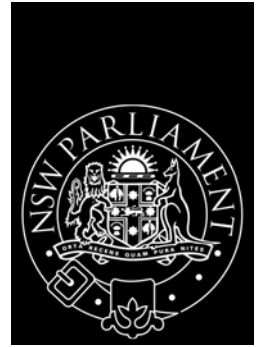


PARLIAMENT OF NEW SOUTH WALES



Committee on the Office of the Ombudsman and the Police Integrity Commission

Report on the Fifteenth General Meeting
with the NSW Ombudsman

Together with Questions on Notice,
Transcript of Proceedings and Minutes

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Membership and staff

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Functions of the Committee

The Committee on the Office of the Ombudsman and the Police Integrity 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*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- to monitor and review the exercise by the Commission and the Inspector of their functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

Functions of the Committee

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint 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, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The Statutory Appointments (Parliamentary Veto) Amendment Act, assented to on 19 May 1992, amended the Ombudsman Act by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the Ombudsman Act provides:

- The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- A referral or notification under this section is to be in writing.
- In this section, a reference to the Minister is;
 - in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
 - in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
 - in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.

The Committee also oversees the Information Commissioner. The Committee's functions are set out in section 44 of the Information Commissioner Act. Under section 5 of that Act the Committee has the power to veto the appointment of the Commissioner.

Chair's foreword

The General Meetings with the Ombudsman and his executive staff provide the Committee with the opportunity to overview the work undertaken by the Office during the previous year and become aware of particular issues which the Ombudsman considers should be brought to the Committee's attention. This meeting was the first occasion that I had met with the Ombudsman since my election as Committee Chair.

This year the Ombudsman indicated that in order to ensure its efficiency and effectiveness in the light of financial constraints his Office was reviewing its systems and processes, senior staff development and the nature of the work done by the Office.

Each year the Ombudsman's Office continues to handle many thousands of inquiries and formal complaints and produce a number of important reports which often deal with disadvantage suffered by the most vulnerable members of our community. As well, the Ombudsman is often given the responsibility for monitoring and reporting on the operation of new legislation.

Two issues were of concern to the Committee: one is the Ombudsman's access to correctional centre official visitors; the other is a provision in the Ombudsman Act which allows agencies to claim legal professional privilege. These and other matters are discussed in the following report.

I would like to thank the Members of the Committee for their participation in the General Meeting and their contribution to the reporting process.



The Hon Kerry Hickey MP
Chair

Chapter One - Commentary

- 1.1 On Thursday 21 May 2009, the Committee conducted the Fifteenth General Meeting with the New South Wales Ombudsman and his executive officers. This is the second time the Committee has met with the Ombudsman during the 54th Parliament.
- 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 the Annual Report for 2007-2008. The answers to these questions on notice can be found at Chapter Two of this report.
- 1.3 Evidence was taken from the Ombudsman and his executive officers in relation to the Annual Report for 2007-2008 as well as current issues relevant to the Ombudsman's jurisdiction. The commentary that follows focuses on a number of issues, including the establishment of the Information Commissioner, the ways in which the Ombudsman verifies information sought from agencies in response to complaints, the operation of the Official Visitors Program in prisons and correctional centres and the Ombudsman's work with Indonesian and Pacific region Ombudsman.
- 1.4 During the meeting, the Committee was informed of the retirement of Anne Barwick, and would like to thank her for her diligent and tireless work as the Assistant Ombudsman for Children and Young People. The Committee notes that Ms Barwick led the Ombudsman's child protection division from its beginning, establishing the jurisdiction and the interagency relationships necessary for effective work. The Committee thanks Ms Barwick for her significant contribution to ensuring better child protection in New South Wales.

Information Commissioner

- 1.5 In February 2009, the Ombudsman released a special report to Parliament under section 341 of the Ombudsman Act called *Opening up Government: Review of the Freedom of Information Act 1989*. It made 88 recommendations concerning repealing the Freedom of Information Act and replacing it with an Open Government Information Act, as well as establishing an Information Commissioner as the public proponent for the objects and intentions of the new system, as well as providing an external review of decisions.
- 1.6 On 6 May the Premier released three exposure draft bills for public comment: the Open Government Information Bill, the Information Commissioner Bill and the Open Government Information (Consequential Amendments and Repeals) Bill. The majority of the recommendations made in the Ombudsman's report had been accepted.
- 1.7 The Ombudsman gave evidence at the General Meeting that he was glad to see some momentum on the issue of reforming access to information and that the legislation provided a greatly improved access regime than currently existed.
- 1.8 In June, the Premier introduced the new access to information legislation into the House, the *Government Information (Public Access) Bill 2009*, and provided for an Information Commissioner in the *Government Information (Information Commissioner) Bill 2009*. Both Bills were assented to on 26 June 2009 and the *Government Information (Information Commissioner) Act 2009* commenced on 17

Commentary

July 2009. As yet, the *Government Information (Public Access) Act 2009* is not in force.

- 1.9 The Committee on the Office of the Ombudsman and the Police Integrity Commission will be overseeing the Information Commissioner.

Information verification

- 1.10 During the course of the General Meeting, the Ombudsman responded to a question without notice concerning how his Office ensured the accuracy of information used in reaching a decision regarding a complaint. The Ombudsman discussed the systems used by his Office to ensure the accuracy of information and how it is interpreted for use in correspondence and reports. The Ombudsman noted that these issues are discussed on page 28 of the Annual Report. The Ombudsman also stated that if a report was critical of an agency, his Office consults with the agency to give them the opportunity to respond to the matter.
- 1.11 It is imperative that the Ombudsman has rigorous mechanisms in place to ensure the accuracy of information. The Office's reputation and credibility relies on the veracity of its information. The Committee is pleased to see the Ombudsman managing this risk in a proactive and ongoing manner.

Indonesian and Pacific Region Ombudsman

- 1.12 In his response to questions on notice, the Ombudsman discussed his Office's ongoing involvement with the Indonesian Ombudsman and the Pacific Ombudsman. During the General Meeting, the Assistant Ombudsman, Greg Andrews, outlined some of the exchange programs that have taken place, primarily through the Commonwealth Ombudsman. The Ombudsman indicated that his work in the region is funded through the Government Partnership Fund, which is administered by AusAID. Mr Barbour advised the Committee that his application for continued funding has been viewed favourably by AusAID, and that the Chairman of the Pacific Ombudsman Alliance, John McMillan, the Commonwealth Ombudsman, will be writing in relation to this matter shortly. Mr Barbour said that he understood they were supportive of a further five year program.
- 1.13 The Committee is pleased to see the Ombudsman making such an important contribution to strengthening institutions in both Indonesia and the Pacific region.

Official visitors in correctional centres

- 1.14 The official visitors are independent of the Department of Corrective Services, and make unannounced visits to correctional centres as a way of independently monitoring conditions and practices at those centres. Formerly, the official visitors were administered by the Inspector of Corrective Services, but since the abolition of that office, the official visitors are administered by the Department of Corrective Services while still remaining independent of that department.
- 1.15 In answers to questions on notice, the Ombudsman discussed in some detail the changes to the administration of the official visitors appointed by the Minister for Corrective Services. Previously, the Department of Corrective Services supplied the Ombudsman's Office with the contact details for all official visitors. However, on the basis of "privacy concerns" the Commissioner for Corrective Services issued a directive that Correction's General Managers were to facilitate the Ombudsman's contact with the official visitors.

- 1.16 As a result, the Ombudsman's Office now has very little contact with official visitors. This impacts on the Ombudsman's work in a number of ways. The Ombudsman is no longer in position to raise grievances with the official visitors that may be best dealt with by them; the Ombudsman is no longer able to speak to them before visiting prisons, which means it is difficult for Ombudsman officers to acquire an understanding of current issues in particular correctional centres or ascertain which inmates may benefit from an interview.
- 1.17 While some official visitors do contact the Ombudsman's Office, and the Ombudsman's staff are able to make contact with the official visitors at regional conferences, there is now greatly reduced contact.
- 1.18 While the Ombudsman suggested to the previous Minister for Justice a number of ways in which official visitors' privacy could be respected while allowing the Ombudsman access to their contact details, neither the Minister nor the Corrective Services Commissioner agreed. As matters now stand, the Ombudsman has no way of contacting the official visitors directly.
- 1.19 The Committee is concerned that the current arrangements whereby the General Managers of correctional centres hold the contact details for the official visitors compromise the independence of both the official visitors and the Ombudsman. It also places an extra administrative burden on the General Managers. The Committee intends to write to the Minister for Corrective Services asking him to rectify this matter.

Matters arising from the Fourteenth General Meeting with the NSW Ombudsman

Legal Professional Privilege

- 1.20 During the 14th General Meeting with the NSW Ombudsman, the Ombudsman drew to the Committee's attention ongoing issues surrounding legal professional privilege. For Ombudsman in other States, Territories and the Commonwealth, as well as the Western Australian Parliamentary Commissioner, public sector agencies cannot refuse access to documents on the basis of a claim of legal professional privilege. The Police Integrity Commission and the Independent Commission Against Corruption are not prevented from accessing any class of document. However under section 21 of the NSW Ombudsman Act, a claim of legal professional privilege can prevent the Ombudsman from gaining access to documents held by a public sector agency.
- 1.21 On the basis of the evidence given by the Ombudsman, the Committee wrote to both the Premier and the Attorney General in October 2008 seeking an amendment to the Ombudsman Act to removed the legal professional privilege exemption. Almost one year has passed and no response has been received by the Committee despite follow up action being taken by the Committee Secretariat. The Committee will again write to the Premier and the Attorney General raising these matters and seeking a full and prompt response.

Oversight powers for Telecommunications Interception

- 1.22 The Committee is pleased to note that the issues highlighted in the Report on the Fourteenth General Meeting with the NSW Ombudsman regarding the Ombudsman's ability to effectively oversight warrants for telecommunications interception have been

Commentary

addressed by the *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009*.

Chapter Two - Questions on notice and answers

Matters Arising from NSW Ombudsman Annual Report 2007-08

Question 1

Can you provide more information to the Committee on your work with Indonesian and Pacific region Ombudsman (AR pp 9 and 24)?

Answer

A Presidential Decree promulgated in March 2000 established a national Ombudsman function for Indonesia. Upon establishment, early contact was made between the Chief Ombudsman of Indonesia and the Commonwealth Ombudsman and that office conducted some support programs in the following year. In 2005 a new partnership was developed between the Commonwealth Ombudsman, the NSW Ombudsman and the Western Australian Ombudsman to provide ongoing support under the Commonwealth Government's Government Partnership Fund. The Indonesian/Australian Ombudsman Linkages and Strengthening Program was initially to run from January 2006 to June 2009 but due to the funds being underspent it has been extended to June 2010.

The initial aim of the program was to strengthen decentralised Ombudsman services in Indonesia and strengthen the central functions of the National Ombudsman Commission ("NOC") and build relationships between Indonesian and Australian Ombudsman staff.

The establishment of the National Ombudsman Commission was predicated on there being a subsequent passage of legislation to provide specific powers and enable the Ombudsman to function in a similar fashion to Ombudsman in Western democracies. It was, however, not until September 2008 that the law on Ombudsman of the Republic of Indonesia was finally passed. There have been a number of exchanges of staff between the NOC and Australian Ombudsman offices in the intervening period.

Since July 2008 direct involvement of our office in the program has involved support for the NOC assisting it to develop processes to improve the internal complaint handling within the Indonesian Lands Department. Two of our staff attended a workshop in Jakarta in July 2008 and provided other advice to NOC staff during the week they were there. This has been supplemented by ongoing email advice.

In August 2008 two senior investigation officers from the NOC spent a 12-day placement in our office where they focused on learning about how to develop complaint handling systems in general and how to develop professional relationships with agencies within the Ombudsman's jurisdiction. For the latter program we arranged a number of agency visits for them to observe consultation and liaison strategies involving the NSW Police Force, the Department of Lands and the Valuer General, and the Department of Corrective Services. They also had a meeting with the then Chair of the Joint Parliamentary Committee on the NSW Ombudsman and Police Integrity Commission.

The original intention of the program, which was to support the decentralisation of Ombudsman services in Indonesia, was thwarted by the long delay in the Indonesian parliament passing legislation, and all efforts to date have concentrated on strengthening

the central National Ombudsman Office in Jakarta. The passage of the legislation now provides a mechanism for decentralisation which will provide significant new opportunities and challenges in supporting the NOC. However, under the transition arrangements, the new Ombudsman Commission has to be established by October 2009, and the NOC has been largely concentrating on documenting its protocols, establishing procedures for the new commission and doing proactive work to support the recruitment of nine new Ombudsmen by that date. This has also been complicated by the Indonesian general elections. As a consequence, apart from the two activities mentioned above, the general level of activity under this program has slowed considerably over the past 9 months.

At this point we are still waiting for the NOC to identify any other specific areas of assistance they wish to involve us in.

Our involvement in this program is both a product of and assists us in achieving our corporate goal of being a leading watchdog body both within our own jurisdiction and internationally. All our direct costs involved in both visits to Indonesia and supervising placements of their staff here have been met by the Government Partnership Fund Grant administered by the Commonwealth Ombudsman.

Pacific Ombudsman

The Ombudsman is the current vice-president of the International Ombudsman Institute for the Australasian and Pacific region. At a meeting of the regional body some years ago, the Pacific Ombudsman asked for the region's help in assisting them to strengthen their institutions. To respond to this request the Commonwealth Ombudsman and the NSW Ombudsman submitted a funding grant application to AusAID to run a program aimed at assessing the development needs of the existing Pacific Ombudsman offices. In 2005 Assistant Ombudsman Greg Andrews conducted a needs analysis in the Cook Islands, Samoa and Fiji with the assistance of a consultant who also visited Tonga, Vanuatu and the Solomons. Following a further application and as a result of this work, in April 2006 AusAID provided \$267,000 from its Pacific Government Support Program to the Commonwealth Ombudsman's office to conduct an activity to build a mutual support network for Pacific Island Ombudsmen. It aimed to build a professional peer network and help the Pacific Island Ombudsman operate more efficiently and effectively through improved effectiveness in handling complaints and lowering their backlog of complaint cases.

The Ombudsman and Assistant Ombudsman Greg Andrews were involved in a number of meetings of the Network, and staff from the Commonwealth Ombudsman's office took part in a number of placements in offices of South Pacific Ombudsmen supported by this grant. We also established a network news web service for members. The work under this grant was largely completed in June 2007.

At that time the Commonwealth Ombudsman was approached and requested to scope an initiative of the Pacific Plan. The Pacific Plan is the current strategic plan of the Pacific Island Forum (of which Australia is a member). It envisaged a regional Ombudsman for the Pacific. This specific grant was provided to the Commonwealth Ombudsman to use the existing network to assess the potential of a range of approaches towards regional Ombudsman services, given current capacities and constraints at the national and regional levels. It was also to foster a high degree of consensus among an expanded network of Pacific Island representatives.

In March 2008, Assistant Ombudsman Greg Andrews, in the company of the Chief Ombudsman of Papua New Guinea and the Director of International Programs from the Commonwealth Ombudsman's office, visited Palau, the Marshall Islands and the Federated States of Micronesia to conduct a country consultation about their intentions under the Pacific Plan with respect to an Ombudsman. Another team visited Kirabati, Tuvalu and Nieu. The existing Pacific Ombudsman and representatives from each of those countries subsequently attended a meeting in Port Vila. The NSW Ombudsman and Assistant Ombudsman also attended, along with representatives of the Pacific Forum Secretariat and the United Nations Development Program. As a result of that meeting there was a consensus that the most viable way to strengthen regional Ombudsman services was to build on the existing Pacific Island Ombudsman Network but expand it to include other like-integrity agencies and to provide support to those countries wishing to develop Ombudsman offices.

Some further seeding money from the Pacific Government Support Program administered by the Commonwealth Ombudsman has enabled us to take this initiative further and in October 2008 the Pacific Ombudsman Alliance was established. The charter of the Alliance is attached at annexure A. The NSW Ombudsman, as the current vice-president of the Australian and Pacific Region of the International Ombudsman Institute, is an ex-officio member of the Board of the Alliance. Assistant Ombudsman Greg Andrews continues to assist the Secretariat as required depending on his availability.

In March 2009, the Ombudsman and Assistant Ombudsman attended the first board meeting of the Alliance in Raratonga where the workplan to expend the remaining funds of the seeding grant was determined. Assistant Ombudsman Greg Andrews returned to Palau in April to help the government develop legislation to establish a Parliamentary Ombudsman's Office. All his expenses including a re-coup of his salary were paid for out of the grant. The Commonwealth Ombudsman as Chairman of the Board is in the process of submitting a further application for multi-year funding to AusAID to support the ongoing development of the Alliance.

Question 2

What feedback did you provide to NSW government departments and authorities following your survey of their complaint-handling systems and has there been any response from agencies to your work in this area? (AR p 22)

Answer

We prepared two reports of the survey results – one for local councils and one for departments and authorities. Each agency which had been sent a survey was provided with a final report. We suggested they use the survey report to look at how well their complaint handling system was operating. In particular we said this should include consideration of the adequacy of written procedures as well as what is happening in practice in their organisation. While a thoughtful, well written policy is an essential underpinning for any complaint handling system, its effectiveness is determined by how well it is put into practice. We received feedback from a number of agencies that the survey had prompted them to review their complaint handling systems and to make improvements.

Question 3

Can you provide more detail about your participation in, and the purpose of, the International Network for the Independent Oversight of Police (AR p 25)?

Answer

In late 2006 the Independent Police Complaints Commission for England and Wales (IPCC) made contact with this office to brief us about the initiative it had undertaken with a number of other organisations from Canada, the United States and European Union to create an international network for independent police oversight bodies. They were keen to extend the network to our region. The aim of the network was to create opportunities for existing oversight organisations to learn from the experience and knowledge of their peers in other jurisdictions, and secondly to champion the principle that independent oversight of policing provides an essential protection of citizens' rights and is necessary to ensure that police services operate effectively.

Following contact with other Australian oversight agencies, there was a general consensus that the NSW Ombudsman act as a liaison point for the INIOP Steering Committee. The then Assistant Ombudsman, Simon Cohen, represented eight Australian and New Zealand police oversight agencies at a meeting of the INIOP Steering Group in March 2007 held in Belgium by way of video conference from Sydney. He subsequently participated via email in work of the Steering Group to develop a constitution. In September 2007 he also attended a meeting of the Steering Group that was held in association with the annual conference of the National Association for the Civilian Oversight of Law Enforcement in San Jose, California.

The establishment of INIOP and the Secretariat functions associated with the Steering Group has been initially supported by the Independent Police Commission for England and Wales, however that support has its limits. Further development of INIOP has been delayed due to problems grappling with governance issues associated with incorporating an international body and banking and financial issues. A good deal of the momentum appears to have been lost in the last year because of these problems and there has been little ongoing contact in the current financial year. Due to our distance and limited resources, our office has not been in a position to play a significant role in the development of the association but will continue to support it if it becomes a viable organisation.

Question 4

Have you reported to the Department of Housing and NSW Health on your investigation into the housing needs of people with a mental illness and if so, what has been the response (AR p 31)?

Answer

During 2007-2008 we conducted an investigation into the implementation of the *Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing* (JGOS). Our investigation examined the steps taken by Housing NSW and the NSW Department of Health to meet the JGOS aims, which are to:

- better assist and enhance the wellbeing of existing social housing tenants whose tenancy may be otherwise at risk, and

- assist housing applicants who may be homeless or at risk of homelessness to successfully establish a tenancy.

Our investigation considered awareness and knowledge of the JGOS, practical implementation of the JGOS principles at a local level, governance and performance measurement. We focused particularly on the level of involvement of Aboriginal housing providers and medical services and the supported accommodation assistance program (SAAP) sector.

Against a background of the increased targeting of social housing to people with complex needs and the introduction in NSW of the *Housing and Human Services Accord* (the Accord), our investigation also explored the future role of the JGOS. We considered the extent to which the principles underpinning the JGOS have been embedded in the everyday practices of housing workers, and whether changes are needed to ensure that social housing is intrinsically responsive to the increasingly complex needs of its clients.

We provided our preliminary findings and recommendations (PF&R) to both agencies on 23 March 2009 and invited them to provide comments within six weeks. We have since granted an extension to allow the agencies to respond by 18 May 2009. We also provided the PF&R to the other signatories to the *Joint Guarantee of Service*: the NSW Aboriginal Housing Office, the Aboriginal Health and Medical Research Council of NSW and the Department of Community Services. In addition, we provided the PF&R to the Department of Ageing, Disability and Home Care given the relevance to that department of some of our preliminary recommendations.

Once we have considered any comments made by the agencies, we will proceed to finalise our report. Depending on the nature of the comments received, we may choose to table the final report in Parliament given the public interest in the issues it raises.

Community engagement

Question 5

Two of the main areas of concern raised by Official Community Visitors about service provision in visitable services in the 2007-08 reporting year were resident safety, representing 8% of the issues raised, and nutrition, health and hygiene, another 8% (Official Community Visitors Annual Report 07-08, p 8). These are issues which are basic to the fundamental well being of residents. Do you have any on-going concerns about the ability of services to meet the needs of residents in these areas?

Answer

The role of Official Community Visitors (OCVs) is to identify and resolve issues of concern for residents living in supported accommodation. They seek to support appropriate mechanisms for residents to raise concerns themselves and, where that is not possible, they will undertake that role.

These concerns are largely identified and resolved at the local level, which usually means at the time of their visit. In most cases, the issues listed have already been resolved by the time the information is reported to the Ombudsman.

Questions on notice and answers

In 2007-8, we handled 20 complaints that had been made by OCVs, and provided advice to support them in dealing with 74 complex service issues. Of the 20 complaints made by OCVs, nine related to resident health and/or safety.

The majority of the issues had been resolved by the time they were reported in the OCV Annual Report. By the end of June 2008, almost two-thirds (63.4%) of the nutrition, health and hygiene issues reported by OCVs had been resolved, and more than two-thirds (68.4%) of the issues reported about resident safety had been resolved.

It is important to note that, the figures alone are not an accurate representation of risk to residents. For example, some of the issues reported are concerns about policies, procedures and guidelines, such as policy and procedures missing or not implemented, but with no immediate risk of harm to residents.

In addition to the work of OCVs and our related complaints function, the nutrition, health, and safety of residents are key areas that are considered in our reviews of the deaths of people with disabilities in care.

Our reviewable disability deaths annual reports have consistently focused on improving the management of risks to residents, including nutrition, swallowing, falls, and safety risks. In recent years we have noted some important developments in this area, including: the release by DADHC of sector-wide policy guidance and requirements regarding health care and managing client risks; evaluations of key risk assessment tools, such as the Nutrition and Swallowing Risk Checklist; and increased resourcing of allied health and behaviour intervention and support services.

Question 6

How has DoCS responded to observations made in the report *Supporting the carers of Aboriginal children* and have recommendations of the Special Commission of Inquiry into Child Protection Services in NSW supported the report's conclusions? (AR pp 49 and 69)

Answer

We provided our report to DoCS in April 2008 following an in-depth review including face-to-face surveys of 100 carers of Aboriginal children. The report detailed observations about issues including support for carers; consultation processes around the placement of Aboriginal children; cultural support planning; health and education and data collection. We also provided a copy of our report to the Special Commission of Inquiry given that it was examining a number of the issues canvassed in our review.

Against this background, we recommended that DoCS provide us with their response for addressing the issues raised in the report within two months of the Special Commission of Inquiry reporting its findings. Justice Wood issued his report of the Special Commission of Inquiry on 24 November 2008.

The recommendations of the Special Commission of Inquiry supported the observations and conclusions made in our report in relation to the following key areas:

- We recommended that DoCS develop, implement and monitor appropriate and consistent cultural support planning processes to foster cultural identity and

connectiveness for Aboriginal children in out-of-home care. The Inquiry highlighted that Aboriginal children and young persons in OOHC should be connected to their family and their community, while addressing their social, emotional and cultural needs. The Inquiry agreed that innovative measures are needed for Aboriginal children and young persons to remain connected with their culture while being safe, cared for and educated.

- The Inquiry supported our recommendation that DoCS develop, implement and monitor clear and consistent guidelines for departmental consultation with communities in relation to placement decisions for Aboriginal children, to ensure meaningful compliance with the Aboriginal Child Placement Principles and noted that:

It became apparent to the Inquiry that there exists among DoCS caseworkers, and the community more generally, a range of views about actions that must be undertaken in order to satisfy the Aboriginal and Torres Strait Islander principles within the Care Act (both the Aboriginal Placement Principles, and the principles at ss.11, 12 and 14). This range of interpretations in turn influenced the range of views about whether the principles are themselves satisfactory, and whether they are being satisfactorily applied in practice.

Given the way in which consultation has been interpreted in different CSCs, and the fact that such practices may or may not meet the requirements of s.13 of the Care Act, depending on the connection of the specific Aboriginal caseworker or consultant to the family and/or community of the Aboriginal child or young person, it would appear that clear guidelines need to be developed and implemented to assist caseworkers to consistently and meaningfully apply the Aboriginal Placement Principles. There may be regional differences in their application which should be accommodated.

- We highlighted the limited capacity of the Aboriginal OOHC sector, with these services currently only able to place around 200 of the Aboriginal children and young persons in OOHC. The Inquiry supported further consideration of our recommendation that a review take place of the Aboriginal, Child and Family Secretariat's current capacity with the view to considering the role it might play in the future through expanding its activities in providing advice to DoCS in all facets of child protection work including assessment, case planning, case meetings, home visits, attending court, placing Aboriginal children and young persons in OOHC and making restoration decisions.
- We recommended that DoCS needed to ensure appropriate, regular and ongoing communication between caseworkers and carers in order to better support carers and facilitate a cooperative approach to achieving case plan objectives. We suggested a range of practical strategies to achieve this. The Inquiry supported our view that given the increasing numbers of Aboriginal children and young persons in OOHC, as well as their placement with relatives or kin, supporting these carers is essential. Due to the large numbers of Aboriginal children and young persons in OOHC, the Inquiry also recommended that priority should be given to strengthening the capacity for Aboriginal families to undertake foster and kinship caring roles. The Inquiry also highlighted its concerns about the communication with and engagement of carers by DoCS caseworkers and their direct line managers, and noted that this did not always reflect DoCS policies and procedures.
- We made several recommendations about the need to ensure that children and young persons are assisted to gain regular access to education, health and other services to meet their changing needs and to enable them to grow and develop. The Inquiry highlighted the need for a system common to all agencies delivering services to children and young persons in OOHC that collects essential health information and monitors their health and educational outcomes. The Inquiry also supported a number of the practical health and education measures that need to be addressed as a matter of priority. For

example, the need for each child in OOHC to have an accessible, comprehensive and transferable medical record.

In December 2008 we arranged a meeting with the Director General of DoCS and the NSW Children's Guardian to discuss the most effective method for establishing an ongoing and coordinated monitoring process to ensure compliance with recommendations made in the various OOHC reports issued by our office and the Children's Guardian over the last 18 months. We recently received advice from DoCS that it is currently developing an issues register which will include all of the systemic issues identified in reports prepared by both organisations as well as timeframes for completion. This document will be used to track progress through regular meetings between DoCS, the Children's Guardian and our office. We expect to have our first meeting in the next month.

Question 7

You have identified a need for suitable bail accommodation for homeless young people facing criminal charges (AR p 54). Now that the Special Commission of Inquiry into Child Protection Services in NSW has concluded, has the Office formulated its response to this problem?

Answer

Our consultations with youth services, particularly juvenile justice community service officers, alerted us to the issue of young people being held in detention because suitable bail accommodation is not available. In particular it seems there is a gap in accommodation for accused young people who do not have stable homes, especially as many of them may be hard to place in youth refuges because of their complex needs.

The Special Commission of Inquiry has recommended the Department of Juvenile Justice establish an after hours bail placement service. The government supported the recommendation in principle. We are unable to make an assessment of the likely impact of the recommendation until funding has been announced, along with further details of what the service will consist of. We will continue to monitor the issue through our complaint work, visits to juvenile justice centres and meetings with relevant organisations.

Children and young people

Question 8

Following your review of 50 children under five years of age in out-of-home care, has DoCS progressed in improving policy and practice to support very young children in care? (AR pp 70-71)

Answer

Our review of very young children in out-of-home care identified a range of practices requiring improvement. These included adoption practice in relation to permanency planning, compliance with section 82 orders under the *Children and Young Persons (Care and Protection) Act 1998*, identifying and responding to children's health and development needs when they enter care, the documentation of children's health and developmental progress over time, compliance with the DoCS's rules around case transfer, completion of placement reviews, and compliance with the statutory requirements relating to the provision of information and documents to carers.

In response to these issues, DoCS (the department) has advised this office that it has taken the following steps to improve practice. The most recent advice received from the department about these matters was received in April 2009.

Adoption and permanency planning

The department:

- created an out-of-home care team in February 2008
- provided a two-day permanency planning training course for over a 1,600 of its field staff and good practice guidelines are now in place – all relevant staff have now been provided with the training
- has developed additional guidelines (*Considering Adoption for Children in PR of the Minister, Consent to Adoption, Post Adoption Contact, and Prepare the Court Application*). These are currently awaiting approval and will then be placed on the department's intranet
- evaluated its permanency planning project
- established new regional adoption positions to assist and support caseworkers with adoption cases – as at March 2009, six such positions were filled.
- is providing practical support with preparation of the adoption application documents through the adoption paralegal attached to the department's legal services branch

The department has advised that several of the children identified in our 2007 group review report as languishing in foster care have now been adopted.

Compliance with s82 orders

In October 2008, the department told us that, in light of the group review findings concerning the department's inconsistent practice regarding these reports, it would review possible mechanisms to prompt caseworkers when s82 reports were due and amend its *Information about care orders* procedures accordingly.

In April 2009, the department noted the Special Commission of Inquiry into Child Protection Services in NSW recommendation relating to orders made under section 82 – namely, that the Children's Court should develop rules concerning the timing, notice, confidentiality and procedures related to s.82 reports to ensure that they are made in a timely fashion and that all parties are provided with a copy of the report.

The identification of children's health and development needs when they enter care

Disappointingly, our review found that the identification of children's health and development needs on entry into care had not significantly improved since our making a similar finding in 2003.

In October 2008, the department:

- acknowledged that in relation to the consistent provision of timely health and education assessments for children in care there remains a *'critical gap in the out of home care service system, as does the provision of appropriate services to ensure these needs are met...'*

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- said its staff were receiving training on NSW Health's 'blue book' (for children)
- reaffirmed its position that all children and young people entering out-of-home care should have a comprehensive health assessment
- advised that it was seeking expressions of interest for the establishment of a state wide out-of-home care assessment service.

In April 2009, the department noted that the NSW Government had supported the Special Commission of Inquiry's recommendation relating to the provision of comprehensive multidisciplinary health and development assessments for all children within 30 days of entering out-of-home care. The department has told us that it has commenced planning with NSW Health to implement this recommendation. Accordingly, the department is no longer pursuing an expression of interest for the establishment of a state wide out-of-home care assessment service.

The documentation of children's health and developmental progress over time

Our group review found significant deficiencies in the documentation of children's health and developmental progress while they were in care.

In response to this finding the department told us that it was developing an *OOHC Client Information Checklist* which would be supported by new procedures and training. The list includes immunisation, dental and medical records and would form a part of annual placement review. The department also developed a practice solution session on the NSW Health *My First Health Record* to assist caseworkers appreciate what information should be documented.

In April 2009, the department told us that the checklist is now in place.

Compliance with the department's rules around case transfer

Our review highlighted the significant problems children and carers face when the child's file is not transferred to the appropriate office in a timely way.

In October 2008, the department advised that it was reviewing its casework practice procedures *Transfer of Case Management and the Case Plan*. The department told us that the review would consider the actions that staff are required to take to facilitate case transfer, timeframes for these actions, and transfer of cases between staff within units and between units. The department also told us that it was working on a project to '*define handover procedures between DoCS teams and review any current inadequacies*'.

In April 2009, the department advised that its new procedures for transfer of case management will be completed by June 2009, and rolled out from July 2009.

We have asked the department to provide us with a copy of the finalised procedures.

Completion of placement reviews

Our group review highlighted the multiple problems that may arise when children's placements are not reviewed.

The department has told us that it introduced revised procedures for placement reviews in November 2008. Training in these procedures was provided concurrently.

Compliance with the statutory requirements relating to the provision of information and documentation to carers

The department told us that its practice procedures clearly state what information caseworkers should provide to carers. The department said that its staff have been provided with training in relation to these procedures.

Question 9

On p 79 of the Annual Report you noted your concerns that DoCS had not completed in due time investigations of higher-risk allegations of child abuse. However, you then report on page 80 that DoCS' finalisation rate in these matters had begun to significantly improve. Has this improved finalisation rate continued and have you been able to extend the class or kind determination in line with Recommendation 23.5 of the Special Commission of Inquiry into Child Protection Services in NSW?

Answer

In March 2008, the Child Protection Division (CPD) sought information from the Department of Community Services (the department) about its delays in finalising investigations of reportable allegations and about its failure to provide information that we required under the *Ombudsman Act*. The department advised us in May 2008 that it had implemented both short term and longer term strategies to prioritise the finalisation of investigations and to improve communication and information exchange between the department and the CPD.

In the period following that advice, the department finalised a large number of investigations and cleared the backlog of outstanding information requested. With some exceptions (and disregarding the delays), the investigations received were generally of a satisfactory standard.

These circumstances indicated that the department's finalisation rates of reportable allegations had begun to improve and that it was building future capacity. We commented on this improvement on page 80 of our annual report.

As a result of this improved performance, we drafted a class or kind determination that extended the range of alleged conducts that could be exempted from notification to the Ombudsman. A draft determination was forwarded to the department's Director General in September 2008 for comment.

Current situation

The department's efforts to prioritise the finalisation of reports have continued. Since April 2008, the CPD has received approximately 350 completed investigation reports from the Department.

However, in the same period, the number of matters notified by the department has increased by approximately 10% and the department is again struggling to complete investigations in a reasonable timeframe within the current staffing level of the Allegations Against Employees Unit (AAE Unit).

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We note that of the more than 450 open investigations of reportable allegations, a large proportion are low-level allegations that should be finalised more quickly. In our view, low-level matters and matters that are not overly complex should be finalised within 4 months, and no longer than 5-6 months. Currently, the department is taking 8-10 months to complete these investigations.

In February 2009 the Assistant Ombudsman, Children and Young People, advised the department that if the determination was to be finalised by July 2009, the Ombudsman would need to be assured that the department had clear strategies in place to address the current backlog of allegations and to effectively manage all investigations into the future. The department wrote to the Ombudsman in March 2009 and outlined its strategies including further centralising its investigation functions, expanding the AAE Unit, and improving its business processes.

The department did not provide a firm time frame for the implementation of its strategies and acknowledged that the majority of strategies were in the developmental stage. The department also advised that its budget for the expansion of the AAE Unit had not been secured. The recruitment and training of additional staff rests on receiving an enhanced budget allocation for the AAE Unit.

In principle, the Ombudsman supports the extension of the current class or kind determination. However, until the department can demonstrate its capacity to effectively manage its workload in the area of reportable allegations against employees, the Ombudsman is not able to extend the determination at this time. That said, we will continue to work with the department to achieve this outcome.

Question 10

You reported that, “a number of public authorities, some with significant contact with children, had inadequate understanding of reportable allegations and the requirement to report them to the Ombudsman”. (AR p 81) Can you provide more detail about your efforts to address this, including information about your biannual public authorities forums? Has there been any improvement in this situation?

Answer

In last year's annual report we outlined concerns that some public authorities, some with significant contact with children, had an inadequate understanding of reportable allegations and the requirement to report them to the Ombudsman. We have addressed these concerns in a number of ways.

In November 2008 we held a half-day forum attended by more than 30 representatives of more than 20 public authorities. The forum covered topics including reporting responsibilities to the Ombudsman, trends and patterns in reporting by public authorities and strategies for preventing child abuse in the workplace. The forum was well received and the subject of positive evaluations from attendees. The forum has also resulted in an increase in formal and informal inquiries from public authorities, seeking advice about their child protection systems and policies. Some public authorities have also been more proactive in contacting us to discuss child protection complaints. We will not be holding another forum in April 2009 due to the proximity with our Child Protection Symposium being held in May. However, attendees at the November forum expressed an overwhelming interest in the forums continuing on a biannual or annual basis.

Over the year, we have assessed several public authorities' child protection policies, providing detailed written feedback on the strengths of the policies and areas for improvement. We have also held case consultations with a number of public authorities in regard to complex child protection investigations, resulting in the matters being progressed more effectively and the involved parties having a greater awareness of our expectations and a greater capacity to manage similar matters in future.

For the period July 2008 – March 2009, we have received twice as many notifications from public authorities as we had for the same period last year. This suggests that our efforts to increase awareness of reporting responsibilities have been successful. We continue to hold concerns about a particular public authority's compliance with the strict requirements of our legislation, however we are satisfied that the agency is cooperating with our efforts to assist it to improve its practice.

People with a disability

Question 11

What have been the outcomes of the Office's discussions with DADHC concerning large residential centres' compliance with the *Disability Services Act*? (AR p 93)

Answer

In 2008, we received legal advice concerning whether there were any potential compliance issues associated with the proposed redevelopments of a number of DADHC large residential centres. To this end:

- We sought DADHC's views on our legal advice. In response, DADHC has indicated that our advice was based on some incomplete information, and has since provided additional information to clarify its position on this issue.
- We have also had frequent discussions with DADHC regarding the department's progress towards obtaining its own independent legal advice. In March 2009, DADHC agreed to provide us with a copy of its legal advice on the proviso that we do not make it publicly available. In this regard, DADHC has said that any release of its legal advice to us would not constitute it waiving legal privilege in relation to the material. Relevant to this claim of privilege is the fact that DADHC's legal advice around this broad issue is still 'evolving' and 'litigation on related matters is now in train'.
- We have informed DADHC that, once we receive the department's legal advice, we will provide it to our legal counsel for reconsideration of his original advice to us.
- We are continuing to have discussions with DADHC regarding ways in which there might be public discussion and debate on this issue. Obviously, current proceedings are complicating this issue.

Question 12

Has Early Childhood Intervention Australia completed its examination of programs and services for children with disabilities? (AR, p 93) If so, what are the outcomes of their research?

Answer

Early Childhood Intervention Australia provided us with a report in July 2008 on the current issues facing young children with disabilities and their families accessing the early childhood services. In the main, these are educational and therapeutic services.

The report identified a number of weaknesses with the current service system. Broadly, these included:

- a lack of a centralised intake and referral process within regions across NSW
- the complexity of the service system and the problem this presents to families trying to access services
- poor coordination between the health and disability systems
- lack of choice of services for families in regional/remote NSW
- funding levels and the impact of this on service access and equity.

The report acknowledged the NSW Government's *Better Together* initiative, and that *Better Together* has been designed to make services work better for people with a disability and their families through better coordination, increased funding, a focus on early intervention, and better services. The report noted that implementation of *Better Together* should address some of the weaknesses referred to above.

In addition to contracting the above report, this office has been closely monitoring DADHC's roll out of *Stronger Together*, with a particular focus on the department's new case management framework and what this means for children with a disability and their families. We have met with senior staff of the department to receive briefings on the roll out of the framework and these meetings are scheduled to be ongoing throughout 2009.

It is our view that effective case management is critical to the success of both *Better Together* and *Stronger Together*. Accordingly, we have told DADHC that this is an area that we will examine more closely in 2010.

Question 13

What has been the outcome of the Office's review into the implementation of DADHC's *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy* (AR p 94)?

Answer

In 2008 we commenced a review of the implementation of DADHC's *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*. The *Aboriginal Policy Framework* aims to guide staff in their work with Aboriginal people and communities. Our review is exploring whether individual regions are implementing the strategies outlined in the framework and if so, the effectiveness of these strategies. The *Aboriginal Consultation Strategy* aims to ensure that Aboriginal people with a disability and their carers have:

- equity of access and outcomes to DADHC programs and services, and
- equity of participation in DADHC planning and decision-making.

As such, our review is exploring the adequacy of consultation mechanisms in place between DADHC, relevant service providers and Aboriginal communities at a local, regional and state

level. We are also examining whether these mechanisms are providing Aboriginal people better access to DADHC's services and to the services it funds.

The review is based on consultations in selected locations within DADHC's six regions, including interviews with DADHC staff, local partners and service providers (both Aboriginal and mainstream), and where appropriate clients, carers and community groups. To-date our consultations have involved visits to over 70 locations across NSW and over 400 meetings. We have completed consultations in five of DADHC's six regions and are finalising provisional reports to each DADHC Regional Director. We will seek written responses prior to providing final reports to the Director General of DADHC. A feedback bulletin for distribution to people and organisations consulted will also be prepared in consultation with each Regional Director.

Question 14

What have been the responses of the Department of Ageing and Community Services and NSW Health to the recommendations in *Report of Reviewable Deaths in 2007, Volume 1: Deaths of people with disabilities in care*?

Answer

The recommendations in our *Report of Reviewable Deaths in 2007 Volume 1: Deaths of people with disabilities in care* have been directed at the Department of Ageing, Disability and Home Care (DADHC), and NSW Health. Both departments have responded to our recommendations within the required timeframe, and have indicated action underway or planned for meeting the recommendations.

NSW Health

We directed two recommendations to NSW Health, targeted at:

- a) services for people with dual diagnoses of intellectual disability and mental health; and
- b) services to improve the health outcomes of people with an intellectual disability.

In relation to services for people with dual diagnosis, NSW Health has told us that:

- A Chair of Intellectual Disability Mental Health at the University of NSW has been appointed, funded by DADHC. The position will be responsible for undergraduate and postgraduate teaching in mental health and intellectual disability, and is funded for an initial five year period.
- The NSW Institute of Psychiatry is funded to provide nine Advanced Psychiatry Fellowships over three years in intellectual disability and mental health. As there have been no applications to date, NSW Health had organised a meeting of a sub-group for early 2009 to consider options for attracting applicants.
- A Memorandum of Understanding (MOU) is being developed by NSW Health and DADHC to improve interagency roles and responsibilities in support of people with dual diagnosis. The draft MOU has been circulated for consultation in both departments, and a copy of the final document will be forwarded to this Office once approved.

With regard to services to improve the health outcomes of people with an intellectual disability, NSW Health has advised that:

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- In partnership with DADHC, the department is developing a *Service Framework to improve the health needs of people with intellectual disability in NSW*. NSW Health has a public commitment to provide the Minister for Health with a business case to implement the Service Framework. While there are currently no funds identified for the implementation of the Service Framework, the aim of the business case will be to develop the preferred state wide model(s) and to secure adequate funding to ensure all Area Health Services are equipped to provide health services to people with an intellectual disability.
- A time-limited Advisory Group has been established to contribute to building the business case, with three meetings arranged for 2009. NSW Health anticipates submitting a business case to the Minister for Health this year.
- The Centre for Developmental Disabilities has been awarded a three-year grant from 2008/09 to 2010/11 to continue to provide specialised health services to people with intellectual disabilities through the Developmental Disability Health Unit.

DADHC

We directed 10 recommendations to DADHC. Five of the recommendations were targeted at care and support for people with disabilities living in DADHC-operated or funded accommodation ('disability services'), and five were targeted at care and support for people living in licensed boarding houses.

Our recommendations concerning people living in the care of disability services focused on:

- a) setting first aid requirements;
- b) evaluating the department's policies on palliative care, health care, and ensuring good nutrition; and
- c) developing a policy regarding support for ageing people with disabilities.

In response to these recommendations, DADHC told us that:

- One-off funding will be provided to the non-government sector to train disability support staff in first aid effective from July 2009. DADHC is also considering how it will address our recommendation regarding enforcing first aid requirements.
- The evaluation of the *Ensuring Good Nutrition* policy is expected to be completed in March 2009. In January 2009, DADHC also engaged dietician services to provide increased clinical expertise in each region for people with disabilities living in accommodation services or at home in the community.
- An independent evaluation of the *Palliative Care* policy was completed in February 2009, and DADHC is currently considering the findings and recommendations of the report.
- DADHC will give consideration to reviewing the effectiveness of the *Health Care* policy in its operated and funded services in 2010, once all services have had at least one full review period to demonstrate improvements in their health records and health outcomes for their clients.
- A number of DADHC program areas are developing appropriate services responses to meet the needs of people with a disability who are ageing, including the introduction of a new adult day program targeted at people aged 55-64 years and people with early onset ageing. DADHC is currently considering what other action it may take with regard to our recommendation.

Our recommendations concerning people living in licensed boarding houses focused on:

- a) review of the tool used to screen people before entry to licensed boarding houses;
- b) action in response to a 2007 review of the health needs of residents in the inner-west of Sydney;
- c) development of initiatives to promote good practice standards relating to the administration of regular medication;
- d) actions to improve record keeping; and
- e) action taken by the Interdepartmental Committee on Reform of the Private Residential Service Sector (IDC) to progress the review of the *Youth and Community Services Act 1973*.

In response to these recommendations, DADHC told us that:

- DADHC's review of the Screening Tool for Entry to Licensed Boarding Houses is expected to be completed in July 2009, once the pilot of the revised screening tool and the evaluation of the pilot have been finalised.
- An evaluation of Primary and Secondary Health Care services will commence in May 2009, and the findings of the 2007 health review report will be considered in this context.
- The DADHC/ NSW Health Senior Officers' Group has endorsed the development of a joint initiative to address our recommendation regarding medication administration standards. DADHC has held preliminary discussions with representatives of NSW Health's Pharmaceutical Division to progress the initiative.
- DADHC will develop relevant resources and good practice guidelines to support compliance with record keeping requirements.
- The IDC has established the broad directions for the reform of shared private residential services sector, incorporating the review of the *Youth and Community Services Act 1973*. The broad directions for the reform are currently being considered by the NSW Government. Monthly meetings of the IDC are being scheduled.

DADHC and NSW Health will provide a further report to this Office in July 2009 on progress towards implementing our recommendations.

Police

Question 15

Have you been able to assess how effectively the NSWPF is using the streamlined complaint-handling procedures since their rollout across the State? (AR p 99)

Answer

Streamlining was rolled out in May 2008. Both Police and this office expected it would take some time for the new procedures to be "bedded down" and this proved to be the case. However, we are now seeing clear evidence of changes in police handling of complaints due to streamlining. The anticipated benefits are improvements in the timeliness for dealing with the less serious complaints, cost savings from more simplified procedures for resolving complaint issues, and greater levels of satisfaction for all parties.

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While no formal evaluation has to date been conducted to assess these anticipated outcomes, informal feedback received during the past 10 months indicates positive support for these objectives. We have conducted a number of visits to metropolitan and country Local Area Commands to meet with commanders and senior staff and observe complaint management team meetings and have discussed streamlining during these visits. Universally there has been positive feedback.

Under the class and kind agreement under section 122(2) of the Police Act, NSW Police Force is required to measure the satisfaction of complainants in the handling of non-notifiable matters annually and report the results to the Ombudsman. In December 2008 our office provided some advice to the Professional Standards Command and encouraged them to conduct a more detailed telephone survey to assess complainant satisfaction. This was recently trialled and a further survey will be conducted and reported to us by the end of the financial year. This should provide some insights into how streamlining is being seen by complainants.

We have also identified a significant uptake of streamlined procedures with notifiable complaints. Pursuant to the agreement between the Ombudsman and the Police Integrity Commission after consultation with the Commissioner of Police, police are required to notify the Ombudsman of complaints about more serious matters for detailed case by case oversight by the Ombudsman. While police officers in carrying out investigations must have regard to any matters specified by the Commissioner or the Ombudsman as needing to be examined or taken into consideration, generally the nature of the investigation is a matter for the police to determine. There are two principal approaches to investigation. For serious and criminal allegations, the investigation usually warrants an evidence-based approach. With less serious matters that, if true, are capable and likely to be appropriately dealt with by local management action, an informal resolution-based approach is adopted.

Even with notifiable matters, the streamlining procedures are being increasingly adopted. In notifiable matters the subject of investigation in 2007/08, approximately 5% were dealt with by way of informal resolution focused investigations. Current figures indicate in 2008/09 this will rise to at least 20% of all investigations of notifiable matters.

Section 160 of the Police Act requires the Ombudsman to inspect the records of the NSW Police Force at least once every 12 months for the purpose of ascertaining whether or not the requirements of Part 8A of the Act are being complied with. Further, it requires the Ombudsman to keep under scrutiny the systems established within the NSW Police Force for dealing with complaints. As part of this general audit function, my office is currently scoping a special audit to examine streamlined complaints which will be conducted later in the year. There are a number of risks associated with streamlining, including that wrong decisions may be made about whether to conduct evidence-based investigations or informal resolution, failure to take non-reviewable action when it is warranted, and failure to manage the perceptions and expectations of complainants. We hope that our audit of a representative sample of streamlined matters will enable us to assess whether NSW Police Force is dealing appropriately with such risks.

Question 16

You report on poor NSWPF response to complaints of detrimental action against police whistleblowers (AR pp 104-5). Has the Office finalised its suggestions for reform?

Answer

Following the review of cases involving detrimental action, the Professional Standards Command was provided with a discussion paper outlining the results of our review. There has been some constructive exchange of correspondence with police arising from the discussion paper and subsequent meetings held. The most recent was on 16 February 2009. Rather than proceeding to unilaterally issue a report, we have taken the approach of engaging with the Professional Standards Command to jointly develop some proposals for reform, on the basis that this is the most productive way for police to take ownership of the problem and generate some useful solutions to overcome the problems we have identified to date. Police are currently in the process of developing a new framework for reporting misconduct. A draft was supplied to this office in April for comment. Once this framework is refined and adopted, further changes to existing procedural guidelines and legislative provisions will be identified and agreed upon. While this project is taking some time, it is extremely important that we get it right. The project remains an important priority for our Police Division.

Question 17

Has the NSWPF responded to the Office's proposals to facilitate the provision of information about the uses of Part 6A emergency powers (*Law Enforcement (Powers and Responsibilities) Act*) (AR p 113)?

Answer

The delay by police in responding to the proposed information agreement for the provision of data to facilitate our review of the ongoing review of the exercise of Part 6A powers was an issue taken up directly with the Commissioner at the Standing Committee meeting on 12 February 2009. A draft information agreement had previously been sent to the Commissioner in January 2008. Correspondence from the Manager of the Executive Advisory Unit of the Commissioner received in January 2009 indicated that police were significantly reading down our powers to require information for the review and were opposing the provision of a range of necessary information. Those concerns were addressed in detail in correspondence sent by the Assistant Ombudsman. Police subsequently agreed to the information agreement with a minor amendment that was satisfactory to this office. The signed agreement was provided to this office on 16 April 2009.

Juvenile Justice

Question 18

Has any action been taken to ameliorate overcrowding in juvenile justice facilities? (AR pp 119-120)

Answer

Some action has been taken but it has been inadequate to address the significant and ongoing overcrowding in juvenile justice centres. While DJJ gained the 50 bed former periodic detention centre at Emu Plains in July 2008 on a 30 month lease from the Department of Corrective Services, it lost the 23 beds at Keelong Juvenile Justice Centre when it was closed in the mini budget in November 2008. While 15 new beds are due to be completed at Orana Juvenile Justice Centre in June this year, the ongoing high numbers in custody mean there will continue to be a shortfall in beds to accommodate all those in custody.

We are extremely concerned about the situation which we believe poses an unacceptable risk to both young people in detention and the staff who care for them. Centres continue to accommodate young people on mattresses on the floors in single rooms, in holding rooms and clinics. At Frank Baxter Juvenile Justice Centre young people are being accommodated in what is known as the 'overflow', which is in fact the visits area. Three or four young men are accommodated on the floors of each of the interview rooms previously used for legal and other visits. We made detailed enquiries with the Department of Juvenile Justice (DJJ) in March 2009 following an alleged sexual assault on a detainee in one of these rooms by his two room mates. Both of the alleged perpetrators have been charged by police.

While Emu Plains is providing much needed beds, it is not a full service juvenile justice centre. It has no school or recreation oval. Rooms are all double rooms with no running water, toilets or showers. Lack of space means detainees only have very limited time out of their rooms each day. While initially DJJ hoped to only place detainees on 4-5 day remands at Emu Plains this has proved impractical and stays are now open ended.

When both beds and overflow facilities in centres are full, young people are being accommodated in police cells.

We have been impressed at the efforts being made by DJJ to manage the difficult situation they find themselves in. However, more robust action is needed to address both the short and longer term projections for numbers of young people in custody.

Question 19

Have any concerns arisen from the Office's monitoring of the transfer to adult correctional centres of certain categories of detainees aged over 18? (AR pp 120)

Answer

DJJ suspended transfers in August 2008 pending a review of its procedures. This was as a result of a successful court challenge to the process used to transfer a number of detainees from DJJ to the adult correctional system. We provided comments on the new draft transfer procedures earlier this year and understand assessment procedures for eligible detainees will become operational shortly. We will monitor how the new transfer procedure operates in practice.

Corrections

Question 20

What is the background to the changes made in your working relationship with official visitors? What are the implications of the reduction in your access to them?

Answer

Our ability to directly contact Official Visitors was removed as a result of a decision taken by the Hon John Hatzistergos when he was Minister for Justice. We understand the decision was made on the basis of a recommendation of the Commissioner for Corrective Services.

Prior to the decision the Department of Corrective Services provided our Manager of Corrections and Compliance with personal, direct, contact details for all Official Visitors –

either a phone number or a postal or email address, and sometimes all three. Departmental staff told us this would no longer happen due to “privacy concerns” and the Commissioner issued a direction to General Managers that they were to take responsibility for facilitating our contact with the Official Visitors.

We suggested to the Commissioner and the Minister that privacy concerns could be overcome by contacting each Official Visitor and seeking their agreement (or otherwise) to provide the Ombudsman with personal details to enable direct contact. Neither the Commissioner nor the Minister agreed with this proposal.

As Official Visitors are appointed by and accountable to the Minister we had a discussion with him around our concerns about the Commissioner’s direction to his staff, and to the Visitors, that we could only contact them via the General Manager of the centre/s to which they are appointed. We put forward our view that this fettered the independence of both this office and the Visitors, and was impractical from our point of view, as well as being an unnecessary burden on the General Managers to essentially provide a ‘secretarial service’ to the Visitors.

As a result of this restriction imposed in our ability to directly contact Official Visitors we now have very little contact with them. Unless a Visitor takes the initiative to contact our office we no longer speak to them direct, for example, to raise specific inmate grievances that may come to our attention but are better dealt with by them. Also, we no longer speak to them prior to our visits to the centres they visit to gain an understanding of current issues, or of inmates who may benefit from an interview with our staff.

It remains our view that the lack of direct and regular contact between the staff of this office and the Official Visitors reduces the efficiency of the oversight of the correctional system that should be achieved by both areas working together.

Question 21

You reported that there was a positive outcome in 440 matters out of 692 preliminary or informal complaints you received in 2007-2008. What about the remaining 252 complaints?

Answer

When we receive a complaint we make an assessment on the information in the complaint about what action we should take. Often the assessment is that we should make some preliminary or informal inquiries/ investigation and in many cases we achieve a positive outcome. In regard to other cases that we inquire into (the 252 out of 692) we may not have an outcome that could be described as positive, for a range of reasons.

These include:

- after making inquiries/investigating there is insufficient evidence to either prove or disprove the substance of the complaint
- our inquiries/investigations reveal that information set out in the complaint did not happen as described or interpreted by the complainant
- a decision that is complained about is not seen as unreasonable once we are made aware of other information (such as security or intelligence information) that cannot be given to the complainant

Questions on notice and answers

- we make inquiries and confirm that the actions complained about are consistent with policy, procedure and legislation and these are not flawed in any way that would require examination by us
- the department refuses to resolve a relatively minor matter in a way we consider to be positive but based on our priorities and resources we cannot justify further action to address the issues
- the department resolves a matter before we make contact with them.

Departments and Authorities

Question 22

What has been the response of the Department of Education and Training to your recommendations in relation to long suspensions from school?

Answer

The Department of Education and Training responded positively to the investigation, commenting on its quality and thoroughness when accepting all of our recommendations. The department has implemented a number of the measures recommended and has established an internal departmental committee to progress the remaining matters. The department is reporting to us at three monthly intervals on its progress.

Wood Royal Commission Recommendations on Child Protection

Question 23

Has implementation of the recommendations relating to the Office of the Ombudsman that the Government supported begun?

Answer

The final report of the Special Commission of Inquiry into Child Protection (the Special Commission of Inquiry) was released in November 2008. The resulting *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* (the Inquiry Amendment Act) was passed on 3 April 2009.

Overall, the Inquiry Amendment Act reflects the intent of the Special Commission's recommendations in relation to our office. However, at this stage the legislation has not been proclaimed.

Question 24

In general terms, have any of the more significant recommendations made in your submission been accepted by the Government?

Answer

In total, we made 10 submissions to the Special Commission of Inquiry, outlining our views on a range of different topics including assessment practices, early intervention, privacy, interagency cooperation and children in out-of-home care. A summary of the issues we raised in our submissions can be found in our *NSW Ombudsman Annual Report 2007-08*.

Broadly, the issues we raised in our submissions were acknowledged by the Special Commission of Inquiry and reflected in its findings and recommendations. In turn, many of these issues have now been picked up by Government and incorporated into the Inquiry Amendment Act. Some specific examples are outlined below.

Risk of harm reporting thresholds

Our work has consistently highlighted that chronic truancy is a particular risk factor for children and young people. We suggested that there was merit in amending the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) to specify habitual non-attendance at school as a specific ground for reporting that a child is at risk of harm. The Inquiry Amendment Act does in fact extend the circumstances where a child or young person will be considered to be at significant risk of harm to include situations where the child or young person is not receiving an education as required by the *Education Act 1990*.

We were also in favour of raising the “risk of harm” reporting threshold, and including a specific reference in the Care Act to neglect as a ground for considering a child to be at risk of harm. The Inquiry Amendment Act specifically includes changes to the Care Act which reflect this.

Early intervention

We identified a critical need to significantly expand service capacity in the area of early intervention and prevention. In particular, we advocated the need to implement measures to build the capacity of the non-government sector over time with a view to NGO organisations eventually delivering the bulk of these services. There is a significant emphasis in Government’s response on developing systems that will support this type of capacity building; for example, the implementation of Regional Intake and Referral Teams that will be responsible for coordinating responses to families who are suitable for early intervention services.

Interagency cooperation and exchange of information

We made a number of observations to the Special Commission of Inquiry regarding the need to deal with issues around the exchange of information, provision of feedback to mandatory reporters and providing clear pathways for interagency partners to escalate matters when required.

We expressed our view that there needs to be a greater scope for agencies to use information holdings more effectively to identify at risk families who are frequently the subject of multiple risk of harm reports to DoCS. To assist DoCS’ assessment practices, we argued for a shift towards intelligence driven child protection practice. We submitted that this would entail enhancing DoCS’ data retrieval systems to allow frontline staff to better identify high risk families in a timely way.

The Government has committed funds to re-design and enhance DoCS’ database systems, including the development of an electronic feedback system to mandatory reporters.

The Government has also announced the commencement of a “Frequently Encountered Families” case coordination project in selected locations. The project will target families who are already high end users of government services, or at risk of becoming high end users, for a coordinated multi-agency case management response.

We also highlighted the significant problems associated with current privacy laws that inhibit the effective exchange of information between agencies.

We proposed specific amendments to the Care Act along with other relevant provisions in the privacy legislation to reduce the barriers for agencies involved in the provision of child protection services to exchange information with each other directly. The Inquiry Amendment Act and other related Government policy statements give effect to the changes we proposed.

The Government has also committed funds towards the development of an electronic system of feedback from the DoCS Helpline to mandatory reporters.

The Children's Court

In relation to care proceedings in the Children's Court, we identified, inter alia, the need for much greater use of alternative dispute resolution at the pre and post court stages. The Special Commission's report and the Government's response strongly endorses a range of initiatives aimed at strengthening the capacity of the Children's Court to engage families involved in care proceedings in alternative dispute resolution.

The Government has also announced the establishment of an expert working party to review possible alternative dispute resolution models and report by the end of 2009.

Out-of-home care

Our submission regarding children and young people in out-of-home care discussed some of the key issues that we have observed from our work in this area. We argued the need for the significant expansion of the non-government sector providing out-of-home care services. We also commented on issues such as recruiting sufficient numbers of carers, better supporting children leaving care, the need for better coordination of health care, improving practice around compliance with the Aboriginal placement principles and improving arrangements for children with a disability who are voluntarily placed in care. These issues were taken up and endorsed by the Government in their response to the Special Commission's report.

Aboriginal children and young people

We made a detailed submission to the Special Inquiry about the issues surrounding the delivery of services to Aboriginal families. In this area we are keen to see how the Commission's vision of integrated service delivery in Aboriginal communities, combined with, as far as practical, the operation of self-determination, might be progressively realised.

In recognition of the work we do in overseeing the provision of services to Aboriginal communities, the Commission of Inquiry recommended that our office be given the authority to audit the progress of the implementation of the Aboriginal Child Sexual Assault Interagency plan. The Government supports this recommendation. We are currently seeking advice from the Department of Premier and Cabinet in relation to issues about resourcing and possible legislative amendment.

FOI Report

Question 25

The FOI report contains only a brief discussion of the recommendation that the NSW Houses of Parliament be brought within the ambit of FOI legislation. Can you elaborate further on your reasons for making this recommendation?

Answer

While there is a need to maintain a certain level of Parliamentary privilege, there is no clear reason why the operation of both Houses of Parliament should be free from any form of public scrutiny.

Both NSW Houses of Parliament currently produce an annual report. These provide some information about member's travel expenses, as well as general information about the operation of both Houses in the preceding year. Unlike public authorities, this report is discretionary, and is not produced in response to a legislative requirement, as the Houses are excluded from the *Annual Reports (Departments) Act 1985*.

The operation and administration of both Houses is funded by public monies, and as such the public have a right to know how and on what those funds are being spent. We reviewed the situation in a number of other jurisdictions, and saw no reason why the houses should not be subject to the Act.

Question 26

Can you also briefly explain the way in which comparable jurisdictions have included Parliaments within the scope of their access to information legislation and especially how they have balanced the need for open government and the protection of the Parliamentary process?

Answer

As noted in the report, a number of other jurisdictions have included their Houses of Parliament within the scope of their access to information schemes. In preparing the final report, our office looked particularly at the experience in the United Kingdom and Scotland.

Under the UK FOI Act, both Houses of Parliament are included in the Schedule 1 list of public authorities subject to the Act. There are two provisions within the Act allowing the Speaker of the Commons or Clerk of the Parliaments to certify that information is exempt:

- section 34, to avoid an infringement of the privileges of either House
- section 36(6), where in the 'reasonable opinion' of the Speaker or the Clerk disclosure would inhibit the free and frank provision of advice, or prejudice the effective conduct of public authorities.¹

Between January 2005 and February 2007, five certificates were issued under section 36(6), and one under section 34.²

¹ Oonagh Gay, *The Freedom of Information (Amendment) Bill* House of Commons Library research paper 07/18, 21 February 2007, p.8

² Ibid.

As noted in the discussion paper, a private members Bill was introduced in the United Kingdom in 2007, amending the FOI Act to remove the Houses from Schedule 1. The Bill would also exempt communication between a member of the House and a public authority. The Member responsible for introducing the Bill indicated he was doing so out of concern that correspondence from constituents would be released. While the Bill has passed the House of Commons, it appears to have stalled in the House of Lords.

Part 1 of Schedule 1 of the *Freedom of Information (Scotland) Act 2002* provides that the Scottish Ministers, the Scottish Parliament and Scottish Parliamentary Authority are all public authorities under the Act. The scope of this coverage has been challenged in a number of appeals to the Scottish Information Commissioner. In a matter relating to a member of Parliament's travel expenses, the Information Commissioner found that, while the information was personal, it was in the public interest for it to be released.³

In recognition of the importance of information about member's expenses, the website for the Scottish Parliament includes an easily searchable database of payments made to members. These are accessible at <http://mspallowances.scottish.parliament.uk/MSPAllowances/>.

Question 27

Did you receive any submissions opposing the inclusion of the NSW Parliaments within the ambit of the FOI legislation?

Answer

We did not receive any submissions opposing the inclusion of both Houses within the scope of the proposed *Open Government Information Act* (OGI Act). However, it is worth noting we did not receive substantive comment on this issue. FOI and Privacy commentator Peter Timmins told us he believed the Houses should fall within the scope of the Act, but 'perhaps with an exclusion for information concerning representations made by private individuals.'

As noted in the report, some submissions raised the possibility of bringing MPs within the coverage of the Act. Due to the small number of submissions dealing with this issue, we suggested it should be addressed as part of the first independent review following the introduction of the new Act.

Question 28

Has there been any Government response yet?

Answer

This question would be best directed to the Premier as the Minister responsible for the FOI Act.

On 5 February 2009, the day the report was tabled, a media release from the Premier expressed a commitment to introducing a draft Open Government Information Bill in the current session of Parliament.

³Scottish Information Commissioner, *David McMetchie MSP's travelling claims since 1999 – taxi journey destinations*, Decision 033/2005, 6 October 2005.

There are several issues within the report that we noted required greater consultation. The Department of Premier and Cabinet has contacted the relevant public authorities seeking their views in relation to these issues. Our office has been asked to provide reasons for the continued inclusion of certain functions within Schedule 2 of the Act, as well as information on how documents relating to protected disclosures should be dealt with.

On 2 April, we received a letter from the Deputy Director General of the Department of Premier and Cabinet indicating that the Department is working on a Bill, which the Premier intends to introduce in the current session of Parliament, and that 'the Department will be in a position to discuss the Bill with you later in April.'

Report of Reviewable Deaths in 2007 Volume 1: Deaths of people with disabilities in care

Question 29

Has the DADHC responded to the recommendations in this report? Are you aware of any actions that have been taken or are proposed by the Department to implement the recommendations?

Answer

See response to Q14.

The Use of Taser Weapons by NSW Police Force

Question 30

Following the publication of the report, has the Police Force:

- a) updated their standard operating procedures governing Taser use;**
- b) improved their record keeping about Taser use; or**
- c) provided improved training to officers using Tasers and those backing them up?**

Answer

A formal response to the recommendations in the special report to Parliament was provided by the then acting Commissioner of Police Dave Owens APM on 21 January 2009. Generally NSW Police accepted the intent of many of the recommendations made by the report, but considered they had already been addressed or were better addressed through means other than those recommended. They could not report that any action was taken as a result of the report. The Standard Operating Procedures governing Taser use have not been updated, nor have changes been made to the training provided to officers using Tasers as well as those backing them up. With respect to improved record keeping, there has been no direct action, but police have indicated that issues relating to record keeping for Taser use will necessarily be examined as part of the 'use of force' register project.

Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*

Question 31

Has the Government responded to any of the recommendations made in this report, especially the recommendation that consideration be given to whether aspects of the legislation should continue at all?

Answer

The *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (NAPR) amended various laws relating to sentencing, bail and sentence administration (leave, parole and home detention) and was designed to target gang-related crime.

Our review report was provided to the (then) Attorney General and Minister for Justice in December 2006 and it was tabled in Parliament in December 2008.

Our report included recommendations that the Parliament consider the report in reviewing the ongoing need for:

- non-association and place restrictions orders, as an option to target gang activity (Rec 1)
- specific provision in the *Bail Act 1978* to permit the grant of bail subject to non-association and place restriction conditions (Rec 3)
- specific provisions enabling non-association and place restrictions conditions to be attached to leave, parole and home detention (Rec 8).

As yet, the Government has not formally responded to these recommendations.

We should note, however, that we provided a copy of the draft final report to relevant agencies (the NSW Police Force, Department of Corrective Services, Department of Juvenile Justice and the Attorney General's Department) for comment in June 2006. These agencies made various submissions and supported a number of our recommendations. These responses are documented in our final report. We note in particular the following response by the Director General of the Ministry of Police:

Notwithstanding the infrequency of its use, the Police Portfolio considers that the Act should continue. The Government will shortly introduce further anti-gang legislation and in the light of some of the new offences contained in that bill, it is likely that there will be greater use made of the Act in the future.

In addition the Director General of the Attorney General's Department commented:

[The report] will provide a valuable basis for further considering the operation of the legislation.

Supporting people with an intellectual disability in the criminal justice system: Progress report

Question 32

Has DADHC agreed to report to the Ombudsman in June 2009 and 2010 as recommended in this report?

Answer

We tabled the *Supporting people with an intellectual disability in the criminal justice system: progress report* in Parliament in August 2008. Prior to the release of our report, DADHC, on behalf of the Senior Officers' Group for People with an Intellectual Disability and the Criminal Justice System (SOG), made a commitment to us that the SOG would report to our office in June 2009 on the progress of its work, and subsequently on a yearly basis. Our recommendations reflect this commitment.

On 16 March 2009, we met with DADHC to discuss the department's work in relation to people with an intellectual disability in contact with the criminal justice system. During this meeting, DADHC advised that the SOG would report to this office in June, in line with our recommendations.

ANNEXURE A

Charter of the Pacific Ombudsman Alliance

1. Intent

The intent of the Pacific Ombudsman Alliance (the Alliance) is to provide a service delivery and mutual support organisation for Ombudsman and allied institutions of countries that are members of the Pacific Islands Forum. The Alliance does not have any legal powers in relation to Ombudsman activities in any nation.

2. Charter

This Charter provides the governance framework for the operation of the Alliance, comprising the Membership, Board and Secretariat.

The Alliance is constituted in accordance with this Charter by agreement of the foundation members of the Alliance, as listed in the Schedule to this Charter, commencing on 29 October 2008.

3. Principles

The Alliance is based on the following principles:

- Integrity
- Accountability
- Simplicity
- Flexibility
- Respect
- Sustainability

4. Objects

The principal objects of the Alliance are to:

- Strengthen cooperation within the community of Pacific Ombudsman and allied institutions
- Foster integrity in the delivery of government services, by supporting the creation and maintenance of strong Ombudsman and allied institutions
- Develop culturally appropriate resources and training support to address common issues faced by the Pacific Ombudsman community
- Provide mutual support to help members meet their obligations and responsibilities and improve their service delivery and effectiveness
- Support the development of legislation and programs that recognise the right of citizens to transparent and accountable government services through effective complaint and oversight mechanisms
- Enable the national Ombudsman institutions of the Pacific Islands Forum nations to provide a common or consistent approach in dealings with international ombudsman bodies
- Foster and promote the work of Ombudsman and allied institutions throughout the Pacific

5. Membership

The foundation members of the Alliance are listed in the Schedule to this Charter and are full members of the Alliance. The Board or a meeting of the Alliance may admit other organisations to be full or associate members of the Alliance, and may remove an organisation as a member of the Alliance.

To be eligible for membership of the Alliance an institution must be created by an enactment of a legislative body or be provided for in the constitution and have a role to protect any person or bodies of persons against maladministration, violation of rights, unfairness, abuse of powers, corruption or any injustice caused by a public authority.

There may be only two full members per country. Any additional country members shall be associate members.

A member shall be represented in the activities of the organisation by the person or officer listed in the Schedule. With the agreement of the Board or a meeting of the Alliance, a member may be represented at a meeting of the Board or Alliance by an authorised alternate.

The Board may decide the rights or obligations that attach to Associate Membership, and the way in which an Associate Member may participate or be represented in the activities of the Alliance. The Board or a meeting of the Alliance may admit or remove a person or organisation as an Associate Member of the Alliance.

Meetings of the Alliance

The members of the Alliance shall meet at least once each year, either at a face-to-face meeting, or by an electronic medium. A meeting of the Alliance may coincide with other regional meetings of Ombudsmen and stakeholders, to enhance the opportunity for cooperation and collaboration among members.

A meeting of the Alliance may alter this charter, or may vary or rescind any decision of the Board.

6. Board of Governance

Appointment of the Board

The first meeting of the Alliance shall appoint a Board from among the full members of the Alliance. The Board shall comprise at least five and no more than seven members. The Alliance shall seek to ensure that it appoints as members of the Board people who can adequately represent the interests of members.

A country may have no more than one elected member of the Board. At least one member must be a representative of the Non Ombudsman Smaller Island States Working Group. The Alliance shall seek to ensure there is adequate gender representation on the Board. The Board may invite the Vice-President of the Australasian and Pacific Ombudsman Region (APOR) of the International Ombudsman Institute to be a non-voting ex-officio member of the Board.

The Board shall hold office for two years, unless a meeting of the Alliance earlier decides to appoint a new Board.

A member may resign from membership of the Board, or may be removed from the Board by a meeting of the Alliance.

A meeting of the Alliance shall appoint a new Board upon the expiration of the term of office of the Board, and upon a vacancy occurring in the Board.

Questions on notice and answers

The Board shall elect from among its members a Chair and a Vice Chair. The Chair shall be responsible for arranging and presiding at meetings of the Board and for the general supervision of the activities of the Secretariat and the Alliance. The Vice Chair may preside at a meeting at which the Chair is not present.

Role of the Board

The Board will:

- Provide leadership, oversight and strategic direction
- Ensure that Alliance activities are legal, ethical, financially prudent and appropriate for the Pacific

Each Board Member will:

- Display commitment to the objectives of the Alliance and be diligent in supporting the Alliance
- Advocate for good complaint handling, systemic improvement to public administration and other related principles such as transparency, integrity and accountability.
- Distribute and promote information about the Alliance and its activities
- Seek opportunities to raise resources, and to engender national and regional support for the Alliance

Responsibilities of the Board

To be consultative: Board members will consult with Alliance members, government organisations, staff, donors and other stakeholders to broadly represent the best interests of the Alliance.

To be strategic: The Board will focus on higher level strategy and will:

- Promote the principles and objects of the Alliance
- Set the long term strategic direction for the Alliance
- Develop the three year Strategic Plan to include the mission statement, strategic vision and the transition program
- From 2009/2010 start to strategically define Alliance programs and services, commencing with a strategic plan 2009-2012
- Approve the structure, function and the membership of working groups that report to the Board
- Consider and endorse activity plans, ensuring that the activity plans fit within the strategic directions endorsed by the Board
- Ensure that the Alliance is focused on getting results
- To liaise with APOR to ensure consistency and achievement of the objectives of the Alliance

To be accountable: The Board will:

- Ensure that the Alliance's legal, ethical and financial obligations are met
- Approve financial reports and performance monitoring including any necessary reporting to donor agencies.
- Develop and manage transparent Board meeting procedures and rules
- Report to Alliance members at an annual members' meeting, and electronically throughout the year
- Regularly self monitor Board performance
- Ensure the integrity of the Secretariat, and may recommend to the employer of Secretariat staff that staff be taken off Alliance work where this would be in the best interests of the Alliance.

To oversight operations: The Board will:

- Establish performance expectations, clearly outline expectations, delegate activity responsibilities and monitor and evaluate the results
- Oversight the administration of grants made to support the activities of the Alliance.
- Endorse staff appointments and oversee the Alliance Secretariat
- Develop and implement appropriate monitoring and evaluation procedures for Alliance activities
- Oversight the development and implementation of risk management practices

Board meetings and decisions

The Chair may call meetings of the Board, as needed. At least one face-to-face meeting of the Board shall be held each year.

The quorum for a meeting of the Board shall be half plus one of the members of the Board.

A decision of the Board shall be reached by consensus of the members, or by a majority of the Board members present at a meeting.

Working Groups

The Board may at any time establish working groups. A member of the Board shall be allocated responsibility for each working group. The working group is to perform the activities outlined in the decision of the Board which established it, and is at all times accountable to the Board. The Board will set the term of operations for all working groups.

A Non Ombudsman Small Island State Working Group will be an initial Working Group within the Alliance, with modification as deemed appropriate by the Board.

7. Secretariat

The Secretariat is appointed by and accountable to the Board of the Alliance.

The Secretariat is responsible for coordinating and implementing the activities of the Alliance, including:

- Providing support to Alliance members in accordance with the annual work plan
- Undertaking or providing technical assistance on activities and projects determined by the Board or the Board's delegate(s)
- Facilitating and monitoring complementary projects and activities conducted by donor and other agencies
- Developing grant documentation and a draft annual work plan for consideration by the Board
- Arranging and preparing for Board meetings and annual members' meetings
- Providing a report on financial matters to the Board as required and at least every six months
- Preparing the Annual Report and other accountability reports
- Other support or duties as required by the Board.

Initially the Secretariat is to be located within and attached to the Commonwealth Ombudsman. This is an immediate cost effective approach and can be reviewed once the Alliance has established itself.

8. .Transition from Network to Alliance

Initial activity targets for the Alliance to 30 June 2009 are:

- Establish the Alliance Governance Framework to include a Charter, the Board, Secretariat and Members

Questions on notice and answers

- Establish a Non Ombudsman Small Island State Working Group through collaboration between the Pacific Island Forum Secretariat Governance Officer and Alliance representatives
- Finalise and endorse the strategic and action plans that Network members have worked on for the past two years with activities that include:
 - Establish a communications service, including trials for a sustainable website or similar service
 - Review training needs and produce training materials
 - Establish a legal/technical advisory service
 - Maintain and build liaison with other professionals in the field with an aim to foster sustainable improvements to governance

This Charter was adopted by the undersigned foundation members of the Alliance on 29 October 2008

[Original contains Ombudsman and Representative Signatures on a separate page.]

Schedule – Foundation Members of the Pacific Ombudsman Alliance

Members attending the foundation meeting of the Alliance, 28 and 29 October 2008	Representative present
1. Commission for Public Relations, Tonga* 2. Commonwealth Ombudsman 3. Komesina O Sulufaiga (Ombudsman) of Samoa 4. Office of the New South Wales Ombudsman/APOR 5. Office of the Ombudsman, Cook Islands 6. Office of the Ombudsman, Solomon Islands 7. Office of the Ombudsman, Vanuatu 8. Office of the Ombudsmen, New Zealand 9. Ombudsman Commission of Papua New Guinea 10. Government of Nauru 11. Government of Niue 12. Government of Palau	1. Commissioner's representative 2. Ombudsman 3. Ombudsman 4. Ombudsman/Vice Pres of APOR 5. Ombudsman 6. Ombudsman 7. Ombudsman 8. Chief Ombudsman 9. Chief Ombudsman Representatives appointed by their respective Governments
Members not attending, represented by the above at the foundation meeting of the Alliance: 13. Solomon Island Leadership Commission 14. Government of the Federated States of Micronesia 15. Government of Kiribati 16. Government of the Marshall Islands 17. Government of Tuvalu	Chairman Representatives appointed by their respective Governments

*Now in transition to Office of the Ombudsman, Tonga

**APOR: Australasian and Pacific Ombudsman Region, International Ombudsman Institute

Chapter Three - Transcript of proceedings

NOTE: The Fifteenth General Meeting with the NSW Ombudsman was held at Parliament House, Macquarie Street, Sydney, on 21 May 2009 at 2pm.

BRUCE ALEXANDER BARBOUR, New South Wales Ombudsman, Level 24/580 George Street, Sydney,

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, Level 24/580 George Street, Sydney,

STEVEN JOHN KINMOND, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner, Level 24/580 George Street, Sydney, and

GREGORY ROBERT ANDREWS, Assistant Ombudsman (Police), Level 24/580 George Street, Sydney, affirmed and examined:

ANNE PATRICIA BARWICK, Assistant Ombudsman (Children and Young People), Level 24/580 George Street, Sydney, sworn and examined:

CHAIR: I now formally open the proceedings of the Committee's fifteenth hearing with the New South Wales Ombudsman and statutory officers from his office. Mr Barbour, thank you and your team for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information for the general meeting in relation to a wide range of matters concerning your office in accordance with the Committee's statutory functions.

Mr Barbour, the Committee has received a submission from you dated 30 April 2009, which is consistent with your responses to questions on notice taken from your annual report 2007-08. Do you want the submission to form part of your formal evidence?

Mr BARBOUR: Yes, thank you, Mr Chair.

CHAIR: Would you like to make an opening statement?

Mr BARBOUR: Yes, I would. I would like in my opening statement to deal briefly with a number of important issues, particularly the Office of the Ombudsman's current budgetary situation and the work we are undertaking in relation to our strategic planning and structure. Before discussing those issues I wish to apologise to the Committee that the Assistant Ombudsman, General Division, Ms Adofaci, was unable to attend today's hearings.

I will start with our current and future financial situation. There is no question that the community as a whole is experiencing unprecedented and difficult economic times. However, there are two pressures on my office's finances that were brought to bear well before the current financial crisis. These are the efficiency dividends and underfunded pay increases that my office has been required to meet. I would like to take this opportunity to make the Committee aware of the impact these measures are going to have on the work of my office.

Of course, all government organisations that are reliant on public funding should endeavour to be as efficient in their spending as possible. Over the past seven years the New South Wales Government has, in relation to agencies and departments, subjected them to efficiency dividends of around 1 per cent each year. We have estimated that the cumulative impact of these dividends between 2002 and 2012 on our office's budget will equate to a cut of approximately \$1.8 million. The impact of these sorts of measures is not felt just by my office, and is not unique to New South Wales. However, their impact on small offices is both considerable and undesirable.

A recent report by the Commonwealth Parliamentary Joint Committee of Public Accounts and Audit assessed the impact of efficiency dividends on small Federal agencies. The committee's broad conclusion was that the system of efficiency dividends "favours large agencies and agencies with a strong policy focus over smaller agencies". The committee went on to note:

Smaller agencies face particular challenges in relation to the efficiency dividend. One issue is that smaller agencies are often established to fulfil a specific function or purpose. That limits their capacity to reprioritise or trim discretionary activities. Also, such agencies are occasionally required to absorb new functions. The cost of one additional activity may appear small, but it could represent a large proportion of a small agency's total budget.

These comments sum up, in my view, my office's position very well. I would like to provide the Committee, at the conclusion of today's hearing, with a copy of the Commonwealth report. The efficiency dividends have not been the only pressure on my office's budget. Following negotiations with the Public Service Association, the Government agreed to a series of 4 per cent pay increases each year over three financial years, commencing 2008-09. Unfortunately, the Government has only provided funding to meet 2.5 per cent of those increases. This is not the first time pay increases have been approved but not fully funded by government.

I am raising this today to bring to the Committee's attention my concern about the impact of these measures on my office. As the Committee is well aware from its general meetings with us over the past years, our office has already undertaken extensive work to ensure that wherever possible we have reduced our costs whilst maintaining a quality service to the New South Wales community. The work that comes to my office shows no sign of reducing. If anything, it is likely to increase as financial pressures impact upon the level of service provided by government agencies and in turn this leads to an increase in complaints to my office. I am also fearful that as agencies grapple with their own reducing budgets, one of the areas of operation that may well be affected is the quality and capacity of their own complaint handling systems. If these systems are weakened or reduced in scope, the likely outcome is that considerably more work will be generated for my office.

In several areas of my operation, as you well know, we already have agreements in place which limit the number of matters that need to be notified to us. These agreements, particularly with New South Wales Police and various agencies within our child protection jurisdiction, mean that we do not directly oversight less serious matters. Our capacity to extend such agreements further is severely limited, and must be carefully measured to ensure that we continue to provide quality oversight at a level which is expected by both the Parliament and the community. These financial pressures make our effective strategic planning for the future all the more important and necessary. At the end of last year we

commenced a significant review of the office's strategic planning program, its internal structures, work processes and future direction.

Like any organisation, we need to regularly reassess the way we do our business in order to meet our challenges, plan for the future, and maintain our credibility and relevance. The first area we are looking at closely is the way we interact with our stakeholders. This will include the Parliamentary Committee, and I would welcome any comments from you about the way you and our office interact. We need to continue to ensure that we are working in the most efficient and effective way possible. To achieve this, we are reviewing our internal systems and processes to provide the best possible support for our work. We are also assessing whether our work itself needs to change or be tackled differently. During last year's general meeting I commented that the work of my office is constantly evolving, with a greater focus in recent years on proactive and project work. Being flexible, responsive and creative in our work, whilst ensuring that we also meet our statutory obligations, is critical for the future of our office.

Finally, senior staff in the office must continue to develop and be properly equipped to work effectively to lead the office. We are looking at ways of building a stronger leadership group, as well as ensuring that we have the most effective governance and accountability processes in place. This is a considerable amount of work, to be undertaken on top of an already very heavy workload. I am pleased to say, however, that staff in the office recognise the importance of these activities and they are participating in and contributing to them in a very positive way.

Lastly, I would like to mention a little about our work. Since our last meeting with the Committee in March last year we have dealt with almost 29,000 inquiries and more than 10,000 formal matters. We have issued a number of important reports to Parliament, including our 2007-08 annual report, our annual reports into the deaths of certain children and people with a disability, our annual report regarding the work of official community visitors, a report into access to government information in New South Wales, a review of certain functions provided to police by the Law Enforcement (Powers and Responsibilities) Act, a report into the use of Taser guns by New South Wales Police, a progress report into the support provided to people with an intellectual disability in the criminal justice system, and a review of the use of drug detection dogs by police in roadside operations.

We have also made publicly available a number of other reports regarding our work, including reviews of the situation of children under the age of 5 and between the ages of 10 and 14 in out-of-home care, a review of the support services available to those caring for Aboriginal children, and a review of complaint handling by family support services.

We have completed a large number of investigations, some of them very large in scale, making use of royal commission powers in many to require the production of documents and the attendance of witnesses at hearings. We have also provided a great deal of information to the Wood Special Commission of Inquiry into Child Protection Services in New South Wales. The Government's response to the commission's recommendations has led to a change in our role, as well as providing us with a new function to audit the implementation of the interagency response to child sexual assault in Aboriginal communities. We have recently been given a number of new legislative responsibilities, including a yearly audit of the use by agencies of new covert search powers and a review role of the new criminal association legislation.

Lastly, it is with some sadness that I also wish to advise the Committee of the imminent retirement from the Office of the Ombudsman of Anne Barwick, who is our Assistant Ombudsman for Children and Young People. This will be her last meeting with the Committee. Anne has worked in the position of Assistant Ombudsman for 10 years. She has led with distinction the Ombudsman's child protection division from its inception, establishing the jurisdiction from scratch and managing our very important obligations and relationships with agencies. I would like to acknowledge here her significant contribution to the work of our office and in ensuring better child protection practices throughout New South Wales. Mr Chair and Committee members, I am most happy, as are my senior staff, to answer any questions you have.

CHAIR: Thank you for that statement. I now open the hearing to questions. As to the review of the Ombudsman's information security policy, the annual report discusses the security of your information systems. It says that the review identifies six main risks. One of these is "significantly inaccurate or incomplete information used in reports, correspondence or as the basis for findings, recommendations, or decisions." That is at page 28 of the annual report. From time to time people write to this Committee complaining that your office has made a decision based on inaccurate information, which has been provided by the agency that they are complaining about. Can you tell us how your office ensures the accuracy of information used in reaching a decision on a complaint?

Mr BARBOUR: There are a range of processes that we have had in place for a considerable period of time not only to manage security issues but also to manage risk. If I can just by way of history refer the Committee to the fact that for the purposes of our security accreditation Chris Wheeler, who coordinates our security processes within the organisation, identified these six factors that are nominated and listed in the annual report as being the key risks from a security perspective for the office. That is particularly the case because the office's reputation and credibility are paramount in terms of the way in which we engage with agencies, and that represents a very significant risk to us. In terms of actually ensuring the accuracy of information, a range of procedures are in place, and they are also noted on page 28 of the annual report under "Managing Risk". In each of the areas of our office we have a range of systems in place to ensure as best we can not only the accuracy of information but also the accuracy of the interpretation of the information if we are going to use it in correspondence or in reports. We also ensure that before we make any statements which are negative to an agency or where the views of an agency might be put in a manner that the agency might be concerned about we consult with the agency and provide them an opportunity to give us any further advice about the matter that they wish before we finalise anything. I am not sure whether there is anything much more to add. Chris, did you want to add anything?

Mr WHEELER: No.

CHAIR: Another risk to information security that the review identified was unauthorised disclosure. From the systems that you have in place to prevent unauthorised disclosure, are you satisfied that the leaking of the February 2009 report on the Roads and Traffic Authority's handling of the two Freedom of Information applications did not emanate from your office?

Mr BARBOUR: Yes, I am satisfied that it did not emanate from my office. One of the challenges in any large-scale investigation, of the kind that particular investigation was, is that you have a large number of people involved by way of giving evidence. Also, in that particular matter we had an additional challenge, which was that the complainant was a journalist. Trying to balance the competing tensions involved in a large-scale investigation and ensuring that the many witnesses that we are calling to give evidence are given sufficient information to allow them to properly give evidence, that the agency is fairly treated throughout the process, and that you are keeping your complainant in a manner appropriately informed mean that you have to balance a lot of issues that sometimes raise natural tensions. I am confident, however, we put in place for that matter very significant safeguards, and certainly the way in which the information was reported definitely, in my view, tended to suggest that the leaks came from outside our office.

The Hon. CHARLIE LYNN: Mr Barbour, paragraph 2 of your response is in regard to feedback from New South Wales government departments and authorities following a survey of their complaints handling systems. What has been the response from agencies to your work in this area? Was the Department of Fair Trading included in the survey that you did?

Mr BARBOUR: I cannot off the top of my head recall whether they were one of the responders to the survey. My recollection is that all State government agencies and all local councils were part of our survey, but not everybody responded. I am not sure whether all government agencies responded and whether Fair Trading responded. Greg was involved in coordinating that. I am not sure whether his recollection is better than mine.

Mr ANDREWS: I cannot remember off hand either.

Mr BARBOUR: We could certainly have a look at our records, if that is of interest to the Committee.

The Hon. CHARLIE LYNN: It is.

Mr BARBOUR: Not all government agencies responded. It was not a compulsory survey.

The Hon. CHARLIE LYNN: Are the results of that survey available publicly?

Mr BARBOUR: The results of the survey were provided to all of the people who participated in it. I think a copy of each of the reports in relation to that, which do not have identification of the agencies, are on our website. I will confirm that for you.

The Hon. CHARLIE LYNN: I would appreciate that.

Mr BARBOUR: Could I just mention for the Committee's interest, the significant outcome of that particular survey in my mind was that we saw a slippage in the quality of the complaints handling systems that were in place in both government and local government agencies and, indeed, results were less impressive than the results we had received the last time we did the survey quite some years earlier.

The Hon. CHARLIE LYNN: It would be interesting to review some of those. I refer this question to Mr Andrews in regard to the Pacific Islands Ombudsman issues. As part of that program, which I think is a very good program, do you have any form of exchange between the Pacific Islands and Australia where officers come here on long-term exchanges to look at the issues of governance?

Mr ANDREWS: There have been a number of exchanges but they have been done primarily through the Commonwealth Ombudsman's office up to date. There is one about to take place between the New Zealand Ombudsman's office and the Cook Islands and we expect that over the next few years our office may be involved as well. There has been a particular long-term exchange arrangement between the Commonwealth Ombudsman's office and the Ombudsman Commission in Papua New Guinea and there have been placements done for three- to six-month periods. In most of the consultation work we have done with agencies in the Pacific we have come to the firm belief that these exchanges are the best way to transfer ideas and training. So far all the evaluations we have done have shown that it is appreciated and it is making a significant impact.

The Hon. CHARLIE LYNN: It would be my belief that bringing people from Papua and New Guinea to Australia for long-term exchange would be far better value in the longer term than your officers going up there, for example.

Mr ANDREWS: I think it is probably valuable both ways.

The Hon. CHARLIE LYNN: Indeed.

Mr ANDREWS: One of the problems, as you would appreciate, is that we do not have all the answers and we are dealing with very different political and governmental environments. So I think it is useful for us. I certainly know from my own experience travelling to some Pacific nations it has helped me reflect on our practices by just being exposed to the challenges that other Ombudsman offices face. So I think there are certainly benefits both ways. It is not just the developed nations giving expert advice to the developing nations. I think we can learn from them as well.

The Hon. CHARLIE LYNN: It is a very good project.

Mr PETER DRAPER: I want to put on record my appreciation of Anne Barwick's work over the past 10 years. It is one of the most important sectors of our community and giving young people a better place to live is very important. I appreciate what you have done and wish you every success in whatever you move on to do. Mr Barbour, in the annual report it is stated that the New South Wales Police Force does not define the sex industry as high risk under its secondary employment policy. Do you feel that there is sufficient risk mitigation on the part of the New South Wales Police Force both in terms of its secondary employment policy and also the broader issue of how police officers officially interact with workers in the sex industry?

Mr BARBOUR: That particular issue, of course, came to light in the handling of a specific complaint matter that we looked at. During the course of our oversight we identified that as being an issue of concern and we took it up with Police. You quite rightly refer to our comments in the report. I think that the secondary employment issue for police is a very significant issue and one well beyond simply the sex industry that needs to be looked at.

There is no doubt that there are considerably more and more police involved in secondary employment. The current rostering programs and work programs foster and facilitate that. Indeed, one of the main objections to changes to the 12-hour, days on, days off type of roster is that it would limit the opportunity for police officers to engage in secondary employment, rather than actually being for its intended purpose, which was to allow police to rest before they go on duty. There are considerable risks in all forms of areas where police are in secondary employment, whether it be the security industry and security-type work right through to other employment. I think it is something that needs to be looked at. It is not something that we really have an opportunity to direct police in any way about. But certainly to the extent where any concerns around it come up in the context of complaints, we are very live to addressing them on each case.

Mr PETER DRAPER: Just on police, are you satisfied with the New South Wales Police Force's current progress in developing a use of force register?

Mr BARBOUR: Is the Committee aware of any further developments that I am not? Because if it is not, then I would say that we are still in a position where we do not think much is happening. Certainly following your EIS inquiry and recommendations, we have been contacted by Police to ensure that we are continuing our role in working with them in that project. I have absolutely no hesitation in doing that. We agree with the Committee's recommendations and we are happy to support a tripartite approach to that issue with the Police Integrity Commission and the New South Wales Police. But as far as I am aware there has not been a great deal of progress made.

Mr MALCOLM KERR: Just dealing with the matter of freedom of information and the open government information bill, has any further information or consultation taken place?

Mr BARBOUR: We received copies of an early draft of the bill, which I think was in line with the recommendations that we made in our report to Parliament. We provided a range of comments on the provisions of the open government bill and also on the information commissioner bill. We are currently in the process of drafting a formal submission to Premier and Cabinet in relation to the bills as tabled in Parliament. We do believe that there are some improvements that can be made. We have some concerns about some aspects of the legislation, but I have to say overall I think that the response of the Government to the report has at last been a quick one. I am glad to see that there is some momentum on the issue. I think that the legislation as currently drafted in the bill provides an excellent platform for moving forward and it certainly would provide a far improved access regime than what we currently have.

Mr MALCOLM KERR: What sort of improvements would you like to see embodied in the bill?

Mr BARBOUR: A decision has been taken to set up an independent office. It is not clear to me what the public policy benefits are of that, quite frankly. We considered very carefully the notion of setting up a separate office or whether the role should be one that was conducted by the Ombudsman. I still lean towards it being a more appropriate fit with this office. Ironically, what will be set up will be a new body that will have all the same powers and be designed, or modelled if you like, on the Ombudsman office. So, it is a little unclear why one is suitable and one is not. There has been no pronouncement about why that recommendation has not been followed. Having said that, certainly an independent

office can work, but I think that for an independent office that is being set up from scratch there are enormous hurdles for it being able to achieve the sort of inroads and the level of credibility that we already have in the landscape and that would attach to that particular responsibility.

Mr MALCOLM KERR: In your opening statement you mentioned financial constraints, particularly the increase in salaries that have not been offset with any additional revenue from the Government. How serious is that problem for you in being able to perform your duties?

Mr BARBOUR: It is extremely serious. We regard it, in the context of our planning and our strategic work at the moment, as really the burning platform for the office in the sense that there is always a higher and greater expectation on us to perform in a particular way. We cannot continue to do that on a shrinking budget. You will have noticed that I did not specifically say that I was after increases in my budget. What I was pointing out was that what government was taking away, arguably openly, but really by stealth, is causing a very significant impact. If you want me to measure that in people terms, we have estimated that the dollar amount will mean 20 fewer investigators by the year 2012. That is more than 10 per cent fewer investigators to do the work, which is increasing. As you know, and certainly this is the direction I have felt from the Committee over the past few years, you are very supportive of our increased proactive and project work because it achieves such positive outcomes.

The challenge for us is that that very work actually requires greater resources. Some of the projects that we have underway or have just completed—including the review of FOI, our review of JGOS, the Aboriginal foster carer project and so forth—require travel to all parts of New South Wales. We have meetings with in excess of 400 people during the course of these reviews, sometimes in 25 or 30 different locations. There is an enormous amount of material and information, and we are dealing with multi-agency responses to very difficult public issues. So, to be able to continue to do that work and for me to make decisions to allocate resources to that, I have to make sure that we are able to balance that important role also with our core and statutory responsibilities that we need to meet as well. Now, the opportunity to do that effectively and to the standard that we have set is really going to be eroded and compromised if we are to continue to lose the level of money that we are.

Mr MALCOLM KERR: You mentioned proactive projects and you used the blanket term "and so forth". Could you particularise the other projects that might spring to mind or perhaps give the Committee a written response? It would be important to know what is being threatened.

Mr BARBOUR: I cannot point to a particular thing that is being threatened, but really what I am saying is that the opportunity for us to be able to do that work is going to be limited. So, when we sit down to work out what we can afford to do in our budget, as we are currently doing for next year, we are going to have to make choices. So, instead of maybe doing two significant projects, we might be able to only do one. We might have to limit the number of people we have involved in those, which would limit the scope and the benefits that would flow and the positive outcomes that would flow. So, we are going to need to look at that. I do not want to get to a position where we have to decline more matters, but that is something we have also considered as being a possibility. So, there is no particular thing I can point to, but certainly what we have to do in relation to our budget is more carefully

scrutinise our work plans and probably make decisions that we are not going to be able to do some things that we would like to do.

Mr PAUL PEARCE: Just on the freedom of information issue, particularly in relation to—

Mr BARBOUR: Sorry, could I add to that last question because my deputy Chris Wheeler has just mentioned one thing that we have in fact made a decision about, which I can specifically provide you with an answer on, and that is our mystery shopper program. We will not be doing a mystery shopper program in the coming year because we do not have the resources to do it. That to me is very disappointing because it is a longstanding project and one we have always received positive feedback from.

Mr MALCOLM KERR: You might remind us of the mystery shopper program. It did not have anything to do with retail outlets?

Mr BARBOUR: No, no. The mystery shopper project is one that has been on foot for a long time. We target different sectors of the public sector or broader government agencies each year. The one that is reported on that we did in 2007-08 was in relation to 30 local councils. We targeted 18 regional and 12 metropolitan councils. My staff assume a mystery identity, which is an identity of a local resident, and ask questions, attend councils, and receive information; we mail letters, we contact council by email and we develop a profile about customer service and provision of information to provide feedback to the agency from a mystery shopper perspective of how well that agency actually is responding to inquiries from the community. We have done it in a whole raft of different areas over the years and it has always been well received. I have to say, unusually the agencies that are the subject of this project often are very grateful because it does provide them with really first-rate insight into how their front-line services are operating.

Mr PAUL PEARCE: I hope the staff member involved is being paid penalty rates to do it, if it is local government! To return to the earlier discussion about freedom of information, in your report you give a brief discussion on the issue of freedom of information [FOI] applicable to Houses of Parliament and, particularly, the issue of privilege. You cite the United Kingdom freedom of information Act, which, in the light of recent developments, maybe is not quite as effective as we all might have thought. The issue of parliamentary privilege is difficult to deal with. In one way the issue of expenses et cetera can be addressed, but there is a raft of other things that members of Parliament deal with, particularly lower House members, about which it would be dubious to be generally publicly acceptable by way of FOI. In the absence of any statutory scheme defining parliamentary privilege in New South Wales, how would you see this operating to ensure that there was not a step over the line in our relationship with our constituency and following up our constituents' issues?

Mr BARBOUR: We certainly put this in really to generate discussion and to have those with an interest in this issue direct their attention to whether or not Parliament should be included. I do not think there is a right or wrong answer to the question you are asking. I think really it is a question of degree and a question of principle. Like all parts of any access-to-information legislation, there will be areas where it is permissible to gain information and there will be areas where it is not permissible. I would see no reason why, if there were a general consensus that Parliament will be included, there may well be consideration given to

particular aspects of the work of Parliament that would be excluded for good reason. But we suggested that in relation to any consideration of this, it probably wait until the first review of any new legislation that came in because in that five-year period there could be very genuine consideration given to the sorts of issues that you are raising. Certainly, we did not think and we did not take a position to the effect that members of Parliament ought to be covered specifically—clearly Ministers are—and we are unaware, apart from the examples that we provided, of that happening in any of the jurisdictions within Australia, obviously. So, it is a new issue for Australia, but as a matter of principle we saw no reason why Parliament ought be excluded per se.

Mr PAUL PEARCE: I agree that it is going to be subject to debate. Given the current climate, I am a little nervous that there will be a stampede or a drive to do something that could significantly disadvantage or put at risk the parliamentary role vis-a-vis our constituents. As you would be aware, there is a very grey area when we are dealing with correspondence from constituents, which we then forward onto various departments, as to whether or not that correspondence remains privileged for the purpose of any subsequent litigation.

Mr BARBOUR: I must say it certainly would not have been in my mind that that sort of correspondence would have been able to be sought under the Act. Really what we were getting at was far more the administrative functions of Parliament and the way both Houses of Parliament operate—similar information to what they put in the voluntary annual reporting mechanisms they have at the moment.

Mr PAUL PEARCE: So, changing the method from voluntary to mandatory?

Mr BARBOUR: Exactly, and drilling down to the sort of level that you are talking about was certainly not something that we had contemplated. We were looking at the initial step of it being a far more generic process of the administrative practices of the Houses of Parliament.

Ms SYLVIA HALE: How do you check upon the accuracy of an agency's response to your office in response to a complaint about the work of that agency?

Mr BARBOUR: It would very much depend, I think, on the nature of the complaint and the type of information. Some information we would know from our own checking would be accurate or inaccurate. Some information where it is opinion based or based on some sort of consideration of particular facts may or may not vary, depending on where it is coming from. Have you a particular issue in mind?

Ms SYLVIA HALE: Yes I have. Without going to the specifics of it, an agency assured your office and the complainant that it would be issuing an apology within two weeks. The person who made the complaint had not received the apology, and rang your office about five months later only to be told that in fact the agency had written to your office falsely claiming that the complainant was happy with the response and that the matter had been resolved. The question this person is interested in is: When you receive a response from that agency is there any mechanism for checking with the complainant whether the response you received from the agency is actually as the agency maintains?

Mr BARBOUR: In most cases I would think that sort of issue would not arise because in most cases if the agency was providing this advice it would normally copy us with the actual letter it has sent or the correspondence it had sent to the individual, the complainant. So, we would normally have a copy of the letter. Now, unless they have falsely claimed they had mailed it or something, we would accept that at face value. We would accept it at face value from the agency. Where there has been some sort of resolution reached between the parties, we always endeavour to indicate to the complainant if something does not transpire that has been agreed to, or if there are concerns, to let us know so that we can take that back up with the agency. But it would be impossible for us to check literally every statement that comes from an agency. We have to accept in large part at face value that what they are telling us is accurate.

Mr ANDREWS: We should add also that if we find out that that has happened, we take it very seriously.

Ms SYLVIA HALE: There was a complaint to the police about the failure to wear identification tags and about obscuring those tags with fluorescent vests and then threatening arrest of the person who was taking a photograph of an officer not wearing an identity tag. The police rejected that complaint. The complainant wrote back asking for details about which subsection of the Police Act that complaint had been dismissed under, and the grounds for it. No reply was forthcoming, so a letter was sent to the Ombudsman's office. Then, adding to the source of the complaint, for two months there has been no satisfactory response from the Ombudsman's office or any indication that the matter is being pursued.

Mr BARBOUR: It is very difficult for me to comment on a matter without looking at it.

Ms SYLVIA HALE: Do you have a time frame, other than an automatic response, in which you would expect to get a response, say, within a month?

Mr BARBOUR: We have time lines that we try to adhere to, and so do the police. We monitor the police efforts in relation to that. If there is a particular concern about us failing to respond to something within an appropriate time frame, I would be very happy to look at it. Sometimes people's expectations and what we are able to deliver do not necessarily match. What you have described may well be one of those cases. In relation to any concerns that any Committee member or any member of Parliament has, we regularly deal with letters from members of Parliament about the concerns of their constituents. I am more than happy to address them individually.

Ms SYLVIA HALE: You do not have your own technical staff or funding to obtain independent expert opinion on a fee-for-service basis when you undertake an investigation. Does the office have any input into the selection of experts required to provide technical reports? Or is that left to the department or the Minister who is the subject of the investigation?

Mr BARBOUR: Firstly, we can retain expert assistance if we need to, if a case warrants it. It would be fairly rare and it would be a particularly complex or specialist type of issue that we would consider doing it for, but we have done that in the past. When we get a response from agencies and ask them to provide information to us, our expectation is that

that information will be accurate and will be of a standard that meets that agency's needs and expectations on that particular issue.

Ms SYLVIA HALE: As a result of the Minister or department or agency appointing an expert, would you make any inquiries as to potential conflicts of interest? Would you pursue that?

Mr BARBOUR: It would depend entirely on the circumstances. I am not sure what you are asking. We would not ordinarily inquire into the particular qualifications of an expert that is advising an agency unless, in the course of our inquiries, we believe that expert was giving inaccurate advice or had in some way provided inappropriate advice to us on behalf of the agency. It would not be as a matter of course that we would have any contact with those people. It would only be in the context of a particular investigation or inquiry, where we were working with them.

Ms SYLVIA HALE: Do you keep statistics as to complainant satisfaction with the Ombudsman's responses?

Mr BARBOUR: We do regular surveys of complainant satisfaction. We tend to do them every three to four years, sometimes we do spot surveys through our inquiries area. We publish the response rates and put them in our annual report when we do those surveys.

Ms SYLVIA HALE: But they are surveys rather than detailed statistics of satisfaction?

Mr BARBOUR: The surveys are about satisfaction. They go through in detail and ask a series of questions about not only whether they are satisfied with the outcome but also the processes, whether they were treated appropriately, whether things are explained appropriately to them.

Ms SYLVIA HALE: Is that spot-checking rather than an assessment?

Mr BARBOUR: We could not possibly do it in all cases. We deal with 35,000 people a year.

Ms SYLVIA HALE: What percentage of cases would you do?

Mr BARBOUR: We do different samples, depending on when we do it. I do not know what the last sample was, I could look back for you if you would like that information. It would be in the hundreds, but then you cannot compel people to respond, so you are dependent upon the response rate. But they would be done in a professional way and they would be done of a sample that was considered to be statistically appropriate.

Ms SYLVIA HALE: If a complainant is dissatisfied with the Ombudsman's response, what avenues are open to a complainant to pursue it further?

Mr BARBOUR: We have an internal review process, which I personally am involved with. If anyone writes to us and says that they are unhappy with the decision and seek a review of it, we follow a very detailed process. We contact the person to find out exactly

what they are concerned about. If it is an issue around their not really understanding why we have made a decision, or re-explaining it, or reframing the information, we try to do that with them informally over the telephone.

If it is clear that they want us to actually formally review things, and they think we have got it wrong, another officer—not the officer who handled the matter before—usually someone senior, does a formal review and provides recommendations to me. I end up looking at those files myself and I sign off on those. That is the review process. Beyond that, the only other form of external review would be if it were a legal issue, to take the matter to court or, alternatively, to address the concerns to the Committee.

Ms SYLVIA HALE: In your annual report, do you comment on complainant dissatisfaction with responses at all?

Mr BARBOUR: We refer regularly to our compliments and our complaints. On page 13 of the annual report there is a table that lists the number of complaints and the issues that they were for, and also the outcome of the reviews conducted. It is extremely important to provide that information. I am also pleased to say that the number of compliments that we get compared to complaints is about 10:1.

Ms SYLVIA HALE: From your answers to questions on notice, it would appear—and I hope I am not misjudging the issue—that the New South Wales Police Force is somewhat uncooperative in its responses to complaints. Is that a fair characterisation?

Mr BARBOUR: What exactly are you referring to in our response that leads you to that conclusion?

Ms SYLVIA HALE: It states:

In January 2009 the police were significantly reading down our powers to require information for the review. Has the Police Force responded to the Office's proposals to facilitate the provision of information about the uses of Part 6A emergency powers.

You said that they were reading down your powers to require information for review, and were proposing the provision of a range of necessary information. You said that you have a signed agreement, which was received on 16 April. Is it your experience that there is certain recalcitrance on the part of government departments? Or is this more characteristic of police?

Mr BARBOUR: No, I think the reason why it is perhaps associated more frequently with police is because it usually will arise in the context of our review functions, and those review functions normally relate to additional or new powers that have been given to police. I believe that, quite wisely, Parliament has from time to time, when police have been given new powers, particularly powers that are more intrusive to civil liberties than normally present, given us a role to observe the operation of those and to report back to Parliament.

From time to time in the initial stages of those reviews, there is, for want of a better expression, a bit of a dance that happens. We want to get access to information that we believe is necessary for our review. Sometimes police will take a very literal or formal view about what we are entitled to obtain for the purposes of the review. In most situations, that is

able to be resolved relatively well. Occasionally, it takes longer than it should. My view is that it is a silly dance, in the sense that we are both working ostensibly for the same team.

The idea is that police are supposed to exercise their powers appropriately and we are meant to ensure that they do. At the end of the day, normally if we are not able through senior officers to get an appropriate outcome, I will raise it directly with the commissioner. He looks at it and quite often that changes the dance and we get a bit of a breakthrough.

The Hon. LYNDA VOLTZ: Who funds the Government Partnership Fund grant, which is administered by the Commonwealth?

Mr ANDREWS: AusAID.

The Hon. LYNDA VOLTZ: So it is funded by the Commonwealth Government?

Mr ANDREWS: Yes.

Mr BARBOUR: Unfortunately that is one of our limitations. I share Mr Lynn's view about the importance of this work and our office's role and contribution to it. However, because it is Commonwealth funding and it is not really one of our statutory obligations I have to ensure that, as much as possible, our involvement in it is covered by funding we are able to get through the Commonwealth Ombudsman's Office from AusAID. If we are unfunded to do this I cannot justify our being involved.

The Hon. LYNDA VOLTZ: At what point is the current AusAID application?

Mr BARBOUR: It has been the subject of a favourable indication from AusAID. The chairman of the Pacific Ombudsman Alliance, the Commonwealth Ombudsman, John McMillan, has advised us that he will be forwarding correspondence shortly. We understand they are supportive of a further five-year program.

The Hon. LYNDA VOLTZ: I do not underestimate the importance of this program, but I think it was very brave to go to Fiji. I notice that they are not on the list. Do not get me wrong, I think it is vitally important in places like Papua New Guinea.

Mr BARBOUR: We have not been to Fiji.

The Hon. LYNDA VOLTZ: What about in 2005?

Mr BARBOUR: Yes. But not since the formation of the POA.

The Hon. LYNDA VOLTZ: Is there an ombudsman there at the moment?

Mr BARBOUR: No, or not one that we deal with anyway.

Mr MALCOLM KERR: You mentioned police being given additional powers. Have you received any response to the recommendations in your review of certain functions conferred on the police under the Law Enforcement (Powers and Responsibilities) Act 2002?

Mr BARBOUR: Since it has been tabled we have not received anything further. That document and the provisional report were provided to the police for comment and many of the comments they made informed our final investigation in relation to the document. As you know, it dealt with three major issues. The most significant in terms of public interest was probably the search powers and provisions. We have made a large number of recommendations and there is a time line for reporting set out in the report.

Mr PAUL PEARCE: You have made a number of points in your response to the question about the use of Taser weapons by the New South Wales Police Force, particularly in respect of improved recordkeeping and there being no direct action. Have you heard anything further from the police on that issue?

Mr BARBOUR: Unfortunately we are at odds with the NSW Police Force, the association and the Government in our view on Tasers and their ongoing use. We have not opposed the use of Tasers per se. In fact, to the contrary, we indicated that while they were being used by specialist police units there was nothing to suggest they were being misused or inappropriately used and that they seem to provide an appropriate resource. However, after doing a lot of research and looking at other jurisdictions, our concern was that there was a safety issue in relation to their use that has not been properly researched and considered. We also believe that there is anecdotal evidence from their wider use by police in other jurisdictions that they are misused.

We were also concerned that even among the specialist units there were different operating procedures and practices and we were concerned to ensure there was consistency of practice before any further rollout. The police have agreed largely with the sentiment of our recommendations and what underpins them, with the exception of the rolling-out issue, but they have not been moved to change their procedures much. What is of interest to me is that the Victorian Police Commissioner has specifically ruled out the further expansion and use of Tasers until the very steps we have identified have been undertaken. There have also been 12 Taser-related deaths since the release of our report, including one in the Northern Territory.

Mr PAUL PEARCE: That is the reason for my question. I note that you mentioned the police were going to examine the use of force register project. Has there been any further feedback?

Mr BARBOUR: We do not have any feedback about that project. As you know, it is not something they have seen as popular or necessary. I think there will be further developments because of the Committee's recommendations in relation to the EIS. We will continue to work with them on that. Clearly, if there is going to be a use of force register then the wider use of Tasers will figure prominently.

Ms SYLVIA HALE: I read with concern your response to the question about the official prison visitors and whether or not you could make any contact with them. I assume the commissioner is still not facilitating contact.

Mr BARBOUR: He facilitates contact, but through his officers, which I find unacceptable as a matter of principle. I am yet to be provided with any reason that it is inappropriate to ask the official visitors if they have a problem with us contacting them. If they do not then we will. I believe this is a further example of an unnecessarily rigid

approach to issues within the Department of Corrective Services. It is further suggestive of a position that limits cooperation and coordination amongst those who have a role to ensure that the system operates appropriately.

Ms SYLVIA HALE: As you are no doubt aware, the Government proposes to privatise Parklea Correctional Centre, and Junee Correctional Centre is already privatised. Do you have ready access to people who have complaints about the operations of Junee?

Mr BARBOUR: We have jurisdiction over Junee and we visit regularly. We deal with it as we would any other correctional centre and we deal with those issues with the management of Junee. In terms of any additional privatisation, we would plan to deal with the prisons in exactly the way we deal with the department.

Ms SYLVIA HALE: Presumably any management contract should make provision for your involvement.

Mr BARBOUR: It is all covered by statute.

CHAIR: I am sure that Mr Woodham would be very sympathetic to the Ombudsman.

Ms SYLVIA HALE: I am sure he would. The other disturbing feature of your answers to questions on notice relates to the overcrowding of Department of Juvenile Justice facilities. I assume you have made appropriate representations to the department. Indeed, you say you have been impressed at the efforts being made by the department to manage this difficult situation. However, you also say that more robust action is needed to address both the short-term and long-term projections for the number of young people in custody. You presumably address those concerns to the relevant Minister.

Mr BARBOUR: We do. This issue in particular is extremely troubling. It is a classic situation where policy decisions are made and laws implemented, the consequences of which are not properly thought through. The tightening up of the bail laws has meant that there are far more young people being detained who previously would not have been. I do not know whether that was the intent of tightening up those laws and the focus on law and order issues. There is a growing and very disturbing overcrowding situation within Juvenile Justice which is not of its own making and which it must try to manage to the best of its ability, and it is doing so. The department has received some additional funding to help with overcrowding, but, frankly, that does not deal with the issue. The real issue is why so many young people are going into detention centres. That is what needs to be addressed and considered by government.

We are looking at that issue and a number of other issues in a complementary way around the concept of young people at risk. It is one of the projects that I do not want to be impacted by our budgetary constraints because it is very important and it will be something that the office will focus on in the next 12 to 18 months. I would like to look at how young people intersect with government and the bureaucracy when they are at risk, when they have family problems, when they come from domestic violence backgrounds and when they have been abused and subjected to inappropriate treatment. I want to examine where they intersect with the Department of Community Services, courts and the police, how the police deal with them and ultimately what happens to them when they end up in a Juvenile Justice facility. That is a very large task for an office such as ours, but I am increasingly concerned

about the fact that there is no single agency that seems to be championing the concerns of young people and how they deal with these very difficult circumstances.

Ms SYLVIA HALE: Are you continuing to monitor the situation at Emu Plains Correctional Centre? You would be aware of newspaper reports of children being locked in cells for 20 hours.

Mr BARBOUR: I am not only aware, but I also inspected the premises. I took the opportunity to invite the Minister to accompany me. We had a number of discussions during our time at the centre. This is a classic scenario. I see the problem for Juvenile Justice in terms of how it manages the situation. The facilities it has available at the moment through an agreement with the Department of Corrective Services are not consistent with best practice for young detainees. There are two detainees in each locked unit without water or bathroom facilities. There are also shared shower block facilities. That situation presents risks not only to the safety of the young people housed there but also because of shared bathing and toilet facilities.

Because of the problems associated with managing the issues that flow from that there is inadequate staffing to allow the young detainees to spend sufficient time outside their cells. To its credit, the Department of Juvenile Justice has tried in a very difficult environment to introduce a range of measures to make that process better for the detainees. However, it is still not desirable. There is inadequate space and no facilities to ensure that they get really good exercise and those sorts of things. Plans are currently afoot to improve those facilities if they are able to maintain them for a longer term.

Ms SYLVIA HALE: You talked about the Department of Juvenile Justice implementing a range of measures to improve conditions. What are they?

Mr BARBOUR: They have improved the existing facilities to a standard that provides reasonably good opportunities to undertake recreational activities. They have astroturfed some areas and provided basketball and other games facilities. There is also some communal television, interactive video game areas and shaded areas. As you can imagine, during summer it is a very warm environment. To the extent that the physical facilities allow, they are trying to make them as good as possible.

Ms SYLVIA HALE: But if juveniles are in cells for 20 hours at a stretch, their opportunity to make use of those external facilities would be limited.

Mr BARBOUR: It would be exceptional for any of them to be locked up for 20 hours. I understand that there is an effort to ensure that they are not locked up for anywhere near that length of time. We are monitoring that situation. In my view the situation there is not as bad as it is in other facilities where there are mattresses on the floor and rooms that are not designed to house two people are housing two or three young people, which creates additional risks. Some of the other facilities that are currently overcrowded are presenting greater risks and challenges. There was a significant sexual assault in one centre that is under investigation. Undoubtedly, overcrowding is presenting enormous challenges for the Department of Juvenile Justice.

Ms SYLVIA HALE: In your experience, how long would children be subjected to these conditions and presumably deprived of any opportunity to undertake educational activities or anything resembling a normal existence?

Mr BARBOUR: The plan was to limit the time that young people were housed at Emu Plains Correctional Centre because there were no education and program facilities provided. We are monitoring that to ensure that if there are any longer stays that they are being appropriately managed. The plan was that most of the young people would be there for only a short stay or on remand until court dates and so forth. However, our concern is—and it appears to be happening—that they are being kept there longer, and we are monitoring that.

Mr PAUL PEARCE: How does this sit with our obligations under the Convention on the Rights of the Child?

Mr BARBOUR: There are various obligations of that kind. However, there are also significant concerns about appropriate and humane treatment. My greater worry is that the Department of Corrective Services will end up taking over the Department of Juvenile Justice and the situation might become worse. It worries me that the detaining of young people in these facilities will be viewed purely on a cost basis rather than on what is appropriate for their age and circumstances. To reduce recidivism, for them to avoid an adult institution in the future and to have a chance back in the community, we must ensure that Juvenile Justice facilities provide appropriate educational activities, programs, more interaction with staff and a higher staff-to-detainee ratio. They are all things I suspect will be under threat if the only consideration is the dollar at the end of the day.

Ms SYLVIA HALE: I stand to be corrected, but I think your office reported on the number of young people who had been searched by police but not in the presence of a responsible adult.

Mr BARBOUR: Yes.

Ms SYLVIA HALE: Has there been any response from the police to your report?

Mr BARBOUR: That report was only recently tabled in Parliament and we have not yet received a formal response. Certainly, one of our concerns in reviewing the search powers was that in relation to young people there did not appear to be adherence to a support person being available.

Ms SYLVIA HALE: I understand that, for example, at rock music festivals it is now possible for police to check the fingerprints of minors. It is highly unlikely that an adult would be present at a rock music festival or whatever, but the police now have this facility.

Mr BARBOUR: They have mobile machines for fingerprinting, but I am not aware of any power that allows police to take young people's fingerprints.

Mr ANDREWS: The new devices can be used to check the identity of people to whom police are about to issue a criminal infringement notice. However, they cannot issue such notices to people under the age of 18.

Ms SYLVIA HALE: So there is no excuse for attempting to check the fingerprints—

Mr ANDREWS: No, the person concerned would have to be arrested for some offence before the police could do that.

Ms SYLVIA HALE: Therefore the Minister's response that if you have not done anything wrong you have nothing to worry about is inappropriate.

Mr ANDREWS: If a police officer suspects someone has committed an offence for which they can issue an on-the-spot criminal infringement notice, he or she has the power to be assured of the identity of the person, and to do that they can use a mobile fingerprinting device. They could say to someone who claims to be under 18 years of age, "You look older and I want to check." However, that would be unusual. They would certainly not be able to do it willy-nilly with children.

Ms SYLVIA HALE: In your report on the use of sniffer dogs you suggest that police would only be permitted to search a person, in response to a sniffer dog indicating a positive response, if there was a reasonable belief that that person had committed an offence and had drugs or whatever on them. But has the issue of a sniffer dog's responses being sufficiently inaccurate to not form the basis of a reasonable belief as to a person's conduct been pursued at all, to your knowledge, in any jurisdiction?

Mr BARBOUR: We believe that the use of sniffer dogs for their intended purpose, which was to stop dealing and stop large-scale transactions in relation to drugs, was pretty ineffectual. A very high percentage of dog indications, after searching, led to no drugs being found at all and that, in our view, brought into question their usefulness, given the stated purpose of the dogs. However, Government policy and the police position has been to continue to use them in the manner they have been used.

Ms SYLVIA HALE: Do you receive many complaints about the use of sniffer dogs?

Mr ANDREWS: Not a great deal but they still do occur, and we are still very much alive to that issue. It is still an ongoing educational campaign that the police themselves are doing to make sure their officers are alive to the fact that just because a sniffer dog gives an indication, they still have to have something more before they really have the power to search.

Ms SYLVIA HALE: Reverting to Juvenile Justice, I notice in your answers to questions on notice you said that Juvenile Justice suspended transfers of certain categories of detainees aged over 18 to adult facilities in August 2008 pending a review of its procedures, in response to a court case—this appears on page 18. You say there are new draft transfer procedures and you have commented upon them. What is happening now? Has it become operational or are you waiting on those procedures to come into force?

Mr BARBOUR: My understanding is that we are still, through our liaison meetings, working with them on those new procedures, but I am happy to provide an updated position on that to the Committee, if you would like.

Ms SYLVIA HALE: In view of the huge pressures from overcrowding there is no evidence that Juvenile Justice has reverted to transferring—

Mr BARBOUR: That certainly is not happening, as far as I am aware. There are new procedures in place and that was the subject of legal challenge.

CHAIR: But overcrowding is not just isolated to Juvenile Justice; overcrowding is across a lot of the Correctional Services centres throughout the state. Do you delve into that area as well?

Mr BARBOUR: It depends who you talk to, because there are a number of Corrections facilities that certainly have facilities that are unoccupied and largely they are unoccupied because there are inadequate resources to monitor them.

CHAIR: Such as Cessnock?

Mr BARBOUR: Exactly, and there are other centres where there is overcrowding and we have concerns about people being put in rooms that were designed for one occupant and decisions being made to put two people in them.

CHAIR: Such as Wellington?

Mr BARBOUR: There is a disparity, depending on where you go and what you look at.

CHAIR: Thank you for your attendance today. If there are any further questions, they will be put on notice, and I ask they be returned to the Committee secretariat.

(The witnesses withdrew)

(The Committee adjourned at 3.20 p.m.)

Appendix 1: Minutes of meetings

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 14)

10.30 am Thursday 26 March 2009
Room 1102, Parliament House

Members Present

Mr Draper MP	Ms Hale MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC	

Also Present

Les Gönye, Hilary Parker, Indira Rosenthal

The meeting commenced at 10.40am.

6. General Meetings with the Ombudsman and the PIC

The date for the general meetings, Thursday 21 May 2009, was confirmed with committee members and draft questions on notice for each general meeting were distributed to members for their comment and approval.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 15)

10.30 am Thursday 2 April 2009
Room 1136, Parliament House

Members Present

Mr Draper MP	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

Apologies

Ms Hale

Also Present

Jonathan Elliott, Les Gönye, Hilary Parker, Indira Rosenthal

The meeting commenced at 10.30am.

3. General Business

(a) *Questions on notice for the General Meetings with the Ombudsman and the Police Integrity Commission*

Resolved on the motion of Ms Voltz, seconded by Mr Kerr, that the Committee approve the draft questions on notice previously circulated to Committee members.

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Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 17)

10 am Thursday 21 May 2009
Jubilee Room, Parliament House

Members Present

Mr Draper MP	Ms Hale MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC	

Also Present

Jonathan Elliott, Donald Misang, Hilary Parker, Pru Sheaves

The meeting commenced at 10.05am.

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Fifteenth General Meeting with the NSW Ombudsman

The Chair opened the public hearing at 2.05am.

Mr Bruce Barbour, New South Wales Ombudsman; Mr Christopher Wheeler, Deputy Ombudsman; Mr Stephen Kinmond, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner; Mr Gregory Andrews, Assistant Ombudsman (Police), affirmed. Ms Anne Barwick, Assistant Ombudsman (Children and Young People) took the oath.

The Ombudsman's answers to questions on notice relating to the Annual Report 2007-08, dated 30 April 2009, were tabled as part of the sworn evidence. The Ombudsman made an opening statement. The Chair then commenced questioning the witnesses followed by other members of the committee.

The Ombudsman provided a copy of the report, *The efficiency dividend and small agencies: Size does matter*, by the Joint Committee of Public Accounts and Audit, Parliament of the Commonwealth of Australia, as well as the program for the Ombudsman's 2009 Child Protection Symposium.

Evidence concluded, the witnesses withdrew. The committee adjourned at 3.20pm.