that might review that would be the ICAC or, alternatively, the Auditor-General for any contractual arrangements that have been breached.

**CHAIR:** The police are supposed to investigate piracy allegations. Obviously, their understanding of piracy is pretty critical to the enforcement of anti-piracy laws around the State.

**Mr BARBOUR:** As I said, they are clearly taking an alternate view. They do not accept that they have actually done anything unlawful. I am not sure whether there is a problem of the kind you are alluding to. However, if it is determined that there has been inappropriate conduct and the court case determines that, then that may well be an issue that will need to be reviewed.

**CHAIR:** This has ended up in court because there was no mechanism in the New South Wales Government, it would appear, to resolve this matter as a complaint against the police?

**Mr BARBOUR:** I am not sure that that would be appropriate. As I understand it, essentially this is a contractual dispute. Both parties argue about the capacity for each under the terms of the contract. So the appropriate place for it to be determined is in litigation if it cannot be the subject of mediation beforehand.

**CHAIR:** I would agree with that except that your office has settled, as has the Police Integrity Commission—

**Mr BARBOUR:** The Police Integrity Commission and also the Department of Attorney General and Justice.

**CHAIR:** Given that the cases are being settled creates a perception that there is validity to the claim.

**Mr PAUL LYNCH:** You cannot say that unless you know the basis of the settlement.

**CHAIR:** Which is confidential. Basically, this company has no option other than legal action. What happens if the police settlement of this case is confidential as well?

**Mr BARBOUR:** I will not speculate on that because I do not know whether that will or will not happen. My understanding is that there have been efforts to settle the matter out of court. My understanding also is that there have been offers to mediate the matter. As far as I am aware, as at today's date the litigation is proceeding. I think there may well be some additional issues that will be the subject of further litigation and both parties seem to be digging trenches in relation to the matter.

**CHAIR:** How can the public be confident that the police have a correct understanding of anti-piracy laws and are applying and investigating those laws correctly?

**Mr BARBOUR:** That will be something that will need to be addressed once the litigation is complete and once there is actually a determination of whether the police have conducted themselves unlawfully.

**CHAIR:** But my point is that if the police make a confidential settlement, how are we going to know the answers to those questions in the way that the Ombudsman's office has made a confidential settlement?

**Mr BARBOUR:** I cannot answer that because I do not know whether there will or will not be. I do not know what the terms of the settlement will be. Part of the problem is that there appear as well to be multiple other agencies potentially involved in this particular matter. It would just be quite wrong of me to speculate on those types of concerns. Clearly, if there is any suggestion that a government agency is acting inappropriately in relation to software that they are acting unlawfully in relation to contractual obligations, then the place that those matters should be referred to is the ICAC. Similarly, the Auditor-General in reviewing the agency's performance in a financial sense under its contractual obligations has the capacity to look at those issues as well. There is a system in place to review those matters. Whether in this case the company involved ever sought to raise those issues with either of those agencies, I do not know.

**CHAIR:** Did you?

**Mr BARBOUR:** Did I?

**CHAIR:** Did the Ombudsman refer the matter to ICAC?

**Mr BARBOUR:** No. Why would I?

**CHAIR:** Because you have just described to me that that is the correct procedure to investigate allegations of this nature?

**Mr BARBOUR:** Only if you wish to put before them that there is some unlawful conduct and, as I have said, I am not aware at this point of there being unlawful conduct. However, if the court case determines that there was, then that may well be a matter that I would need to decide as to whether or not there should be a reference to the ICAC.

**CHAIR:** Are you confident that the police are handling this appropriately?

**Mr BARBOUR:** I cannot really answer that question. It is not within my purview.

**CHAIR:** Whose purview would it be?

**Mr BARBOUR:** The police commissioner's.

**CHAIR:** Who is going to oversight the police commissioner on this particular issue?

**Mr BARBOUR:** I imagine the police commissioner reports to the police Minister about these sorts of issues and, therefore, to government and I imagine they are also acting on the basis of legal advice. But once again, I am just speculating. My role is not to provide a view about how police are handling their litigation. I do not think that would be appropriate, particularly in public session. There is ongoing litigation. I do not think that would be appropriate.

**CHAIR:** It has reached the point of ongoing litigation; I am just interested in how they reviewed the investigation of whether the software was pirated. It now has developed into litigation, but the initial complaint prior to it going to litigation appears not to have been investigated, which is how we have now reached this point where everyone is in court. As you have indicated, it would have been far cheaper to settle this.

**Mr BARBOUR:** You may have information that I do not have available to me. I am unaware of a complaint being made to anybody about this.

**CHAIR:** Surely they complained to you when it was pointed out that you were, in their view, using pirate software?

**Mr BARBOUR:** Sorry, who is "they"? Micro Focus?

**CHAIR:** Micro Focus, yes?

**Mr BARBOUR:** No. Micro Focus raised concerns with the police provision of that material and then we found ourselves listed as a respondent in court proceedings.

**Mr PAUL LYNCH:** It might be commercial dispute rather than anything else.

**Mr BARBOUR:** I think it is clearly a commercial dispute. It involves a substantial sum of money and it needs to be resolved.

**CHAIR:** Are there any further questions?

**Mr PAUL LYNCH:** I have some, but I am happy for them to be supplementary questions.

**CHAIR:** Yes, we have gone over time.

**Mr BARBOUR:** That is fine. I am in the next hearing anyway so if you want to go a little over time, that is fine with me. It is not a problem. I am very happy to assist the Committee.

**Mr PAUL LYNCH:** I will proceed with my questions as supplementary questions.

**Mr RYAN PARK:** I am happy also to do that.

**CHAIR:** Are you happy to take questions on notice?

**Mr BARBOUR:** Sure, absolutely no problems at all.

**CHAIR:** Is there anything further you wish to add to this part of the hearing?

**Mr BARBOUR:** No, not at all. I am not sure whether the Committee has the latest printed version. This is volume 2, the second edition. I will leave this with the Committee. If people are interested in having their own copies, please let me know and I will make additional copies available.

**CHAIR:** Thank you for appearing before the Committee and thank you for agreeing to take further questions on notice.

**(The witnesses withdrew)**

**(Short adjournment)**

## Appendix One – List of Witnesses

18 June 2012, Waratah Room, Parliament house

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Witness	Organisation
Mr Bruce Barbour Ombudsman	NSW Ombudsman
Ms Linda Waugh Deputy Ombudsman - Police and Compliance	NSW Ombudsman
Mr Chris Wheeler Deputy Ombudsman - Public Administration	NSW Ombudsman

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## Appendix Two – Extracts from Minutes

### MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 9)

10:03AM, Wednesday, 22 February 2012  
Room 1136, Parliament House

#### Members Present

Ms Cusack (Chair), Mr Anderson , Ms Mitchell, Mr Park and Mr Searle

#### Apologies

Apologies were received from Mr Lynch and Mr Evans

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### 3. Public Hearings

Resolved on the motion of Ms Mitchell:

'That the Committee hold public hearings on the 21 May 2012 with the following

- Commissioner of the Police Integrity Commission
- The Inspector of the Police Integrity Commission
- The NSW Ombudsman, in his capacity as Ombudsman
- The NSW Ombudsman in his capacity as Convenor of the Child Death Review Team
- The Information Commissioner
- The Privacy Commissioner;

And inform the above mentioned of the proposed 21 May public hearing date'.

Resolved on the motion of Ms Mitchell:

'That the Committee staff members prepare an explanation of the remit of this Committee'.

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### MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 10)

10:00AM, Wednesday, 28 March 2012  
Room 1254, Parliament House

#### Members Present

Ms Cusack (Chair), Mr Anderson , Mr Evans, Mr Lynch and Mrs Mitchell

## Apologies

Apologies were received from Mr Park and Mr Searle

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## 4. General Meeting – 18 June 2012

The Chair noted the upcoming meeting with the NSW Ombudsman on 18 June 2012.

Resolved, on the motion of Mrs Mitchell:

'That the Committee meet with the Ombudsman in both his capacity as NSW Ombudsman and as Convenor of the Child Death Review Team on 18 June 2012.'

Resolved, on the motion of Mr Lynch:

'That the Committee endorse the draft questions on notice to be sent to the NSW Ombudsman.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 13)

09:30am, Monday, 18 June 2012

Waratah Room, Parliament House

### Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Lynch, Mrs Mitchell, Mr Park and Mr Searle

## Apologies

An apology was received from Mr Anderson

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## 4. General Meetings – 18 June 2012

Members noted the briefing packs that related to the General Meeting with the Ombudsman in his capacity as Ombudsman and the General Meeting with the Convenor of the Child Death Review Team.

Members noted the draft questions without notice, as circulated.

Members noted the answers to questions on notice received from the Ombudsman in his capacity as NSW Ombudsman and convenor of the Child Death Review Team.

The Committee adjourned at 09:45am until:

The Committee convened a General Meeting with the NSW Ombudsman at 10:00am. The public and media were admitted.

Mr Bruce Barbour, NSW Ombudsman, was affirmed and examined.

Ms Linda Waugh, Deputy Ombudsman – Police and Compliance, was affirmed and examined.

Mr Chris Wheeler, Deputy Ombudsman – Public Administration, was sworn and examined.

The witnesses agreed to take further questions from the committee on notice.

Evidence completed, Mr Barbour, Ms Waugh and Mr Wheeler withdrew.

Resolution –

On the motion of Mr Park,

'That the corrected transcript be made available to the public and answers to questions on notice be published subject to corrections.'

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Resolution –

On the motion of Mrs Mitchell,

'That the corrected transcript of the witnesses' evidence be published on the Committee's website, including the answers to questions on notice.'

As the hearing was concluded, the public and media withdrew.

## 5. General Business

Members noted the following:

- That the transcript would be circulated to Members for correction;
- That questions taken by witnesses on notice would be sent to those witnesses, along with any outstanding questions on notice that the Members wish to ask of the witnesses. Questions to be finalised via e-mail by Friday 22 June at 12pm.

Resolution –

On the motion of Mr Park,

'That the Committee invite the Treasurer and the Director General of the Department of Premier and Cabinet to meet with the Committee to discuss aspects of the Ombudsman's evidence.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 14)

10:00am, Wednesday, 15 August 2012

Room 1254, Parliament House

## Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson, Mr Lynch, Mrs Mitchell, Mr Park and Mr Searle

## Apologies

An apology was received from Mr Park

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## 4 General Meetings and answers to further questions on notice

Members noted the circulated answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission, the Information and Privacy Commission and the Ombudsman.

Resolved, on the motion of Mr Anderson:

'That the answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission and the Information and Privacy Commission be published and made available on the Committee website.'

Members noted the Ombudsman's request for confidentiality in relation to his answers to questions one and two. Discussion ensued.

Resolved, on the motion of Mr Searle:

'That the answers to further questions on notice received from the Ombudsman be published and made available on the Committee's website, with the exception of questions and answers numbered 1 and 2 which will not be published or made available on the Committee's website until the Committee makes a decision in relation to the Ombudsman's request for confidentiality.'

Resolved, on the motion of Mr Lynch:

'That the Committee write to the Ombudsman requesting further information in relation to his request for confidentiality so that the Committee may better consider the Ombudsman's request and that the letter take the form of the draft letter circulated at this meeting.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 21)

3:30 PM, Monday, 10 December 2012

Room 1153, Parliament House

## Members Present

Ms Cusack (Chair) and Mr Searle

Via teleconference: Mr Anderson, Mr Evans, Mr Lynch, Mrs Mitchell and Mr Park

Staff in attendance: Rachel Simpson, Emma Matthews, Hilary Parker, Todd Buttsworth and Rohan Tyler

The meeting commenced at 3:33 PM.

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## 2. Consideration of the Chair's draft reports – Review of Annual Reports following General Meetings on 21 May 2012 and 18 June 2012

Members noted Standing Order 301(3) in relation to report consideration, and resolved on the motion of Mrs Mitchell:

'That the Committee consider each of the Annual Report Reviews in globo.'

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In relation to Report 4/55: *Seventeenth General Meeting with the NSW Ombudsman*, resolved on the motion of Mrs Mitchell:

- that the draft Report be the Report of the Committee and that it be signed by the Chair and presented to the House;
- that the Chair and the Secretariat be permitted to correct stylistic, typographical and grammatical errors; and
- that, once tabled, the Report be placed on the Committee's website.

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The Committee thanked the secretariat for its assistance in the preparation of the reports.

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