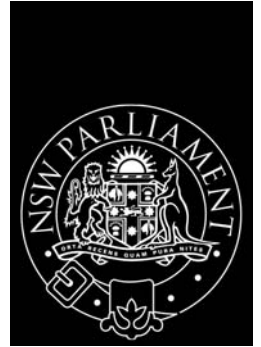


PARLIAMENT OF NEW SOUTH WALES



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

THIRTEENTH GENERAL MEETING  
WITH THE NSW OMBUDSMAN

---

Together with Transcript of Proceedings,  
Written Responses to Questions and Minutes

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission**

Thirteenth general meeting with the NSW Ombudsman : together with transcript of proceedings, written responses to questions and minutes / Parliament of New South Wales, Committee on the Office of the Ombudsman and the Police Integrity Commission. [Sydney, N.S.W.]: The Committee, 2006, 139p.; 30cm (Report; no.10/53, May 2006).

Chair: Paul Lynch MP  
"May 2006"

ISBN 1921012234

1. New South Wales. Ombudsman.
2. Ombudsman—New South Wales.
  - I. Title
  - II. Lynch, Paul.
  - III. New South Wales. Ombudsman.
  - IV. Series: New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission. Report; no. 53/10

352.88 (DDC22)

## Table of Contents

Membership & Staff.....	iii
Functions of the Committee.....	v
Chairman’s Foreword .....	ix
Recommendation .....	xi
<b>CHAPTER ONE - COMMENTARY .....</b>	<b>1</b>
<b>CHAPTER TWO - QUESTIONS ON NOTICE.....</b>	<b>9</b>
<b>CHAPTER THREE - ANSWERS TO QUESTIONS ON NOTICE .....</b>	<b>13</b>
<b>CHAPTER FOUR - TRANSCRIPT OF PROCEEDINGS.....</b>	<b>33</b>
<b>CHAPTER FIVE - RESPONSE TO QUESTIONS TAKEN ON NOTICE .....</b>	<b>69</b>
<b>APPENDIX ONE: COMMITTEE MINUTES .....</b>	<b>121</b>



## Membership & Staff

<b>Chairman</b>	Mr Paul Lynch MP, Member for Liverpool
<b>Members</b>	The Hon Jan Burnswoods MLC (Vice-Chair) The Hon Peter Breen MLC The Hon David Clarke MLC Mr Stephen Chaytor MP, Member for Macquarie Fields Mr Geoffrey Corrigan MP, Member for Camden Mr Malcolm Kerr MP, Member for Cronulla
<b>Staff</b>	Ms Helen Minnican, Committee Manager Ms Pru Sheaves, Project Officer Ms Hilary Parker, Committee Officer Ms Jenny North, Assistant Committee Officer
<b>Contact Details</b>	Committee on the Office of the Ombudsman and the Police Integrity Commission Parliament House Macquarie Street Sydney NSW 2000
<b>Telephone</b>	02 9230 2737
<b>Facsimile</b>	02 9230 3052
<b>E-mail</b>	<a href="mailto:ombopic@parliament.nsw.gov.au">ombopic@parliament.nsw.gov.au</a>
<b>URL</b>	<a href="http://www.parliament.nsw.gov.au">www.parliament.nsw.gov.au</a>



## 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 1974* are set out in s.31B(1) of the Act 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

Functions of the Committee

of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- 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:

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



- (c) 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.



## Chairman's Foreword

The Committee conducted the thirteenth General Meeting with New South Wales Ombudsman and senior officers of his Office on 23 November 2005. The public hearing involved evidence on wide-ranging aspects of the Office's operations. However, the evidence taken at the public hearing and the information provided in response to matters taken on notice resulted in considerable discussion between the Ombudsman and the Committee about the adequacy of the funds and resources available to the Ombudsman to perform his functions.

In recent years the Ombudsman's jurisdiction has expanded markedly following the conferral of child protection functions, the merger of the Office with the Community Services Commission, and new scrutiny and audit roles in respect of controlled operations and legislation conferring special police powers. In addition to the new statutory functions performed by the Office of the Ombudsman, significant increases have occurred in complaint levels within established areas of the Ombudsman's jurisdiction, particularly in relation to police complaints. The functions highlighted by the Ombudsman as in particular need of additional funds include the investigation of reviewable deaths and related systemic issues, and the Community Visitors Program.

The Committee will review the level of funding provided to the Office in detail prior to the next General Meeting with the Ombudsman in late 2006, by which time it is hoped some of the funding issues will have been resolved in negotiations between the Ombudsman, NSW Treasury and central agencies. As a prelude to the next General Meeting the Committee will take in camera evidence from the Ombudsman and NSW Treasury on the response given to the Ombudsman's requests for additional funding. The Committee's findings and recommendations will be included in its next General Meeting report to Parliament.

The Ombudsman's jurisdiction involves oversight of service delivery to vulnerable individuals within the community, and the use of controversial police powers. Consequently, it is of concern that the capacity of the Office to perform these sensitive and highly complex functions may be compromised due to inadequate funding. This is a threshold issue for the Office and it is apparent from the General Meeting that the Ombudsman considered the level of funding available at the time had the potential to critically undermine the service capabilities and operations of the Office. The Committee has a responsibility to draw such matters to the attention of the Parliament and the community.

On behalf of the Committee, I would like to thank the Ombudsman and the senior Ombudsman officers who participated in the General Meeting for their attendance and the standard of evidence they provided during proceedings. I also would like to express my appreciation to the Members of the Committee for their contribution to the General Meeting and subsequent deliberations.

Paul Lynch MP  
Chairman



## Recommendation

The Committee has resolved to conduct separate *in camera* hearings with the Ombudsman and the NSW Treasury prior to the next General Meeting with the Ombudsman in November 2006, for the purpose of examining funding levels for the Office. The evidence from the *in camera* hearings will be used to inform the Committee about the response received by the Ombudsman for additional resources for specific programs. The Committee will report on its findings, and the adequacy of the funds and resources available for the Office to effectively perform the Ombudsman's statutory functions, as part of its report on the General Meeting.



## Chapter One - Commentary

### 1. 1 **Funds and resources**

The Ombudsman drew the Committee's attention to the cumulative effect of funding reductions and unfunded public sector pay increases, and indicated that there are a number of areas where the Office requires additional funding in order to properly exercise the Ombudsman's statutory functions. The Office had advised the Cabinet Office and NSW Treasury that the reviewable deaths function, Community Visitors Program and Police Area would be most affected by the funding situation.

1. 2 **Reviewable deaths:** The reviewable deaths function is aimed at systemic issues arising from reviewable deaths, reviewing trends and patterns, and recommending changes to policies and practices that might prevent or reduce untimely deaths. In order to perform this function the Ombudsman must necessarily examine the circumstances surrounding individual deaths. The Ombudsman has indicated that as the number of deaths captured by the legislation and the amount of work required for each review far exceeds the indicative assessments made when the function was conferred, the funding based on those indicative assessments is inadequate to perform this function appropriately. The Committee notes that this function is non-discretionary and is the subject of considerable public scrutiny. Original estimates of 70-80 reviewable child deaths have been greatly exceeded – in the Office's first review period there were 161 reviewable child deaths and the Office examined 137 of these as they related to abuse, neglect or suspicious circumstances. Detailed investigations were needed into eight deaths, five using the formal powers of the Ombudsman. In the same period the Office received 110 notifications of deaths of people with a disability in care, involving detailed reviews.

1. 3 **Community Visitors Program:** Regular annual requests to increase the funding for the Official Community Visitors function have been rejected and, as a result, the Ombudsman is concerned about his ability to meet his community services obligations, which rely on the information provided by the visitors about the quality of services being provided for children, young people and people with a disability.

1. 4 In 2001-02 the NSW Treasury and the former Community Services Commission agreed to a "responsible visiting rate" of an average of four by four hourly visits to each visitable service per year whereas at present there is sufficient funding for the equivalent of nine visitable hours per service instead of the agreed sixteen hours. The Ombudsman expects the situation to worsen as the number of visitable services increases.

1. 5 The Ombudsman has indicated that budget constraints have meant that visitors have not been able to spend enough time during each visit to do their work effectively, with some services being visited so infrequently (or not at all) that it is impossible for visitors to effectively monitor the quality of the service provided. Significantly, about 22% of eligible services were not visited during the 2003-04 financial year and about 30% were not visited in 2004-05. The Committee shares the Ombudsman's concerns about the level of risk this poses for vulnerable sections of the community, including children, young people and people with a disability in care.

Commentary

- 1.6 **Increasing complaint levels:** The Office's funding difficulties were exacerbated by continued increases in complaint levels despite the range of strategies put in place by the Office. Overall, formal complaints rose by over 16% in 2004-05 but the Ombudsman expressed particular concern about the dramatic increase in police complaints over the last two reporting years. In this situation, some of the strategies adopted by the Ombudsman's Office involved less reporting of minor matters but this in turn required an increasingly extensive program of audits. The Office continues to oversight approximately 99% of all notified complaints about NSW Police and during the same period the number of police complaints audited increased from 1,443 in 2000-01 to 6,000 in 2004-05. Without additional resources the Ombudsman has indicated that the Office's service capabilities will decline, leading to delays and the potential for serious issues to remain undetected.
- 1.7 **Funds needed:** Full details of the Ombudsman's applications for further funds are contained in the submissions to the NSW Treasury attached to this report.
- 1.8 In terms of the Ombudsman's reviewable deaths function, the Office had submitted to the NSW Treasury that a minimum of \$30,000, in addition to the existing budget, was necessary in order to manage the workload in this area. Should the level of detailed investigation needed for these deaths continue, this figure would need to be subject to revision.
- 1.9 The Committee was particularly concerned about the adequacy of funding for the Office's Community Visitor Program, which was originally coordinated by the Community Services Commission prior to the merger of that body with the Ombudsman's Office, and for which there is funding sufficient only for nine hours of visits per service. The Committee is concerned that should this situation continue it will be detrimental to the effectiveness of the Community Visitor Program. The Committee will follow-up with the Ombudsman whether or not the Office's request for an additional \$314,000 for the program has been forthcoming.
- 1.10 The Committee notes that the Ombudsman has acquired new oversight functions under the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005* and that funding was to be allocated in respect of these new functions.
- 1.11 The Committee notes the Ombudsman's evidence that the cost of dealing with difficult complainants also has become a critical issue for the Office.

**RECOMMENDATION**

The Committee has resolved to conduct separate *in camera* hearings with the Ombudsman and the NSW Treasury prior to the next General Meeting with the Ombudsman in November 2006, for the purpose of examining funding levels for the Office. The evidence from the *in camera* hearings will be used to inform the Committee about the response received by the Ombudsman for additional resources for specific programs. The Committee will report on its findings, and the adequacy of the funds and resources available for the Office to effectively perform the Ombudsman's statutory functions, as part of its report on the General Meeting.



**1. 12 Domestic violence project**

The Committee took evidence on the percentage of police officers who were charged with assault following on from the investigation of a complaint and was interested to learn that the Office's work in this area had been extended and a project had commenced, across a range of areas falling within the Ombudsman's jurisdiction, into the issue of domestic violence.

1. 13 The Committee will follow the course of this particular project with interest. It is particularly concerned that the Office's capacity to conduct such wide-ranging projects in future may be compromised by the level of funds and resources available to it.

**1. 14 Children at risk of harm**

The Committee followed up with the Ombudsman the progress made by the Department of Community Services (DoCS) in responding to the systemic deficiencies uncovered by the Ombudsman in his special report to Parliament entitled, *Improving outcomes for children at risk of harm: a case study*. These deficiencies included:

- lack of detailed assessment
- inadequate integration of history
- failure to identify risk factors
- failure to do a comprehensive risk assessment of the children in this case
- inadequate file documentation and record keeping, typical of many files in neglect cases.

1. 15 The Ombudsman will be closely monitoring progress by DoCS in responding to these problems and the Office and DoCS have agreed on a schedule for the Department to provide progress reports and supporting documents on implementation of the recommendations arising from its review of the matter. The Department's first progress report was provided to the Office in October 2005 and the next reports were due in February and July 2006. The Committee will continue to follow developments in respect of this special report.

**1. 16 ICAC and the 500 non-referred complaints**

Against the background of substantially increased complaints in the Police Area, the Ombudsman reported<sup>1</sup> that the Independent Commission Against Corruption (ICAC) had informed his office in February 2005 that they had failed to refer all complaints involving police misconduct to the Ombudsman as required by s.128 of the *Police Integrity Commission Act 1996*.

1. 17 In 1997 the ICAC's jurisdiction over police complaints was removed. It appears that since this time some complaints were sent to the Ombudsman and the Police Integrity Commission (PIC) as required by the legislation, while others were retained or not forwarded by the ICAC. The Ombudsman gave evidence that some of these matters related to events in 1997, while others are more recent. He noted that many of the matters are not just about police. They relate to a range of allegations in which police

---

<sup>1</sup> NSW Ombudsman Annual Report 2004-2005, p.54.

play some role, which may be a mitigating factor in the ICAC not referring on the complaints.

1. 18 The *Police Integrity Commission Act 1996* commenced nearly ten years ago. The Committee is dismayed by the ICAC's apparent failure to ensure the fulfilment of its obligations under the Act. This has not only placed an additional burden on the Ombudsman's complaint handling resources; it also means that some complaints, which may have been able to be addressed in a timely fashion, will now no longer be able to be resolved. The Ombudsman's Annual Report notes that arrangements are now in place to ensure that the ICAC continues to refer all police complaints to the Ombudsman. The Committee will be monitoring this arrangement closely.

### 1. 19 **The Early Warning System Project**

In December 2002 the Committee tabled the *Research Report on Trends in Police Corruption*, which made two recommendations. One was that consideration be given to developing an Early Warning System to identify officers at risk of corruption. In January 2003 an Inter-Agency Research Group was established with representatives of the Ombudsman, NSW Police and the PIC to develop an Early Warning System in relation to police misconduct. The Inter-Agency Research Group met four times during 2004-05.<sup>2</sup>

1. 20 In May 2005, the Police Commissioner's Executive Team gave notice that it intended to consider deferring research into the Early Warning System in favour of a separate process called the Officer Risk Assessment Process. NSW Police cited possible high costs of the project, and complications associated with their mainframe replacement project. The PIC responded to the Commissioner of Police urging in-depth consideration be given before suspending this project. To date, a final decision by NSW Police regarding the Early Warning System has yet to be made.<sup>3</sup>

1. 21 The Assistant Ombudsman (Police) gave evidence that while it was fair to say that the research conducted by NSW Police did not suggest a clear path forward to a comprehensive Early Warning System, the Office had been consulted about the proposed new system and, from anecdotal evidence, it appeared that police officers who present the most risk may well be being identified. However, the Assistant Ombudsman (Police) also acknowledged that the Officer Risk Assessment Process falls short of what the Ombudsman was expecting from the Early Warning System Project.

1. 22 It was extremely gratifying for the Committee that its recommendation in the *Research Report on Trends in Police Corruption*, that the PIC and Ombudsman consider assisting NSW Police to establish the indicators for an Early Warning System to identify and assist vulnerable police officers,<sup>4</sup> was taken up. The Committee will await the NSW Police's decision regarding the Early Warning System with interest.

---

<sup>2</sup> Police Integrity Commission Annual Report 2004-2005, p.39.

<sup>3</sup> *ibid.*

<sup>4</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, December 2002, *Research Report on Trends in Police Corruption*, p.iv.

### 1. 23 **Ombudsman's new functions under the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005***

Shortly before the General Meeting, the *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* was introduced to the House on Thursday 17 November 2005. The Bill was passed by both Houses and the Act was proclaimed to commence on 16 December 2005. It provides for the 'preventative detention' of persons suspected of planning or inciting terrorist acts. The Ombudsman has a number of roles under this legislation including:

- s.26ZO – Monitoring by the Ombudsman
  1. For the period of 5 years after the commencement of this Part, the Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers or correctional officers under this Part.
  2. For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about the exercise of those powers.
  3. The Commissioner of Police is to ensure that the Ombudsman:
    - (a) is duly notified of the making of a preventative detention order or prohibited contact order, and given a copy of any such order, and
    - (b) if a person is taken into custody under a preventative detention order—is duly notified that the person has been taken into custody, and
    - (c) of an order is revoked—is duly notified of the revocation
  4. The Ombudsman must, as soon as practicable after the expiration of:
    - (a) 2 years after the commencement of this Part, and
    - (b) 5 years after that commencement,
 prepare reports on the exercise of those powers and furnish a copy of the reports to the Attorney General and the Minister for Police.
  5. The reports are to be tabled by the Attorney General in each House of Parliament as soon as practicable after they are received by the Attorney General.
  6. If a House of Parliament is not sitting when the Attorney General seeks to table a report, copies of the report are to be presented to the Clerk of the House concerned by the Attorney General.
  7. The report:
    - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
    - (b) may be printed by authority of the Clerk of the House, and
    - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
    - (d) is to be recorded:
      - i. in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
      - ii. in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,
 on the first sitting day of the House after receipt of the report by the Clerk.

1. 24 The Ombudsman gave evidence at the thirteenth Annual General Meeting that he had been consulted in relation to the Bill on the day it was introduced in the Legislative Assembly. Within this small amount of time for consultation, the Ombudsman decided that the review model adopted would best serve the balancing role of the Office. In

terms of the additional workload, the Ombudsman gave evidence that the NSW Treasury had provided assurances that funding for the five year review period will be approved. However, the only funding approved at the time of the General Meeting was for remainder of the 2005-06 financial year.

1. 25 **Tabling of Ombudsman's Reports by relevant Ministers**

Since 1998 the Ombudsman has been required to scrutinise the implementation of nineteen pieces of legislation conferring additional powers on police and correctional officers. The Ombudsman's Annual Report 2004–05 at page 60 details the status of various reviews about police powers. Five reviews were cited as being provided to the Minister but not yet tabled in Parliament. All bar one of these reports was provided to the Minister in 2005. However, one report had been provided to the then Minister in 2003, namely, the report on the *Police Powers (Vehicles) Amendment Act 2001*.

1. 26 The Ombudsman advised in his answers to questions on notice that the *Police Powers (Vehicles) Amendment Act 2001* did not require the Minister to table the report of the review of the Act. However, he had advised the Minister that it would be appropriate for the report to be tabled so that it may become a matter of the public record.

1. 27 During the General Meeting with the Committee on 23 November 2005, the Ombudsman gave evidence that while these reports had not been tabled, the recommendations in the reports had been agreed to by the agencies involved and that compliance with recommendations arising from legislative reviews would be pursued regardless of whether the report has been tabled.

1. 28 On 16 November 2005, the Hon Catherine Cusack MLC, placed a motion before the Legislative Council requiring that the five reports be laid on the table in of the House within fourteen days as per Standing Order 52. The following reports were tabled in the House on 30 November 2005:

- *Review of the Child Protection Register*, dated May 2005;
- *Vehicles Powers*, dated September 2003;
- *On the Spot Justice? The Trial of Criminal Infringement Notices by NSW Police*, dated April 2005.

1. 29 The Clerk tabled documents relating to the Ombudsman's review reports received from the Director General of the Premier's Department on Wednesday 16 November 2005.

1. 30 The Committee fully supports the Ombudsman's approach of ensuring recommendations are taken up by the appropriate agencies regardless of whether the report on the legislative review is tabled. The Committee will continue to monitor the implementation rate in relation to the Ombudsman's legislative review recommendations.

1. 31 **Telecommunications Interceptions (TI)**

In Questions on Notice, the Committee asked the Ombudsman whether he had been advised when the review of the *Telecommunications (Interception) Act 1979* (Cth) would be completed. In response, the Ombudsman noted that the review had already been completed, and that, as a result, the Commonwealth Attorney General had

introduced the *Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill 2005* into Parliament on 14 September 2005. The Bill has been passed by both Houses and the majority of the provisions of the Act commenced on 14 December 2005.

1. 32 The Act amends the definition of “officer of the state” to clarify that the application of this term within the Act includes all police officers. In doing so, the proposed amendment removes a major difficulty in interpreting the current legislation, one which had prompted NSW Police to refuse to provide the Ombudsman with telephone interception (TI) material.<sup>5</sup>
1. 33 There remains, however, the issue of whether dissemination of TI product to the Ombudsman is a “permitted purpose” under s.5 of the Commonwealth Act. The dilemma for the Ombudsman is that he cannot effectively perform his oversight role if a particular investigation has reached particular conclusions based on TI product. The Ombudsman noted that there are a number of current matters which require the resolution of this issue, and which have been delayed to some degree. As a result, there were not many matters for which TI product would be needed.
1. 34 While the Ombudsman was hopeful that this issue could be resolved, recent discussions suggested NSW Police would not provide this information, as they genuinely believed that the Commonwealth Act was ambiguous as to whether this would be lawful. While an opinion from the NSW Solicitor General concluded generally that NSW Police could in fact provide such information to the Ombudsman, NSW Police were reluctant to do so in the absence of a formal agreement with the Commonwealth authorities.
1. 35 The Commonwealth Attorney General's Office has indicated to NSW Police that they believe the TI information can be legally provided to the Ombudsman. Consequently, the Ombudsman was of the opinion that once this advice is confirmed in writing, the NSW Police would allow the provision of the TI information.
1. 36 The issue mirrors difficulties previously faced by the Inspector of the Police Integrity Commission, which were ultimately resolved by way of amendments to the Commonwealth Act in 2000.
1. 37 The Committee will continue to monitor the dealings between the Ombudsman and NSW Police on the issue of dissemination of TI material and its impact on the effective exercise of the Ombudsman’s oversight role.

### 1. 38 **Surveillance Devices**

In its Questions on Notice, the Committee asked the Ombudsman about the outcome of the discussions with NSW Police regarding their intention to propose a legislative regime for the use and monitoring of surveillance devices in NSW, modelled on the Commonwealth’s *Surveillance Devices Act 2004*. Under that Act, warrants may be

---

<sup>5</sup> House of Representatives, Hansard, 14 September 2005, p.11 – The legislation also removed restrictions on the use that existing eligible authorities of the ICAC, Queensland CMC and PIC Inspector could make of intercepted material. In addition it inserted the newly created agencies of the Victorian Office of Police Integrity and the NSW ICAC Inspector as agencies able to access intercepted material.

Commentary

issued for law enforcement agencies to place, operate and retrieve a range of surveillance devices, including listening devices, optical surveillance devices, data surveillance devices, equipment or programs used to monitor computer input and output and tracking devices.

1. 39 The *Surveillance Devices Act 2004 (Cth)* permits the use of certain surveillance devices without a warrant. To address concerns about the potential abuse of these powers, s.55 of the Act requires the Commonwealth Ombudsman to monitor and inspect records relating to the use of these devices. Sections 58 and 59 of the Act allow the Commonwealth Ombudsman to develop more effective and consistent inspection arrangements with other inspecting bodies, particularly State Ombudsmen. Section 59(1) authorises the Commonwealth Ombudsman to delegate some or all of his or her powers of inspection under Division 3 of the Act.
1. 40 In his answers to the Committee, the Ombudsman stated that following the discussions of December 2004 there had been no further contact from NSW Police on the question of parallel legislation in NSW. The Ombudsman noted that the proposed equivalent legislation in NSW will effectively replace the *Listening Devices Act 1984*, and would cover not only listening devices, but also optical devices, such as tracking devices.
1. 41 Currently in NSW, the *Listening Devices Act 1984* authorises various law enforcement agencies to plant listening devices. However, apart from the approval of the warrants by a judicial officer in the first instance, the Act does not provide for monitoring by the Ombudsman or any other independent oversight body, despite recommendations to this effect by the NSW Law Reform Commission in 2001, and the Standing Committee of Attorneys-General and the Australian Police Ministers Council Joint Working Group on National Investigative Powers in 2003.
1. 42 The Ombudsman noted that the workload of the Secure Monitoring Unit within the Office would be significantly affected if he is made the inspecting authority under the proposed *Surveillance Devices Bill*. It is understood that approvals for installation of surveillance devices are currently greater in number than controlled operations authorities and telecommunication interception warrants. Should the monitoring proposal eventuate, the Ombudsman considered that his office would need extra resources to undertake this important work.
1. 43 The Ombudsman noted further that the *Surveillance Devices Act 2004 (Cth)* does not require reports from the independent agency, but uses a process whereby the relevant agency reports to those agencies which it is monitoring, which in turn report to the Minister. This process is not an option favoured by the Ombudsman.
1. 44 The Committee will monitor the accountability mechanisms in any surveillance legislation proposed for NSW, focusing particularly on a role for the NSW Ombudsman, and the extent to which such legislation provides for oversight of covert policing practices.

## Chapter Two - Questions on Notice

### Corporate

1. The Annual Report indicates that reviews were undertaken into each program area (police, general, community services, child protection and corporate) and focused on issues such as the time and resources devoted to each function and activity, staff workloads, backlogs, performance and outcome measurement, and management structures. As a result of the review the report states that improvements are anticipated to the running of programs and changes will be implemented in 2005-06. What will these changes involve and what sort of efficiencies does the Ombudsman hope to achieve as a result of the review?
2. Concern is expressed in the Report that continual and substantial increases in all areas of the Office's work, combined with budget cuts and unfounded pay increases, may compromise the ability of the Office to thoroughly handle all aspects of its core work. Details are provided of the cumulative impact of the funding cuts (the cumulative amount for 2005-6 is \$756,000 and for 2006-7 the amount is \$920,000)
  - (a) How does this impact on the work undertaken by the Office, including staff workloads?
  - (b) Are there any particular programs that will not be undertaken or services that will not be provided as a result and, if so, please identify the programs?
  - (c) To what extent can the efficiencies from the operations review offset the reduction in funding to the Office? Are the funding cuts comparable between the Office and peer bodies?

### Police

3. Do you have any concerns about the percentage of police officers who were charged with assault following on from the investigation of a complaint (43 of a total 155 charges – p.48)? Are you aware of any particular programs initiated by NSW Police to help prevent the incidence of such conduct by police officers?
4. A targeted approach on p.50 of the Ombudsman's Annual Report includes a number of recommendations you made to NSW Police concerning systemic delays in finalising complaints. Have NSW Police acted on these recommendations?
5. Information barriers on p.52 of the Ombudsman's Annual Report identifies a number of areas of dispute with NSW Police about certain sources of information.
  - (a) Have you had any recent difficulties obtaining court transcripts?
  - (b) Have you been advised when the Commonwealth review of the Telephone Intercept Act will be completed?
  - (c) Has NSW Police made arrangements to ensure police officers who report misconduct are accurately informed about confidentiality and are appropriately supported if their identity is revealed?

Questions on Notice

6. ICAC on p.54 of the Ombudsman's Annual Report states that the ICAC has failed to refer on 500 police complaints despite losing their police jurisdiction in 1997. How did this occur?
7. c@tsi on page 54 of the Ombudsman's Annual Report notes a number of deficiencies with c@tsi has lead you to decide to reduce your use of it. What are the implications of this decision for the usefulness of c@tsi and what systems do you have in place that can perform the same function as c@tsi was intended to?
8. Young Offenders Act project on p.58 notes that NSW Police accepted almost all of the 28 recommendations arising from this project. What were the recommendations NSW Police did not accept and what were their reasons for doing so?
9. Does the Office propose following up its recommendation for improvements to the NSW Police and DNA Laboratory databases (p.59)?
10. Status of legislative reviews about police powers on p.60 of the Ombudsman's Annual Report notes a number of reports that have been submitted to the relevant Ministers, but have not yet been tabled in Parliament. Notable amongst these is the *Police Powers (Vehicles) Amendment Act 2003*, which was provided to the then Minister for Police the Hon John Watkins MP in September 2003. Do you know why this report has not yet been tabled?
11. Has the Minister for Police tabled the Ombudsman's review report entitled *Child Protection (Offenders Registration) Act 2000*, provided by the Ombudsman in May 2005?
12. To what extent have reports prepared by the Ombudsman under his legislative review functions been submitted to Cabinet, including with draft legislation to address the Ombudsman's recommendations, prior to being tabled in the Parliament and what is the Ombudsman's view about this practice and the cabinet confidentiality considerations that may arise as a result?

Report to Parliament: *Review of the Police Powers (Drug Premises) Act 2001*

13. Did the poor quality of police recording on COPS, and record keeping generally, have a significant impact on this legislative review?
14. Is the Ombudsman confident that as a result of discussions with NSW Police about the implementation of the COPS audit recommendations, the information entered on the database will be more accurate and comprehensive in the future?
15. Are you of the opinion that the delay in gaining access to search warrant documents signifies a lack of cooperation or a lack of appreciation by NSW Police of the requirements of the review process?



## Undercover Operations

16. The number of controlled operations records inspected by the Ombudsman's Office has doubled since 2001-02. What implications does this have for the Office's capacity to oversight such activities in the long-term, particularly, in view of the proposed legislative amendments to create a two-tier classification system for controlled operations?

## Witness Protection

17. On p.236 of *Sympathy for the Devil* by Sean Padraic as told by Trevor Haken, an incident is described that involves witness security officers (who were federal police officers) demanding information about a colleague from Trevor Haken at gun point. Have you ever received any complaints or appeals about the Witness Protection program from Trevor Haken or his family?
18. Does the Office see any particular difficulties in relation to the management of witness protection for former NSW police officers, such as Mr Haken, who have given evidence against other police officers?

## Transit Officers

19. The Ombudsman's investigations have raised serious concerns about Railcorp's investigative procedures and trends in complaints about transit officers, including the large number of assault matters (p.70) Does the Ombudsman consider that Railcorp is making adequate progress in addressing some of these issues?

## Community Services

20. Special Report to Parliament - In respect of the Ombudsman's special report to Parliament entitled, *Improving outcomes for children at risk-of-harm: a case study*, the Annual Report indicates that DoCS' own review of the matter revealed a range of systemic deficiencies, including:

- lack of detailed assessment;
- inadequate integration of history;
- failure to identify risk factors;
- failure to do a comprehensive risk assessment of the children in this case
- inadequate file documentation and record-keeping, typical of many files in neglect cases.(p.84)

DoCS intends to take several steps to outline these deficiencies and the Annual Report indicates that the Ombudsman will be closely monitoring progress in these areas (p.85).

- (a) What sort of indicators of progress will the Ombudsman look for when monitoring DoCS?
- (b) What progress has been made by DoCS to date?
- (c) Does the information technology and the data collection systems currently in use by DoCS adequately capture information about children in care and protection and

Questions on Notice

is there sufficient capacity to support the systemic reforms proposed by DoCS? For instance, to what extent does the available technology and software used by DoCS provide its caseworkers with the necessary information to compile full histories for children who may be the subject of previous notifications that occur in different locations or who have name changes?

21. It seems that the full benefit of the training and educative measures identified by DoCS (p.85) would be realised mostly in the long-term.
  - (a) What measures does the Department have in place to help safeguard against deficiencies in the short-term?
  - (b) Does it regularly conduct audits of case files?
22. The Ombudsman's Annual Report indicates that the Office receives regular briefings from senior DADHC staff (Department of Ageing, Disability and Home Care), about their reforms to the service system for people with a disability (p.85). Does the Office receive similar briefings from DoCS on its own reform initiatives?

### Corrections

23. Juvenile Justice Centres – Frank Baxter Juvenile Justice Centre was the subject of 62 matters received by the Office. What did these types of matters include?
24. What was the nature of the two matters concerning Junee resolved during investigation with GEO Australia and what was the nature of the matter subject to formal investigation, which resulted in an adverse finding against GEO Australia?
25. A total of 261 matters were received in 2004-05 concerning the Metropolitan Remand Reception Centre. What were the main types of matters raised?

### Freedom of Information

26. This section of the annual report notes instances during the last few years where the Deputy Ombudsman has been involved in negotiations over FOI matters. This would seem to be a very high level of commitment of resources to such matters. Why has this approach been necessary? (p.123)
27. What progress has the Cabinet Office made towards finalising the FOI Manual by the end of this year (p.128)?

## Chapter Three - Answers to Questions on Notice

### Corporate

#### Question 1

**The Annual Report indicates that reviews were undertaken in each program area (police, general, community services, child protection and corporate) and focussed on issues such as the time and resources devoted to each function and activity, staff workloads, backlogs, performance and outcome measurement, and management structures. As a result of the review the report states that improvements are anticipated to the running of programs and changes will be implemented in 2005-2006. What will these changes involve and what sort of efficiencies does the Ombudsman hope to achieve as a result of the review?**

Arising out of the review of the Child Protection Team, the Team has:

- simplified its audit process and is using a more concise format
- re-written the individual agency action plans so that they more closely match the priorities identified in the Team's Business Plan
- streamlined a number of its administrative processes, and
- addressed concerns about the time spent by investigations staff on file related data entry by employing a specialist junior grade officer to undertake this task (another benefit being greater accuracy and consistency in data entry across the Team's files)

Arising out of the review of the Community Services Division, the Division has:

- taken steps to improve the efficiency of the Complaints and Resolution Unit – in the past 12 months the unit's resolution rate has increased by 8% and it is now resolving over 50% of all complaints that are in jurisdiction (in that period investigation numbers have increased fourfold)
- re-focused the Division's community education work onto forums/seminars that are directly linked to some of the critical issues for the Division (at this stage the Division is planning to hold a forum on its child protection work and in June of this year co-hosted a forum on homelessness at Sydney Town Hall), and
- streamlined the practices of the Child Death Team in connection with their analysis of risk of harm reports to help better identify those cases where a rigorous review of all DoCS, police and health files is critical.

As a result of the review of the General Team, action has been taken to:

- introduce a new supervision level into the FOI Unit to better manage its increasing workload

Answers to Questions on Notice

- review Office procedures for dealing with difficult complainants
- review the procedures and actions used to track matters in the Resolve case management system and to review complaint determination codes to better reflect the actual outcomes achieved by our work, and
- improve electronic data capture and search skills of Team members through refresher training on the Office Electronic Document Management System and Case Management System.

Arising out of the review of the Police Team, the Team:

- has completed a business analysis of information collection and reporting processes – changes will reduce the data collection impost, while improving the quality of data and consequent reports of internal and police performance
- is currently reviewing all aspects of complaint handling, to increase the scrutiny of police handling of the most serious matters, further streamline less serious complaints and increase the outcomes from telephone inquiries
- is reviewing the conduct of past legislative review projects across the Office to identify best practice and potential pitfalls from completed reviews – these will be used to improve the conduct of five new reviews commencing this year and in 2006, and
- is currently completing a review of the Team intelligence plan, with a view to further embedding intelligence into the Team's oversight and scrutiny functions, enabling Police Team officers to focus on police officers and commands of most concern.

In relation to the Corporate Team, each year our corporate services are benchmarked against other public sector agencies. This benchmarking activity has been the catalyst for continually reviewing and improving the work of the Team. The program review confirmed that the Team's processes were generally efficient. However, due to a number of structural and staffing changes being made over the last few years, the Team needs to refocus on its customers, ie, management and staff. This will be a priority for the Team.

## **Question 2**

**Concern is expressed in the Report that continual and substantial increases in all areas of the Office's work, combined with budget cuts and unfounded pay increases, may compromise the ability of the Office to thoroughly handle all aspects of its core work. Details are provided of the cumulative impact of the funding cuts (the cumulative amount for 2005-6 is \$756,000 and for 2006-7 the amount is \$920,000)?**

### **a) How does this impact on the work undertaken by the office, including staff workloads?**

The nature of our work is particularly labour-intensive, so it has always been our priority to maintain employee levels. With a reduction in our budget in real terms we have reviewed all areas of our budget, moving funds where possible to cover salaries.

We have reduced our budgets in a number of areas such as training, overtime, printing, stores and contractors, and transferred saved funds to salaries. Even by doing this we still don't have enough funds to cover our establishment.

Our average staff for 2004/2005 was 166.55 (effective full time) – 13.9 eft less than the year before. Some of this reduction is explained by natural turnover, however a significant contributor is the cuts to our budget.

The cumulative cut to our budget as at 2004 – 2005 (ie, \$592,000) is the equivalent of nine investigation officers. The unfunded component of the public sector pay increases is the equivalent to six investigation officers.

As mentioned in the annual report, over the years we have continued to improve our efficiency. If complaint numbers were static we may have gone a long way to absorbing intended pay increase and budget cuts. However with continual and substantial increases in all areas of our work, we are concerned that our ability to properly handle our core work may be compromised.

**b) Are there particular programs that will not be undertaken or services that will not be provided as a result and, if so, please identify the programs?**

We have flagged with central agencies such as The Cabinet Office and NSW Treasury, as well as with Government, that the following areas of our work will be most affected by the funding situation.

**A. Reviewable Deaths function**

In December 2004 the Ombudsman tabled his first annual report on Reviewable Deaths (ie the review of the deaths of certain children and those people with a disability that died in care). This function focuses largely on systemic issues arising from reviewable deaths, reviewing trends and patterns and recommending changes to policies and practices that might prevent or reduce untimely deaths. In establishing and performing this function, it has become clear that we must review deaths not only at a systemic level but also the circumstances surrounding individual deaths. This is an onerous and complex function.

The number of deaths that are captured by the legislation and the amount of work required for each review far exceeds the indicative assessments that were made when the Ombudsman was given this function. The funding provided by the Government, which was based on these indicative assessments, is inadequate to perform this function appropriately. The function is non-discretionary and the focus of considerable public scrutiny.

At the time we were given responsibility for reviewable deaths, it was expected that there would be approximately 70-80 child deaths to be reviewed. In our first review period (which was 13 months) 161 child deaths were reviewable under the Ombudsman's reviewable death function. We closely examined 137 of these deaths as they related to abuse, neglect or suspicious circumstances. A number of these cases warranted further inquiries and we commenced detailed investigations into eight deaths, five using the formal powers of the Ombudsman. The outcome of one of these investigations resulted in a Special Report to Parliament in December 2002.

During the 13 month review period, we also received notification of 110 deaths of people with a disability in care. We conducted more detailed reviews including a group review of 33 deaths that were the result of respiratory illness.

There is both a Parliamentary and community expectation that the Ombudsman will continue to give this work priority. This expectation cannot be met within the resources provided by government.

## **B. Community visitors**

The Official Community Visitor function is severely under resourced, with regular annual requests to increase the funding having been rejected. Official Community Visitors are appointed by the Minister for Community Services and the Minister for Ageing and Disability Services to attend places providing accommodation services for children, young people and people with a disability. Visitors have a key role in monitoring the quality of services provided to residents, and work collaboratively with services to achieve enhanced outcomes for residents. Visitors inform both the Ministers and the Ombudsman on the quality of the services being provided. The work of visiting is essential to the Ombudsman being able to meet his community services obligations.

In 2001-2002 the NSW Treasury and the former Community Services Commission agreed to a “responsible visiting rate” of an average of four by four-hourly visits to each visitable service per year. At present there is a total of 11,000 hours funded for approximately 1198 visitable services – the equivalent of 9 visitable hours per service instead of the agreed 16 hours. Trends indicate that the number of visitable services will increase over time, making this situation worse.

The budget constraints have meant that visitors have not been able to spend enough time during each visit to do their work effectively with some services being visited so infrequently or not at all that it is impossible for visitors to effectively monitor the quality of the service provided. About 22% of eligible services were not visited during the 2003-2004 financial year and about 30% were not visited in 2004-2005.

The Ombudsman believes that this situation has resulted in an unacceptable risk for the most vulnerable in our community, including children, young people and people with a disability in care. The Ombudsman needs additional resources, at least to the previously agreed level, to adequately perform this function.

## **C. Increase in complaint numbers – particularly complaints about police**

We continue to experience increases in our complaint levels despite the range of proactive strategies we have put in place to keep numbers stable. Formal complaints rose by over 16% in 2004-2005. Increases were experienced in nearly all areas of our jurisdiction. Of particular concern is the dramatic increase in police complaints over the last two reporting years.

Our proactive strategies include negotiating agreements with NSW Police and some agencies in our child protection jurisdiction whereby low risk or less serious matters need not be notified as would otherwise be required by the relevant legislation. However, we still must

effectively oversight how these matters are handled through an increasingly extensive program of audits.

The impact of the agreement in the police jurisdiction can be seen in the sharp decline in complaints in the 2000-2001 financial year – the complaint numbers dropped from over 5,000 to 3,600. Since that time however complaint numbers have continued to increase. This office continues to oversight approximately 99% of all notified complaints about NSW Police, with the remaining 1% being oversighted by the Police Integrity Commission (PIC). In the same period of time the number of complaints audited has increased from 1,443 in 2000-2001 to 6,000 in 2004-2005.

We sought additional resources for complaint handling in the 2005/2006 budget process but were unsuccessful. We flagged that without additional resources our service capabilities will decline. Delay will occur in the handling of complaints and there will be the potential for serious issues to remain undetected, which creates an unacceptable risk for the NSW community.

This year an error by the ICAC will see an additional 600 police complaints being referred to the office. These complaints were received at the ICAC over a number of years and were not forwarded to this office or the PIC as required by the legislation. Without additional resources to appropriately deal with these complaints we will need to divert already stretched complaint handling resources from other areas, having a significant negative impact on our complaint handling work.

**c) To what extent can the efficiencies from the operations review offset the reduction in funding to the Office? Are the funding cuts comparable between the Office and peer bodies?**

We have continually worked hard to improve our processes over time but we are now at a point where any changes to our systems will only have minimal impact on improved workflow. This continual review/improvement has been necessary to deal with increased workloads and ongoing funding constraints over the years.

Any changes to our work practices as a result of the operations review (being focused primarily on improving the standard of our work) will not offset the reduction in funding, nor will it allow us to effectively absorb the increase in complaint numbers. Without additional resources we will not be able to adequately deal with matters received.

It is our understanding that the budget cuts have been applied to most agencies.

Police

**Question 3**

**Do you have any concerns about the percentage of police officers who were charged with assault following on from the investigation of a complaint (43 of a total of 155 charges- p.48)? Are you aware of any particular programs initiated by NSW Police to help prevent the incidence of such conduct by police officers?**

These assault charges were laid against 24 officers, with many receiving multiple charges from the one incident. Only 4 of these charges were laid in relation to assaults allegedly

committed while on duty, and of these, none resulted in a conviction at court. Despite the relatively low number of officers charged for assault on duty, allegations of assault constitute around 8% of complaints about police and, as such, my office continues to work with NSW Police to minimise the incidence of such conduct.

Examples of this include a CCTV project undertaken by my office that resulted in recommendations to NSW Police to increase the CCTV coverage and the quality of the footage captured in police stations. NSW Police has also implemented the use of in car video and liaised with my office regarding this. Both of these measures make police officers more accountable and allow for detailed scrutiny of police actions should allegations of assault arise.

We are also reviewing certain new police powers under Law Enforcement (Powers and Responsibility) Act (LEPRA). LEPRA incorporates safeguards in Part 15, including the so called "WIPE" procedures- warn that failure to comply with police acting within their powers may be an offence, inform of the reason for use of the power, provide name and place of duty, evidence that you are a police officer. Significant training is being provided to police about LEPRA, which should increase police officers' knowledge of their lawful powers.

I also note that in relation to the 38 charges resulting from off duty assaults, 19 of these were domestic violence related. This is an area that requires significant attention by NSW Police. My office has recently commenced a domestic violence project, one aspect of which will be to consider how NSW Police deals with allegations of domestic violence by police officers.

#### **Question 4**

**A targeted approach on p.50 of the Annual Report includes a number of recommendations you made to NSW Police concerning systemic delays in finalising complaints. Have NSW Police acted on these recommendations?**

Since late 2001, this office has used a targeted approach to address delays in police investigations. We have commenced two investigations each year into delayed matters.

Our early investigations included approximately 200 matters; this figure has continued to drop each year, to the extent that our most recent audit only identified 20 delayed investigations across NSW Police.

Our most recent recommendations, referred to in our annual report, include:

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

We are presently consulting with police on these recommendations.



**Question 5**

**Information barriers on p.52 identifies a number of areas of dispute with NSW Police about certain sources of information.**

**(a) Have you had any recent difficulties obtaining court transcripts?**

We are pleased to say that, following our advice to NSW Police that we are entitled to require them to provide us with court transcripts to assist us in properly overseeing police complaint matters, we have to date encountered no further difficulties in this area.

**(b) Have you been advised when the Commonwealth review of the Telephone Intercept Act will be completed?**

The review of the Commonwealth Telecommunications (Interception) Act by Mr Blunn AO has been completed, and a report on that review was provided to the Commonwealth Attorney General. As a result, the Attorney General recently introduced the Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill into the Commonwealth Parliament; the second reading of the Bill took place on 14 September 2005. The proposed legislation has not yet been passed.

Significantly, the Bill amends the definition of "officer of the state" to clarify that this term undoubtedly includes police officers. The proposed amendment would remove a major difficulty in interpreting the current legislation, a difficulty that has prompted NSW Police to refuse to provide us with telephone interception (TI) material.

There remains, however, the issue of whether dissemination of TI product to the Ombudsman is a "permitted purpose". While I was hopeful this issue could be resolved, latest discussions suggest NSW Police may not provide this information. If that is the case it may be necessary to seek clarification of this issue by the courts.

**(c) Has NSW Police made arrangements to ensure police officers who report misconduct are accurately informed about confidentiality and are appropriately supported if their identity is revealed?**

NSW Police have finalised a police circular (05/07) titled 'Complaints about the conduct of police officers; Police Act s.169A'. Section 169A of the Police Act deals with the disclosure by police of a complainant's identity. The circular makes clear that the Commissioner may be required to disclose the identity of a police officer who makes an allegation about the conduct of another police officer. Our preference would have been for the circular to explicitly state that this will include disclosure to the Ombudsman or Police Integrity Commission - this suggestion was not ultimately adopted by police.

Separately, we have raised with police the need to implement principles outlined in the Ombudsman publication 'Protection of Whistleblowers, Practical Alternatives to Confidentiality', to actively support officers where their confidentiality cannot be assured. NSW Police is presently exploring how protection of whistleblowers can be included in training programs for commanders, inspectors and sergeants. We will also look to the publication being incorporated in relevant NSW Police complaint handling manuals.

### **Question 6**

**ICAC on p.54 states that the ICAC has failed to refer on 500 police complaints despite losing their police jurisdiction in 1997. How did this occur?**

In early 2005 the ICAC contacted our office to inform us that they had failed to notify a large number of complaints. We were unaware of the failure by the ICAC to notify complaints before early 2005 and had no reason to believe that the ICAC was not complying with its obligations under s.128 of the *Police Integrity Act 1996*.

Subsequently, a meeting was held between representatives of the Ombudsman, the ICAC and the PIC on 23 February 2005. Since that time, all matters have been notified to us and we are presently assessing them.

The ICAC has not provided the Ombudsman with a detailed explanation for its failure to notify complaints in accordance with the legislation.

### **Question 7**

**C@tsi on p.54 notes a number of deficiencies with c@tsi has led you to decide to reduce your use of it. What are the implications of this decision for the usefulness of c@tsi and what systems do you have in place that can perform the same function as c@tsi was intended to?**

C@tsi will continue to provide benefits to the Ombudsman as it allows us to oversight police complaints and to audit systems within NSW Police. It is our view that our decision to reduce our use of c@tsi provides NSW Police with an opportunity to make it a more useful and effective business system for NSW Police users. The limited resources that are available for developing c@tsi may now be used to develop enhancements required by police users.

We have continued to use and support the Ombudsman's "Resolve" case management system for recording complaints about police. This system provides all of the case management and reporting requirements that were not delivered by NSW Police as part of the c@tsi system. We are currently completing a project to improve our use of this system.

### **Question 8**

**Young Offender's Act project on p58 notes that NSW Police accepted almost all of the 28 recommendations arising from this project. What were the recommendations that NSW Police did not accept and what were their reasons?**

NSW Police accepted all of our recommendations except for our recommendation that police have appropriate arrangements in place for 'acting' specialist youth officers (SYOs) who are not yet appropriately trained. This concern arose because some YLOs in their response to our survey suggested that it was possible to act as an SYO before appropriate training was completed.

In response to our report, NSW Police advised that it is not possible for an officer to make decisions as an SYO and enter any decision into COPS until appropriate training has been completed, therefore there are no 'acting' SYOs.

My office was satisfied with NSW Police's advice regarding this issue.

**Question 9**

**Does the office propose to follow up its recommendation for improvements to the NSWP and DNA Laboratory databases (p.59)?**

Through our monitoring of the Crimes (Forensic Procedures) Act, we became aware of concerns held by various stakeholders about the DNA analysis service provided by DAL, particularly in relation to delays in obtaining DNA analysis results. In light of these concerns, we decided in January 2005 to conduct an own motion investigation into DAL's DNA analysis service. As part of that investigation, we audited records held by DAL, relating to DNA samples taken from suspects and volunteers. Our investigation found discrepancies between police records and the information on the DNA database at DAL.

We raised this issue in a statement of provisional findings and recommendations, which we provided to DAL in August. In October we met representatives of NSW Police and DAL to discuss the issues raised in our investigation report, including how to improve the accuracy of information on the DNA database. We will address the issue further in our final report to DAL, which we expect to provide in November. We will also discuss the issue in our forthcoming report to Parliament on forensic procedures conducted on suspects and volunteers.

**Question 10**

**Status of legislative reviews about police powers on p 60 of the Ombudsman's Annual Report notes a number of reports that have been submitted to the relevant Ministers, but have not yet been tabled in Parliament. Notable amongst these is the *Police Powers (Vehicles) Amendment Act 2001*, which was provided to the then Minister for Police the Hon John Watkins MP in September 2003. Do you know why this report has not yet been tabled?**

The *Police Powers (Vehicles) Amendment Act 2001* does not require the Minister to table the report of our review of this Act. However, we have advised the Minister that it would be appropriate for the report to be tabled so that it may become a matter of public record. We understand the report may be tabled in conjunction with a package of law reforms on related police powers. The matter of tabling the report has been raised with the various Ministers for Police on a number of occasions.

We note that the report makes three recommendations, and that NSW Police has agreed to all of them. We are currently pursuing compliance with our recommendations for all legislative review reports regardless of whether or not they have been tabled.

**Question 11**

**Has the Minister for Police tabled the Ombudsman's review report entitled *Child Protection (Offender's Registration) Act 2000*, provided by the Ombudsman in May 2005?**

No. The report was provided to the Minister for Police on 31 May 2005.

**Question 12**

**To what extent have reports prepared by the Ombudsman under his legislative review functions been submitted to Cabinet, including with draft legislation to address the Ombudsman's recommendations, prior to being tabled in the Parliament and what is the Ombudsman's view about this practice and the cabinet confidentiality considerations that may arise as a result?**

I am not aware of any legislative review reports that have been provided to Cabinet together with draft legislation prior to being tabled in Parliament. No legislative review report to date has been tabled in Parliament together with proposed legislative amendments.

My obligation is to finalise the report and provide it to the relevant Minister(s). If, in order to implement recommendations requiring legislative change, a Minister chooses to circulate the report as part of the cabinet consultation process and prior to tabling, I would expect to be consulted as part of this process. My office is prepared to provide comment on draft legislation based on the findings of the relevant legislative review.

It is appreciated that there may be circumstances in which it is preferable to table in Parliament a final report for a particular legislative review together with a legislative and other reform package in response to the report. Assuming appropriate consultation with my office occurred in this process, the only concern would be that such an approach might lead to additional delay in tabling a report.

Reports to Parliament: *Review of the Police Powers (Drug Premises) Act 2001*

**Question 13**

**Did the poor quality of police recording on COPS, and recordkeeping generally, have a significant impact on this legislative review?**

Yes.

COPS does not systematically capture information about every instance that police apply for a warrant, or are refused or granted a warrant. This had a critical impact on our ability to review drug premises search warrants. For example, we were unable to report on the total number of drug premises search warrants applied for during the review period or examine circumstances where warrants were refused.

In relation to 'drug move-ons' the impact of poor COPS records was that we were unable to depend on the information extracted from COPS. Even upon closer scrutiny of records through our audits, we could not properly verify the information that was entered onto COPS.

In relation to record keeping generally, copies of documents relevant to drug premises search warrants were not consistently kept by police. For example, although we received search warrant reports detailing the results of the operation, most police did not keep copies of the search warrant applications, therefore in most cases we could not compare the warrant reports with the warrant applications.

**Question 14**

**Is the Ombudsman confident that as a result of discussions with NSW Police about the implementation of the COPS audit recommendations, the information entered on the database will be more accurate and comprehensive in the future?**

We have recently received advice on the progress of these recommendations, in the context of our investigation relating to the accuracy of knife search statistics compiled by police. We have asked to review standard operating procedures (or their equivalent) relating to the

recording of these COPS events. We have also had detailed discussions with NSW Police about COPS requirements for our new legislative reviews.

We are hopeful these developments will result in some improvement to the accuracy and comprehensiveness of COPS records, including those relevant to our legislative reviews.

The modernisation of COPS (called the 'Mainframe Replacement Program') should also lead to better record keeping. However, it is not anticipated that this project will be completed for several years. In addition, police officers need comprehensive training and support for COPS changes. Our experience, however, is that this often only occurs after data problems have been identified.

#### **Question 15**

**Are you of the opinion that the delay in gaining access to search warrant documents signifies a lack of cooperation or a lack of appreciation by NSW Police of the requirements of the review process?**

Negotiations for search warrant information for the drug premises review began in October 2001. At that time, NSW Police appeared to have a lack of familiarity regarding the information required for the review process, combined with inadequate systems in place to provide the necessary information.

At the time, our negotiations with NSW Police about review information generally were strained. As noted in the Annual Report, obtaining some types of information required lengthy negotiations with NSW Police.

However, we believe that this has improved substantially since then.

For example, our information negotiations for our recent review of *Police Powers (Drug Detection in Border Areas Trial) Act 2003* were based on a shared understanding of the review process. We believe that the smooth provision of information for this review resulted in a report that fairly and accurately reflected the implementation of these police powers.

#### **Undercover operations**

#### **Question 16**

**The number of controlled operations records inspected by the Ombudsman's Office has doubled since 2001-2002. What implications does this have for the Office's capacity to oversight such activities in the long-term, particularly, in view of the proposed legislative amendments to create a two-tier classification system for controlled operations.**

The inspection and monitoring role of the Office under the *Law Enforcement (Controlled Operations) Act 1998* is carried out by the two officers comprising the Secure Monitoring Unit under the direction of the Assistant Ombudsman (General). The Unit also undertake inspections under the *Telecommunications (Interception) Act 1987* and deals with the appeal and complaint functions under the *Witness Protection Act 1995*. The officers also undertake some ordinary complaint handling work as part of the General Team during any excess available time. That latter capacity has contracted significantly in recent times due to the increase in the core work of the unit.

As the core workload of the unit continues to increase it will not be possible for its officers to continue with this general complaint handling work. That will put additional pressure on the other case officers in the General Team.

It is difficult to comment on the extent to which the workload of the Unit will be affected by the proposed changes to the *Law Enforcement (Controlled Operations) Act 1998* until a final amendment Bill has been presented. The review of the act recommended that the existing monitoring and inspection role of the Ombudsman remain for all operations and the initial draft bill that was provided to us for consultation confirmed this. However, it is impossible to assess the potential impact of the proposed amendments for a two-tier system until it is clear how NSW Police in particular propose to implement the changes. Currently NSW Police conduct the vast majority of controlled operations. Their controlled operations records are centralised and the relatively detailed application and approval formats currently used are conducive to the auditing task. We have concerns that the streamlined application and approval records that are likely to be used for the majority of matters under a two-tier system may not be so conducive unless an amended act includes a provision that applications and authorities made on prescribed forms are conclusive evidence of certain mandatory considerations having been made. The proposed two-tier system at least so far as NSW Police is concerned envisages a decentralised approval system. If the records are also decentralised this may also have significant cost and time implications if our staff have to travel to regional areas to conduct inspections.

We do not envisage significant changes to existing procedures for the other eligible authorities (Crime Commission, Police Integrity Commission, Independent Commission Against Corruption, Australian Crime Commission). This is because they are not decentralised agencies, the general nature of the work they do and their general standard of accountable records.

The workload of the Unit will also be significantly affected if the Ombudsman is made the inspecting authority under the proposed Surveillance Devices Bill. We understand that approvals for installation of surveillance devices are currently greater in number than controlled operations authorities and telecommunication interception warrants. Should that proposal eventuate, my office would need extra resources to undertake this important work.

## Witness Protection

### Question 17

**On page 236 of *Sympathy for the Devil* by Sean Padraic as told by Trevor Haken, an incident is described that involves witness security officers (who were federal police officers) demanding information about a colleague from Trevor Haken at gun point. Have you ever received any complaints or appeals about the Witness Protection program from Trevor Haken or his family?**

[The answer to Question on Notice No 17 is confidential pursuant to section 31H (1) of the *Ombudsman Act 1974*].

### Question 18

**Does the Office see any particular difficulties in relation to the management of witness protection for former NSW police officers, such as Mr Haken, who have given evidence against other police officers?**

This Office deals reactively to complaints and appeals made under the Witness Protection Act. We do not have any general scrutiny function in regard to the Witness Protection Program. As such we can only comment from the perspective of the insights we have gained dealing with particular matters. It is the experience of this Office that the NSW Witness Security Unit has developed sound practices in dealing with participants on the program and is held in high regard for its professionalism by other Australian and international witness protection agencies. While former police officers who have given evidence against other police officers may present some difficulties, the Witness Security Unit effectively deals with a wide range of participants who face serious and sophisticated threats against their well being and safety.

## Transit Officers

### Question 19

**The Ombudsman's investigations have raised serious concerns about Railcorp's investigative procedures and trends in complaints about transit officers, including the large number of assault matters. Does the Ombudsman consider that Railcorp is making adequate progress in addressing some of these issues?**

Our report about the investigation by Railcorp of complaints against transit officers made 6 recommendations, all of which have been accepted. I have been pleased with the genuine commitment by senior Railcorp managers to implement those recommendations. Railcorp has largely finalised new procedures, which should result in improved management of complaints against transit officers. That said, concerns about the handling of one recent matter have resulted in a further investigation and report by me, highlighting on-going investigative and administrative deficiencies.

We have also been provided with advice about improved recruitment, training and professional standards for transit officers as a direct response to our investigations.

However, until a formal oversight role is established for the Ombudsman, as agreed to by the Minister, we have a limited capacity to ensure that the issues we have highlighted are properly addressed. I have informed Vince Graham, the Railcorp Chief Executive Officer, of the need for independent oversight arrangements to be progressed before there can be any assurance that ongoing complaint handling and other arrangements for transit officers are satisfactory.

## Community Services

### Question 20

**Special Report to Parliament – In respect of the Ombudsman's special report to Parliament entitled, Improving outcomes for children at risk of harm: a case study, the Annual Report indicates that DoCS' own review of the matter revealed a range of systemic deficiencies, including:**

- **lack of detailed assessment**
- **inadequate integration of history**

- **failure to identify risk factors**
- **failure to do a comprehensive risk assessment of the children in this case**
- **inadequate file documentation and record keeping, typical of many files in neglect cases.**

**DoCS intend to take several steps to outline these deficiencies and the Annual Report indicates that the Ombudsman will be closely monitoring progress in these areas. (p. 84)**

**a) What sort of indicators of progress will the Ombudsman look for when monitoring DoCS?**

This office and DoCS have agreed on a schedule for the department to provide progress reports and supporting documents on implementation of the recommendations arising from the department's review of the matter. The department's first progress report was provided in October 2005 and the next reports are due in February and July 2006.

The department's proposed steps arising from the review to address current deficiencies in child protection practice include initiatives that should impact on the delivery of child protection services such as better training for managers supervising risk assessment, revised file documentation practices, and review of the use of informal undertaking in child protection matters. Our child death review and investigation functions will provide opportunity to verify whether child protection services reflect any reported improvements.

**b) What progress has DoCS made to date?**

The department's October progress report details progress to date. We have sought clarifying advice in relation to some of the information provided. In summary:

- Enhanced secondary risk of harm assessment:
  - i. The Secondary Risk Assessment: Risk of Harm Business Topic (practice guidelines) is being revised. We have asked the department when this work will be completed.
  - ii. A training package for managers about conducting secondary risk assessments is being completed. We have asked the department when and how it will ensure all relevant managers receive training in the package.
  - iii. An audit of the risk assessment model used across regions will be conducted by June 2006 to ascertain consistency of risk assessment models. We have asked the department for advice on the results of the audit when completed.
- Integration of child protection history when assessing new reports:
  - i. Training packages will be adapted to ensure that there is a link between client history and analysis of risk and safety. We have asked when this work will be finalised.
  - ii. Training was provided to departmental staff in May-June 2005 on the importance of integrating history when undertaking a secondary assessment.
- Development of a departmental policy on neglect:
  - i. The department's neglect policy is to be released in 'late 2005'.



- ii. The policy will include guidelines for caseworkers.
- Appropriate use of temporary care arrangements:
  - i. The department has developed a discussion paper on the proposed amendments.
  - ii. The department's Business Help (practice guidelines) topic on the use of temporary care has been amended but at this time not endorsed. It is anticipated that the department's executive will endorse the amended topic 'by December 2005'.
  - iii. Staff will receive training in relation to the amendments.
- Use of formal and informal undertaking:
  - i. Following the department's review of the matter the subject of our special report to Parliament, the department undertook to ensure staff were aware of the 'appropriate use of formal and informal undertakings'. We are now advised that 'DoCS does not endorse the use of informal undertakings. Instead, Care Plans are utilised to formalise agreements between parties that aim to address issues of concern affecting a child or young person.' We have sought clarification from the department on the substantive difference between informal undertakings and care plans not registered with the Children's Court.
  - ii. Training in relation to the proper use of care plans is 'almost ready for endorsement and should roll out in October.'
- Follow up of referrals prior to cases being closed:
  - i. The draft Secondary Assessment: Risk of Harm Business Topic (see above) 'includes a requirement for caseworkers to make contact with family members and interagency partners prior to closure.'
- Documentation requirements (accountability):
  - i. New requirements for client records management (hard copy and electronic files) have been developed and implemented at all Enhanced Service Delivery sites.
  - ii. By June 2006 all CSCs and JIRTS will be required to comply with records management requirements.
  - iii. A compliance audit will be conducted three months after implementation of the requirements.
- Review of the deaths of children known to DoCS:
  - i. DoCS report that procedures are now in place to ensure all deaths of children known to DoCS receive an appropriate review response.
- c) **Does the information technology and the data collection systems currently in use by DoCS adequately capture information about children in care and protection and is there sufficient capacity to support the systemic reforms proposed by DoCS? For instance, to what extent does the available technology and software used by DoCS provide its caseworkers with the necessary information to compile full histories for children who may be the subject of previous notifications that occur in different locations or who have name changes?**

DoCS implemented a new information system in October 2003 ('KiDS'). From our discussions with DoCS it is apparent that implementation of the database is still in the development phase and that in time the department anticipates that its capacity to generate relevant reports will improve.

It is our view that DoCS' information systems must have the capacity to provide a basis for measuring the effectiveness of DoCS' reform agenda with specific reference to the child protection, out-of-home care, and early intervention program areas. We raised this issue in relation to the department's child protection program in our 2003-04 reviewable deaths annual report, noting the department's inability to report on the number of cases transferred from the Helpline to Community Services Centres that received secondary assessment, or on the number of reports closed under the department's case closure policy.

DoCS has advised us that the department has now developed the capacity to report on some of this information. However, the release of information has been delayed due to issues arising from the introduction of KiDS and changes to the database and business practices that have required staff training. Poor compliance with data entry requirements has been an issue for the department.

A limited number of Ombudsman staff have access to the KiDS database for the purpose of our reviewable death function. Our experience is that it is cumbersome, and searching for the purpose of establishing a comprehensive history of departmental involvement with a child/family is difficult. Nevertheless, the technology allows for address and name searches. The search function includes phonetic searches. In response to a recommendation arising from a recent investigation conducted by this office, DoCS has advised us that 'Business Rules outlining the minimum requirements on history and person searches have been updated at the Helpline. After Helpline staff are briefed on the minimum requirements when conducting searches, a compliance monitoring system should be implemented in November 2005...'

DoCS has verbally advised us that the department's intention to make publicly available data in relation to the number of secondary assessments conducted and the outcome of these. We understand that this information will be made available on the department's website in the near future. The department has also advised us that while it intends to release data in relation to case closure, there are technical difficulties preventing release at this time.

#### **Question 21**

**It seems that the full benefit of the training and educative measures identified by DoCS (p. 85) would be realised mostly in the long-term.**

**a) What measures does the Department have in place to help safeguard against deficiencies in the short-term?**

The office met with senior DoCS staff in May and July 2005, in part to clarify the measures the department had in place to ensure operational consistency and compliance with industry standards, policies and practice guidelines.

DoCS informed us that it has developed a range of strategies to improve the quality and consistency of the department's casework across key program areas. Strategies include the

recruitment of qualified staff, improved internal training and professional supervision, and enhanced use of research to guide policy and practice developments. The department has also enhanced its capacity to conduct internal reviews of its practice following complaints and/or critical incidents. We are advised that information arising from internal and external reviews is being used to inform practice improvements.

**b) Does it regularly conduct audits of case files?**

We understand that from time to time the department conducts case file audits for the purpose of ensuring compliance with departmental practice requirements. By way of example, as noted above [20(b)] the department proposes to conduct a 'comprehensive audit of the risk assessment models across all departmental regions to ascertain how consistently risk assessment is occurring'. We are told this will be completed by June 2006. We are also told that audits will be conducted throughout 2006 to ensure compliance with the department's new electronic and hard copy file documentation requirements.

We are advised that the department's Helpline has a continuous quality assurance program that includes case file audits.

We are also aware that from time to time departmental client services managers, area directors and child protection specialists will audit or examine files for a specific purpose.

**Question 22**

**The Ombudsman's Annual Report indicates that the Office receives regular briefings from senior DADHC staff about their reforms to service provision for people with a disability (p.85). Does the Office receive similar briefings from DoCS on its own reform initiatives?**

Throughout the year regular meetings were held between the office and DoCS staff responsible for the department's management and investigation of complaints, deaths of certain children and child abuse allegations against DoCS' employees and foster carers. Deputy Ombudsman Steve Kinmond also addressed DoCS' executive on our role and issues arising from our work relevant to the department.

In addition to these meetings the office requested, and received, briefings from DoCS concerning:

- the role of the Senior Officers Group
- the department's strategies to ensure operational consistency
- the department's performance measures
- the Supported Accommodation and Assistance Program (SAAP), and
- departmental initiatives/strategies to address children protection and out-of-home care issues relevant to Aboriginal communities.

The office also met with senior DoCS staff in relation to:

- the roles and functions of the department's Child Deaths and Critical Incidents unit, and
- a study proposed by the department into fatal child abuse

Corrections

**Question 23**

**Juvenile Justice Centres - Frank Baxter Juvenile Justice Centre was the subject of 62 matters received by the Office. What did these types of matters include?**

62 matters were received concerning Frank Baxter Juvenile Justice Centre during 2004-2005. Matters raised included transfer requests to other centres (usually for family reasons), lost property, access to programs, phone calls, unit allocation within the centre, quality and quantity of food, air conditioning in units, room searches, quality of and access to clothing, classification, punishments under the minor misbehaviour scheme, visits and eligibility for outings and day leave.

**Question 24**

**What was the nature of the two matters concerning Junee resolved during investigation with GEO Australia and what was the nature of the matter subject to formal investigation, which resulted in an adverse finding against GEO Australia?**

The matters referred to are reported in our annual report as case study 50 on page 108. There were two complaints consolidated into one investigation. In essence the matters were about the exchange of data between the Department of Corrective Services and GEO Pty Ltd about inmates' Victim Compensation Levy liabilities and balances. The system had failed resulting in incorrect balances and hence some incorrect deductions from some inmates. As a result of our investigation an interim exchange process was implemented and GEO comprehensively documented the associated procedures, the lack of such procedures being one of the reasons the system initially failed. The Commissioner of Corrective Services has also advised that an interface to more efficiently exchange information has been created and will be activated once the department's Trust Accounting and Payroll System is implemented. The complaints also raised issues about GEO failing to reply to inmate application forms. Our investigation concluded that the existing system should function properly as long as relevant staff properly fulfil their responsibilities to follow up outstanding applications.

**Question 25**

**A total of 261 matters were received in 2004-05 concerning the Metropolitan Remand and Reception Centre. What were the main types of matters raised?**

The main issues of the 261 matters raised both formally and informally at the MRRC can be categorised under the following broad headings: property (generally loss), problems with records/administration (having phone inmate cash accounts and phone accounts activated), visits, classification, access to medical services, access to telephones, officer misconduct, transfers, buy ups (inmate canteen), placement within the centre, case management and general treatment.

Freedom of Information

**Question 26**

**This section of the Annual Report notes instances during the last few years where the Deputy Ombudsman has been involved in negotiations over FOI matters. This would seem to be a very high level commitment of resources for such matters. Why has this approach been necessary? (p.123).**

One of Deputy Ombudsman Wheeler's responsibilities involves managing the FOI jurisdiction of the Ombudsman. Issues that arise in this jurisdiction are often particularly sensitive and potentially controversial, particularly in relation to information sought in FOI applications lodged by Members of Parliament, journalists or interest groups.

From our experience we have found that it is more likely we can achieve a satisfactory response from agencies in relation to complaints about the handling of such applications where there is a high level response to the matter by this Office, such as face to face meetings between the Deputy Ombudsman and relevant senior staff of the agency concerned. It should be emphasised that such meetings are held only in matters which require them.

**Question 27**

**What progress has The Cabinet Office made towards finalising the FOI Manual by the end of this year (p.128)?**

On 3 November the Ombudsman and Deputy Ombudsman met with representatives of The Cabinet Office to discuss progress towards finalising the FOI Manual. The discussion was constructive and it was apparent that considerable work had been done by The Cabinet Office. We were assured that the project was on track for completion by the end of the year.



# Chapter Four - Transcript of Proceedings

REPORT OF PROCEEDINGS BEFORE  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN  
AND THE POLICE INTEGRITY COMMISSION

THIRTEENTH GENERAL MEETING  
WITH THE NSW OMBUDSMAN

---

At Sydney on Wednesday 23 November 2005

---

The Committee met at 10.00 a.m.

---

**PRESENT**

Mr P. G. Lynch (Chair)

**Legislative Council**

The Hon. P. J. Breen  
The Hon. J. C. Burnswoods  
The Hon. D. Clarke

**Legislative Assembly**

Mr S. J. Chaytor  
Mr G. Corrigan  
Mr M. J. Kerr

**CHAIR:** We will formally open the proceedings for the Committee's Thirteenth General Meeting with the NSW Ombudsman and statutory officers from his office. We will conduct this meeting in public session although we will have a short deliberative session at the end of the Committee meeting and then some in-camera evidence, which has already been discussed at a number of deliberative meetings.

**BRUCE ALEXANDER BARBOUR**, NSW Ombudsman, 580 George Street, Sydney,

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

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

**SIMON JUSTIN COHEN**, Assistant Ombudsman, Police Team, 580 George Street, Sydney,

**ANNE PATRICIA BARWICK**, Assistant Ombudsman, Children and Young People, 580 George Street, Sydney, and

**GREGORY ROBERT ANDREWS**, Assistant Ombudsman, General Team, 580 George Street, Sydney, on former oath:

**CHAIR:** Thank you for appearing before the Committee. Your appearance 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. We are delighted to hear your evidence. Mr Barbour, we have received a submission signed by you and dated 18 November that consists of questions we have asked and answers you have provided. I take it you would wish your submission to be made public and included as part of your sworn evidence, with the possible exception of question number 17?

**Mr BARBOUR:** That is correct, thank you.

**CHAIR:** We can deal with question 17 in closed session later. Do you wish to make an opening statement?

**Mr BARBOUR:** Yes, thank you. As you would be aware, this year the Office of the Ombudsman celebrates its 30th anniversary and it also marks the 15th year of operation and oversight of my office by this Committee. These are important milestones for the office, but this year has been a milestone in a number of other ways. This year our formal complaint numbers exceeded 10,000 for the first time, having gradually crept up over the past four years despite our best efforts to contain them. This included a 17 per cent jump in complaints about police and a 5 per cent increase in complaints about public services.

This year we tabled our first annual report about our new work in reviewing the deaths of 161 children and 110 people with a disability who died between 1 December 2002 and 31 December 2003. This year we also finalised five legislative reviews and tabled two special reports to Parliament. In early October we tabled a further special report to Parliament about the land valuation system in New South Wales. No doubt you will have had an opportunity to go through our most recent annual report. I just want to draw your attention to some of the



highlights of our 2004-05 financial year and update you on some developments that have occurred since the time of writing.

One significant development relates to transit officers. We reported on our investigation into the way complaints about transit officers were being handled by RailCorp and we referred briefly to our recommendation that RailCorp's complaint handling system be subject to rigorous and systematic external oversight by a body such as our office. Since the finalisation of that investigation, discussions have continued between senior officers of my office and RailCorp. I have also met with the chief executive officer [CEO] of RailCorp and have written to the Minister. We understand that there is agreement in principle with the setting up of a legislatively based external oversight system for complaints about transit officers. We have indicated in correspondence to the Minister that our preferred position would be to see amendments to the Rail Safety Act to specifically provide for an oversight role for our office—much like Part 8A of the Police Act. I hope that these matters can be progressed quickly and that they will receive broad support within government and by Parliament. I will continue to keep the Committee informed of progress in relation to this matter. Clearly, if this new function is provided to the office, it will be essential that it be accompanied by appropriate additional resources to allow us to fulfil our responsibilities appropriately.

You may also have read with some interest the policy work that we have been doing in relation to protected disclosures. We have been actively involved in the Whistling While They Work project, a three-year collaborative national research project endeavouring to describe and compare organisational experience under various public interest disclosure schemes across the Australian public sector, in an effort to identify current best practice systems for the management of such disclosures. We also made a submission to the New South Wales Parliamentary Committee on the ICAC's current review of the Protected Disclosures Act, and hope that some of our ideas will find some support. You may recall the last review of the Act, where a proposal that a protected disclosures unit be established within our office, was recommended. We have once again put forward this proposal and await with interest the results of this review.

You will also have seen from our annual report that during the financial year we finalised over 10,000 formal matters, including over 4,300 police complaints and over 1,800 notifications received under our child protection jurisdiction. Complaints about community services, corrections and freedom of information all rose compared with the previous 12 months. We also concluded over 24,000 informal matters. In the four months since 30 June not covered by our annual report, we have received over 7,600 informal complaints and 3,700 formal complaints. If the trend these figures represent continues we will receive more complaints this year than last.

You have heard me talk about complaint numbers at each of our meetings, and they do seem to be increasing in some areas year by year. In many ways this is disappointing, in the sense that higher complaint numbers may indicate more public dissatisfaction with services and decisions. However, more significantly for our office, this trend is making it increasingly more difficult for us to fulfil our functions as thoroughly and as well as we would like. We have faced a gradual decline in our funding base in real terms in the past few years and have been advised that our budget will continue to be cut. We are acutely aware of the need to improve efficiency and provide a value for money service. However, the reality is that

we are already a very lean organisation with efficient corporate services and very low other operating expenses per employee compared with similar sized agencies. In my view there are little, if any, further efficiency gains that we can make and our resource base has become dangerously eroded when compared to the community and Parliamentary expectations of our office.

We have identified a number of areas where we need additional funding to be able to continue to properly undertake our statutory functions. Perhaps the most sensitive, and therefore significant, area is our reviewable deaths function. We have found that the number of deaths and the amount of work required for each review far exceeds the indicative assessments that were made when we were originally given this function in December 2002. For example, at that time it was expected that there would be approximately 70-80 deaths of children to be reviewed for every calendar year. In the first review period—which was 13 months—there were 161 such reviewable deaths. The circumstances of the deaths of these children were such that we needed to closely examine 137 of them, and we decided to commence formal and detailed investigations into eight of them.

In addition to our first reviewable deaths annual report, we tabled at the same time a special report to Parliament in December 2004 to bring certain of those issues into the public domain for appropriate discussion and debate. The Committee will be interested to know that our second reviewable deaths annual report will be tabled in a few weeks time. The media interest in that special report and in our annual report confirmed that this is an area of significant public interest. The public reasonably expects my office to continue this work and to give it appropriate priority. The reality at the moment is that this expectation cannot continue to be met within the resources currently provided to my office by the Government. I have raised my concerns with the Premier, the Cabinet Office and the Treasury.

Notwithstanding our budgetary constraints, we are still committed to achieving important outcomes for the public and to ensure we are as effective as possible. We constantly assess how we are travelling to identify areas where we can improve the way we do business. Since our last meeting, we have conducted program reviews looking at the functions and activities being performed in each of our business units. The reviews were conducted by statutory officers from different parts of the office and were aimed at identifying whether changes could or should be made to the way work was processed and how our performance was tracked. More detail about both of these issues is contained in the answers to various of the questions on notice from the Committee.

We also conducted a staff climate survey, asking all staff to give frank feedback on the way our organisation is being managed and the opportunities that they had to contribute to decision-making and to further their careers. I am pleased to say that the results were very positive and well above the average for organisations in the public sector. However, any issues that were raised are being dealt with.

This year we continued our outreach work. We visited 59 different regional areas to present training, talk to community groups and attend community events, meet with police Local Area Commanders, inspect correctional and juvenile justice centres, and audit the systems of various agencies within our jurisdiction. In all, our staff made over 70 speeches and presentations, and delivered over 150 training sessions to more than 2,000 people, including both those providing services and those receiving them. Regrettably, this important

work is another area where it is likely that we will need to reduce the extent of the services we provide due to our budgetary commitments. Given these resources tensions, one further relevant issue I would like to raise with the Committee is our increasing concern at the resources taken to deal with persistent and difficult complainants. This is a particular problem not only for our office but also for many other customer service areas and watchdog agencies, including other Ombudsman offices throughout Australia.

This is an important and complex issue, which requires a strategic approach. To that end I have agreed to a working party being set up in my office to identify issues, look at options and report back to me early next year. I will then consider whether it is appropriate to hold a conference or a meeting of watchdog agencies in New South Wales to further canvass issues. I also propose to put this issue on the agenda of the next meeting of Australasian Ombudsmen, to ensure that the best possible uniform approach to this problem can be adopted across Australia. At a time when we must make difficult decisions about how to meet our core responsibilities effectively, the cost of dealing with difficult complainants becomes a critical issue for my organisation.

Lastly, summarising the work of our office over a 12-month period in this way only partially reflects the individual effort and commitment of each of my members of staff. At a time of ever-increasing workload and responsibilities coupled with reducing resources it is important to recognise the professionalism, dedication and attention to detail that my staff bring to their work. It is in large part these efforts that allow the office to continue to do its good work. For the information of the Committee I am happy to tender my opening statement. I also have copies of our latest updated pamphlet, which relates to our legislative review work for circulation. My senior staff and I are most happy to answer any questions that the Committee has for us.

**CHAIR:** Thank you for tendering those documents. They can be included in the record. In relation to the increasing number of complaints, are there some fields where the complaints are not increasing, or is that occurring in every field of your jurisdiction?

**Mr BARBOUR:** It does not occur in every aspect of the jurisdiction. Interestingly, we are seeing the trend of a slight decline in our informal complaints, the matters that come in generally over the telephone. We are not sure whether there is a reason for that. But what we are noticing, particularly in the police area, is that the complaints are trending up. Also, our general complaints area, the complaints seem to be continuing to trend up this year, as is the trend in the Community Services division. It is too early to say whether it will continue during the year, but certainly an extrapolation of the figures would suggest that we are going to end up with more again this year.

**CHAIR:** Is there any reason you can proffer, or speculation you can make about why the complaints are increasing in those areas?

**Mr BARBOUR:** No, not really. I think it probably was a range of things. It is more awareness of the office and the scope of the work that we are able to undertake. In the police area we believe that our educative functions, in particular, and the work that we have done with Local Area Commands and talking with police probably has prompted an increased awareness of that complaint role. In the police area, because of the particularly large percentage of increases, we are going to try to do some work during the next year to see

whether there are any particular trends that we can identify as contributing directly to the increase.

**CHAIR:** In relation to reviewable deaths, the number that was reviewed in the first 30 months of operation was 161. The estimate was for 70 to 80. Where did the estimate come from? Was it based on previous incidents?

**Mr BARBOUR:** The Child Death Review Team was the source of information around the number of child deaths. Because we are focusing on only a subcategory of the total number of child deaths in our reviews we basically were trying to do the best estimate we could on the data that was available to the Child Death Review Team. But it was not data that was completely complementary, so an estimate was made at the time between Cabinet Office, the Child Death Review Team and us. But it was only that, it was only an estimate. We did not know how many we would get. I am pleased to say that the number has reduced slightly this year, and the number we are reporting on in our next annual report is slightly less. That is not just because of a slight reduction in total deaths, but it is also because of some changes in our definitions for capturing those and reviewing, particularly in relation to neglect. But nonetheless, the number is well above that initial estimate.

**CHAIR:** What level of funding, in your view, is needed to enable you to perform the reviewable death functions, both at an individual and a systemic level?

**Mr BARBOUR:** We have put forward to Treasury, in relation to the reviewable death function, that we need a minimum of \$300,000 in addition to our existing budget for that area to manage the work. However, as I have indicated to Treasury that figure is dependent on the current numbers and current review roles. What we are seeing is a trend that requires us to investigate in more detail some of these deaths. If that trend continues then we may need to revise that figure in future years.

**CHAIR:** Has there been any discussion with Treasury about the amount of money for you to carry out that function with the number of cases you are reviewing?

**Mr BARBOUR:** In previous years we have attempted to have a relationship with Treasury that would be built on those sorts of calculations, as have other organisations. Regrettably, that is not the way Treasury will proceed to operate. If I can give an example, the Community Visitor Program, which we co-ordinate, originally was co-ordinated by the Community Services Commission [CSC]. Prior to the merger of that body with us in December 2002 there was an agreement with Treasury that there be a certain number of visits conducted—16 hours of visits per year to each visitable service—and the amount of money that Treasury would provide in support of that program would be calculated on that arrangement. That is no longer adhered to. We are now in the situation with the Community Visitor Program where we have barely enough funding to conduct nine hours of visits to the visitable services.

**CHAIR:** The agreement about official visitors was with the CSC, and that has not been continued by Treasury with the Ombudsman?

**Mr BARBOUR:** No, and my understanding is that Treasury is reluctant to continue with agreements that are based on a funding model that relates to the number of items of work, the number of visits made, or the number of deaths that we might review.

**CHAIR:** There must be other agencies or departments that have reached an agreement with Treasury based on that sort of model; on the number of things they have to do?

**Mr BARBOUR:** I am unaware of any. Certainly, Treasury has not adopted that suggestion when we have put it to them. I have to say, though, in contradistinction to that, it would be rather difficult for us to rely on that model as well. The simple number of deaths is not going to provide an equal quotation, if you like, translating into the amount of work because it is not clear to us how many we will have to actually conduct detailed reviews on because some will be complex and some will not.

**CHAIR:** I understand that. While we are talking about official visitors, what level of extra funds is needed for that?

**Mr BARBOUR:** We have put to Treasury that we require an additional \$314,000 for that program.

**CHAIR:** One of the other issues you touched on in your opening statement was a possible amendment to the Rail Safety Act. I did not have a sense from what you said as to whether you think your proposal that the Rail Safety Act be amended is likely to meet with success?

**Mr BARBOUR:** That is probably deliberate.

**CHAIR:** I thought it might be.

**Mr BARBOUR:** I have correspondence from the Minister for Transport, indicating in principle agreement that there ought to be external oversight, and it should be by my office. The meetings that we have conducted with his staff and also with RailCorp have been ones where we have indicated that, in our view, that is the best model to adopt. The Chief Executive Officer of RailCorp has given a broad agreement to that from his perspective, but we are yet to see anything translated in a significant way to progress that. There are a number of issues, as I understand it, going to Cabinet that relate to the Rail Safety Act, and we are hopeful that this will be one that will be included in that. But we have no direct confirmation of that at this stage, nor what the preferred model will be. But that certainly is our preferred model. We have also indicated in our discussions that that particular function probably would require an additional increase to our resources in the order of about \$1 million.

**CHAIR:** Have you seen, or do you know about, the bill that was introduced into this place last Thursday called the Terrorism (Police Powers) Amendment (Preventative Detention) Bill?

**Mr BARBOUR:** I am aware of the bill.

**CHAIR:** I think you were consulted in relation to part of the bill during its drafting?

**Mr BARBOUR:** No. I received contact only about the bill on the day it was introduced, and at that stage various models were put to me and I was asked which model would be the most appropriate from my view. I had not seen the bill at that time, so I asked to see a copy

of the bill. We took a decision, given the very brief time that we had available, that the review model would best serve a balancing role, as was recommended for our office. But I also indicated during those discussions that I would be very concerned if there were no formal agreement as to funding being provided for us to do that, and that became an issue of discussion as well. My advice is that funding will be approved for that, and that has been confirmed. The model that has been put forward is not completely the model we recommended. We recommended, following from our discussions with the parliamentary committee and its interest in relation to how reports ought be tabled when we conclude reviews, that there ought to be a different form of wording in the legislation, but our recommendation was not accepted.

**CHAIR:** There would be a view that there ought to be a 28-day time period specified rather than simply allow it to be tabled as soon as practicable?

**Mr BARBOUR:** Yes, that certainly is the model we put.

**CHAIR:** Obviously, you have seen the bill as it was introduced?

**Mr BARBOUR:** Yes.

**CHAIR:** My reading of it suggests a widening of the jurisdiction of the Ombudsman. It says that "the Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers or correctional officers under this part". To me that seems a significant expansion of your current jurisdiction.

**Mr BARBOUR:** I do not believe so. I think it fits very comfortably with our existing jurisdiction. I think all that the review is making clear is that the contact, which relates specifically to performing functions under the Act, is something that we are entitled to look at. But, arguably, unless it were excluded, police conduct or the conduct of correctional officers would come under our various jurisdictional bases in any event.

**CHAIR:** Although generally you would focus on misconduct rather than simply on the ordinary use of powers?

**Mr BARBOUR:** That is correct. Normally you would have a lever of a complaint or some issue arising for you to look at.

**CHAIR:** But this effectively allows you to use your powers without having a complaint to trigger your actions?

**Mr BARBOUR:** For the purposes of the review, and it is consistent with other review roles that we have performed, both in terms of correctional officers and also in terms of police.

**CHAIR:** Although it seems to go beyond just preparing a report of the review, does it not? Is that not true?

**Mr BARBOUR:** Well, not really, in my view. What is it that you particularly think gives us a greater role?

**CHAIR:** It seems to me the wording—that you are to keep it under scrutiny for five years—is a much broader thing than you have been given in other Acts where you have been asked to prepare reports.

**Mr BARBOUR:** I suppose, technically, that is correct, but whenever we have done other reviews, we have always interpreted the language fairly broadly. If there are any issues or concerns that we identify during the course of our review, I would not hesitate to bring those to the attention of the Parliament, independent of the formal review reporting role. So, I see this as being akin to that.

**CHAIR:** Clearly all of your formal powers, which some call royal commission powers, would be able to be used in the exercise of this function?

**Mr BARBOUR:** Yes.

**CHAIR:** If there were a matter that particularly you wanted to draw to our attention, or to the Parliament's attention, you would not be restricted by having to give the report to a Minister and have him table it. Your powers are quite sufficient to be able to give a separate independent report at any time?

**Mr BARBOUR:** That is right. In my view, our functions would be inclusive of conducting this particular review and keeping the systems under scrutiny. If there was an issue of significance that we thought we ought to report on, then I would be able to use my reporting powers to Parliament to do so.

**CHAIR:** And you have an agreement for extra funding to deal with the functions that have been given to you, or that will be given to you, under this amendment?

**Mr BARBOUR:** We have had indicated to us that the funding will be approved. The only funding thus far that has been approved is funding for the remainder of this financial year, but we have received assurances from Treasury that the funding will be approved in our future allocations. That is for a period of six years, to see us through the end of the five-year review period.

**CHAIR:** That concludes my questioning arising out of the opening statement. I think the Hon. Peter Breen caught my attention first. Do you have some questions about rail safety?

**The Hon. PETER BREEN:** I was interested in the current complaints mechanism for rail safety. Are those complaints to do with the actual safety of track and transport, or are they to do with complaints by commuters?

**Mr BARBOUR:** No. The investigation that we conducted was into the complaints system relating to complaints about the conduct of transit officers. Our concern was brought to a head not only by complaints that we had received but also by a great deal of media commentary some time ago about excessive use of force, allegations that transit officers were assaulting commuters, that they were exercising their powers inappropriately, and so on. Given that there are some 600 transit officers—they carry appointments and they operate as

a law enforcement entity—we wanted to make sure that any complaints about their conduct were appropriately managed and dealt with.

We audited a significant number over a full year of the complaints that had been received about the transit officers. Our audit concluded that the quality of handling those complaints was appalling, in essence. Investigations were not conducted effectively. People who should have been spoken to were not. Even people who had made complaints about serious issues like assault were not even contacted before a decision was made that the transit officer had done nothing wrong.

We prepared a report, and that report made wide-ranging recommendations about improving the complaints system and also for the need for there to be external oversight, similar to our oversight of police complaints. It was that report and those recommendations that led the Minister to advise that he accepted that position. We are currently in the process of finalising a further review of a particular matter that has come to our attention where it would not appear as though the level of improvements that we had hoped for are evident in the system. But we are aware that RailCorp is moving to improve its employment practices of transit officers and managing of complaints. They are reworking their systems and we are monitoring how they are doing that.

**The Hon. PETER BREEN:** Are you aware of a proposal for police to actually take over the job of transit officers?

**Mr BARBOUR:** No, I am not, but certainly police used to do that role before transit officers were employed to do it.

**The Hon. DAVID CLARKE:** Mr Barbour, your office clearly has a growing workload. You have said that you have been advised that your budget will be cut. Is that correct?

**Mr BARBOUR:** All agencies, I believe, in the State, with the exception of a few, have received similar advice to our office—and that there will be a standard cut across the board.

**The Hon. DAVID CLARKE:** In your view, is the problem of budget constraints, as far as the Ombudsman is concerned, as serious as it has ever been?

**Mr BARBOUR:** I can probably only comment about my time as Ombudsman, but certainly they are now more serious than they have been in the 5½ years that I have been Ombudsman. We effectively have 13 fewer staff than we had not that long ago to do the work and we have an increasing workload. I think the community's expectation, given the very serious issues that we are now looking at, is that we are going to be adequately resourced to do that very important work. You cannot cut corners when you are reviewing the deaths of children. If you are going to make meaningful recommendations at the conclusion of those reviews, you need to be confident that you have been able to assess them effectively and you have the resources to do it.

**The Hon. DAVID CLARKE:** Your budgetary constraints are more serious than they have ever been as far as you can recall, or certainly during your term as Ombudsman.

**Mr BARBOUR:** They are certainly serious and if we do not receive any relief, we will continue to have to reduce the quality of service that we provide.



**The Hon. DAVID CLARKE:** You have indicated that you have been advised that your budget will be cut. Who advised you of that?

**Mr BARBOUR:** That is a standard advice that has been received by all agencies from the Treasury.

**The Hon. DAVID CLARKE:** From Treasury?

**Mr BARBOUR:** Yes. There is a 1 per cent cut for the budget 2006-07 that has already been forecast and there was a similar cut to the 2005-06 budget, and a 3 per cent cut the year before. So the cumulative loss to our budget since 2002, as predicted up to the end of the financial year 2007, would amount to just under \$1 million.

**The Hon. DAVID CLARKE:** When did you get this advice that your budget would be cut?

**Mr BARBOUR:** The advice comes annually whenever Treasury advises of what our budget is going to be for the future years.

**The Hon. DAVID CLARKE:** That came in the form of a letter, did it?

**Mr BARBOUR:** A range of correspondence and a letter, yes.

**The Hon. DAVID CLARKE:** Are you able to produce that?

**Mr BARBOUR:** I do not have it available to me, but we could provide the Committee with copies of it.

**The Hon. DAVID CLARKE:** Will you take that on notice?

**Mr BARBOUR:** I will take it on notice, yes.

**The Hon. DAVID CLARKE:** Thank you. You have said that you have raised your concerns about this growing problem with the Premier. Is that correct?

**Mr BARBOUR:** That is correct.

**The Hon. DAVID CLARKE:** Did you raise those concerns with him verbally or in writing, or both?

**Mr BARBOUR:** Verbally. I recently, only in the last few weeks, had the opportunity of meeting the Premier for the first time. The reason for that is because the Premier is the Minister who has responsibility for my office. It is rather fortuitous for my office that he also happens to be the Treasurer. During the course of a general briefing, I took the opportunity to advise him of my concern about the trend in terms of our budget and also the potential consequences of our financial situation in terms of our work. I provided him with a copy of a document which we prepared for the Treasury and Cabinet Office about the specifics of our financial difficulties. He indicated to me that he would certainly be considering those issues very closely and seriously. As I say, that was a matter of weeks ago.

**The Hon. DAVID CLARKE:** Have you raised these concerns in the past with the Premier before the present Premier?

**Mr BARBOUR:** Not directly with the Premier, but we have continually raised our concerns around budgetary matters and sought additional funding when we have put in our applications to Treasury. One of the dilemmas for the Ombudsman is that we do not have a traditional relationship with a Minister. The way budgetary matters are generally considered is that there is often an opportunity for Ministers to lobby the budget committee and/or Treasury on behalf of their agencies. Obviously, given the independence of my office, we do not have a traditional relationship with a Minister as such. At a recent meeting with Treasury officials that are responsible for my office, I took the opportunity of raising with them this problem and they have agreed to work with me to try to identify an alternative way of dealing with that particular situation.

**The Hon. DAVID CLARKE:** You said that you have also raised concerns with the Cabinet Office. Is that correct?

**Mr BARBOUR:** Yes, that is correct.

**The Hon. DAVID CLARKE:** What response did you get?

**Mr BARBOUR:** The Cabinet Office I provided with a copy of the document I just referred to and I asked if those issues could be looked at in the context of how we might approach the budgetary issue. A representative from the Cabinet Office was also at the recent meeting with Treasury officials, which is described as a budgetary scene-setting meeting. I understand all organisations have them. I am not sure why it is termed that, but that is what it is called.

**The Hon. DAVID CLARKE:** When did you raise the concerns about these budgetary cuts with the Cabinet Office—approximately how long ago?

**Mr BARBOUR:** I would need to look at the records, Mr Clarke. I would not want to mislead you by giving you a date, but I would say that it would be a few months ago.

**The Hon. DAVID CLARKE:** Have you had any response to raising those concerns?

**Mr BARBOUR:** I think because the Cabinet Office was going to attend the scene-stealing meeting—that was an interesting gaffe, was it not?—rather, the scene-setting meeting, and you would need to ask the Cabinet Office this, but I think the view was that further information would come back from that meeting and then they would be reviewing the issues.

**The Hon. DAVID CLARKE:** I see. I think you said that you have also raised the concerns about these budgetary cuts with Treasury as well?

**Mr BARBOUR:** That is correct. Over the past few years, we have put in for additional funding to Treasury, identifying the specific areas where we believed that we needed additional funding. We recently prepared this particular document which set out what we saw as being the critical issues. We provided a copy of that to Treasury staff before we had our scene-setting meeting and we have, subsequent to that, been required to put in our

estimates for additional funding. We have modelled those on what we understand to be our most critical and urgent areas for additional funding.

**The Hon. DAVID CLARKE:** Would it be true to say that this is the situation: That this year and in the past couple of years, you have put in very strong recommendations for increased funding for you to properly carry out the work of your office, and your requests have actually been met on each occasion with budgetary cuts. Would that be more or less the situation?

**Mr BARBOUR:** We have not received a substantial increase to our budget, recognising the concerns that we have raised, that is correct. I have to say that it has really only been in the last six months that we have put together all the figures and we have realised how critical the issue is going to be for us. The other challenge that we have faced is that there was a 6 per cent pay increase negotiated for public sector staff in this State, which was unfunded. That was a significant impost on an organisation of my size to come up with the funding for that, so it is not simply as a consequence of cuts that we find ourselves in this situation, but we have also had to meet the unfunded pay increases.

**The Hon. DAVID CLARKE:** In real terms, your budget has been cut, has it not?

**Mr BARBOUR:** Yes, and almost by a million dollars.

**The Hon. DAVID CLARKE:** On the question of reviewable deaths, you said that they are in excess of your expectations, or of what your expectations were. Is that correct?

**Mr BARBOUR:** Yes.

**The Hon. DAVID CLARKE:** When we are talking about reviewable deaths, are we talking mainly about children?

**Mr BARBOUR:** No. Our responsibilities relate—

**The Hon. JAN BURNSWOODS:** Chair, I wonder if I could interrupt for a second. I am a member of the Committee for Children and Young People and I was going to ask some questions about this because we had a hearing with Gillian Calvert yesterday and we spent a lot of time on this issue.

**CHAIR:** Are you perhaps suggesting that you might want to ask questions now and that the Hon. David Clarke might want to defer until you have finished?

**The Hon. JAN BURNSWOODS:** I am just pointing it out because, as I said, we got quite a lot of information yesterday. Some of my questions relate, for instance, to any overlap that may exist between the different organisations.

**The Hon. DAVID CLARKE:** Well, I guess that the more questions on this problem of reviewable deaths, the better.

**Mr BARBOUR:** I am not sure I would necessarily agree with you, Mr Clarke, but nonetheless.

**The Hon. DAVID CLARKE:** Would you regard this area of reviewable deaths as one of the most important areas?

**Mr BARBOUR:** I think it is extremely important. It is very difficult in our work to try to equate areas of work. They all have particular importance and they all are seen by different people to have different weights of importance. But unquestionably, this is a very important area of our work.

**The Hon. DAVID CLARKE:** Because it involves the loss of life?

**Mr BARBOUR:** Well, partly because it involves the loss of life, which is clearly important, but also because of the purpose of the work, which is to try to improve systems to reduce loss of life. So, clearly there is an underlying significance to the work.

**The Hon. DAVID CLARKE:** Is there any government department about which we should be concerned in regard to this continuing problem of reviewable deaths?

**Mr BARBOUR:** In our annual report for our reviewable deaths function, and also in our most recent general annual report, we set out the role in detail. But because we are specifically required by the legislation to look at only certain types of categories of children's deaths, naturally there will be an overrepresentation of deaths that relate to the Department of Community Services [DoCS]. The children that we look at are children who die from neglect, abuse and in suspicious circumstances that have been notified to DoCS within a three-year period of their deaths or who have had a sibling notified to DoCS within that time.

So the review work is focused primarily on that agency. However, our reviews have also looked at a growing issue of concern for us, which is interagency co-operation. So our reviews into some of these deaths will not only look at DoCS; they will also look at the role of the Department of Health, Police, and other agencies that have also played a role in the child's life or the circumstances of the family prior to the death.

**The Hon. DAVID CLARKE:** Have you raised your concerns with DoCS?

**Mr BARBOUR:** Oh yes.

**The Hon. DAVID CLARKE:** Are you satisfied with the response that you have received?

**Mr BARBOUR:** We deal with DoCS on a whole lot of issues. On some issues we are satisfied; on other issues we think there is room for improvement in the quality of response. We have a significant interaction with DoCS not only in relation to the reviewable death function but also in relation to our broader community services functions.

**CHAIR:** Mr Barbour has been too polite to tell you that there is a fair bit of detail in relation to this in Question No. 20 and in the answer to that question.

**Mr BARBOUR:** There is. That is in relation to the response for the particular special report we did. But it indicates broadly the nature of the issues we have raised with DoCS on a death-related matter.

**The Hon. DAVID CLARKE:** Do you get any complaints about the Ombudsman?

**Mr BARBOUR:** Oh yes.

**The Hon. DAVID CLARKE:** How many complaints did you receive last year, as an example?

**Mr BARBOUR:** I think we have that noted in the annual report. If you will just bear with me I can give you a precise figure. It depends on how you identify complaints. When we get a letter that registers concern about a particular decision we have made, we register that, if you like, as a complaint and we review it. We call it a review work. Then there are other areas that particularly raise complaints. So in 2004-05 there were a total of 39 complaints about the office, raising a total of 63 issues. The details of those issues and their outcomes are noted on page 30 of our annual report.

**The Hon. DAVID CLARKE:** That seems to be a small number in comparison with the many thousands of complaints you receive at your office?

**Mr BARBOUR:** I think it is directly relevant to the quality of the work we do.

**The Hon. DAVID CLARKE:** That would appear to be so.

**The Hon. JAN BURNSWOODS:** I have a couple of fairly general questions. It so happens that yesterday Gillian Calvert and others from the Commission on Children and Young People appeared before the oversight committee. We spent a large amount of our time on issues relating to the Child Death Review Team and the role of the commission relating to child deaths. Ms Calvert said, and I am sure quite correctly, that more research was needed. There have been some issues, for instance, relating to NSW Health.

The Committee on Children and Young People also followed up some issues relating to the reporting of cross-border deaths. For example, a child might live in New South Wales but die in a hospital in Coolangatta. Obviously the same thing could be said about different parts of the State. I am interested in the extent to which there is an overlap or confusion amongst the roles of all the different agencies involved in looking at the deaths of children and young people.

**Mr BARBOUR:** I do not believe there is a great deal of confusion out there. At the time a great deal of effort was put into the development of our legislation to ensure there was a minimisation of any overlap or duplication. When our function was first set up we worked very closely with the Commission for Children and Young People and the Child Death Review Team to ensure as minimal duplication as possible. We also have a number of arrangements and understandings in place between our organisations so that we do not duplicate things.

We have a very co-operative relationship across most areas. Specifically, they do not review the deaths that we look at, and vice versa. But, clearly, there will be crossovers of issues. The legislation allows us to do joint research, if we want to. It would be my view that before we embarked on anything of that kind we would have discussions to ensure that we did not duplicate any work they were doing. But I am unaware of any stakeholder confusion,

if I could use those words, about our role. If you are aware of any I would be happy to hear of it.

**The Hon. JAN BURNSWOODS:** I noticed in your answer to an earlier question that you talked about your role as being "to review deaths at a systemic level" but that that takes you into the circumstances surrounding individual deaths. One of the areas in which I am interested is the role of the Coroner, of DoCS and a whole number of agencies. Are there problems in defining where the role of one stops and the role of another starts?

**Mr BARBOUR:** There will always be crossovers no matter what area we are looking at. Certainly the Coroner's role is very clear. The Coroner is seized with the responsibility of determining cause of death. The effect of the Coroner's work sometimes means that our reviews are delayed because that process can take a considerable period of time. But where cases are particularly significant or we believe they raise significant issues we do not wait for the Coroner's report if we believe there might be systems issues that need to be reviewed. You are correct that the focus of the legislation was intended to be on providing input back into the systems to reduce problems in the systems that might reduce the number of deaths.

We have found that, in many cases, unless we do very detailed reviews of the circumstances of individual deaths it is not possible to perform that role of making recommendations about systems. It is only when we do a detailed review that we are able to identify key issues relating to any failures or strengths of the systems. We also find when doing the detailed reviews that we are better able to understand the interrelationship between different agencies that deal with children and families. Recently, at the child abuse conference that Commissioner Moroney arranged, I spoke at length about some of the concerns I had about the capacity for agencies to exchange information, which in the area of child abuse and child protection I see as being a key issue.

So these reviews are able to look closely at files and at a spread of information that very few agencies are able to look at. We can see exactly what degree of involvement agencies have had in a family and over how long. We can look at the quality of that and we can also look at the extent of the holdings that each of these agencies has and what exchange of information there has been in relation to those holdings that may have assisted in achieving a better outcome.

**CHAIR:** A moment ago when I was talking about the police powers counter-terrorism legislation I forgot to ask you one question. How will you carry out the functions that we expect you will be given under the new legislation?

**Mr BARBOUR:** We are yet to make a decision about that in a detailed way. But our intention—and what we have received funding for—is to have a specialist officer, probably at a level 9/10 position. That officer will be working in our legislative research unit. In relation to the terrorism area we already have a role that is mentioned in our recent pamphlet entitled, "Terrorism Amendment Covert Search Warrant." It is impossible for me to keep all the names of pieces of legislation in my head. As you know, we already have in place extensive security and other systems in the office.

So they will obviously apply to these issues. There is a commonality of agencies involved in the two pieces of legislation and we have already started some work in relation to

that other review. So that will prove valuable for our preparations in relation to this review. In the areas located within the police team of the office Simon Cohen will be responsible for managing staff involved in that review and presumably we will initiate some roundtable meetings with agencies that are covered by the legislation to talk through how we intend to proceed.

**The Hon. PETER BREEN:** Just on that question of reviewing or overseeing the new anti-terrorism powers, the Premier has been reassuring people that because the Police Integrity Commission is overseeing the police, the police will be constrained in the way that they use the new legislation. However, the Police Integrity Commission does not have any jurisdiction over the Crime Commission. Have you had any role to play in the office of the Crime Commission? For example, do you deal with complaints about the Crime Commission?

**Mr BARBOUR:** No, we do not deal with complaints about the Crime Commission but our two terrorism-related reviews permit us, as part of that review, to access information from the Crime Commission about its involvement pursuant to that legislation. So we will have a role in relation to it for that.

**The Hon. PETER BREEN:** If there were a complaint, for example, about the way a Crime Commission officer used the powers, would you deal with that?

**Mr BARBOUR:** No, we do not have a power to deal with a complaint. However, if it were an issue that clearly went to the application of the legislation or some improper exercise of that, we would be able to deal with it in the context of the review. I mention also that we have a further role in relation to the Crime Commission, which relates to controlled operations and also our covert oversight responsibilities.

**The Hon. PETER BREEN:** And is that a role under the New South Wales Crime Commission Act?

**Mr BARBOUR:** No.

**The Hon. PETER BREEN:** What is the protocol or the guide to use?

**Mr ANDREWS:** Under the Law Enforcement (Controlled Operations) Act the Ombudsman is required to be notified of all control operations and to inspect the records of those eligible agencies to ensure compliance with the legislation. The Crime Commission is one of the agencies that we inspect the records of. Under the Telecommunications (Interception) (New South Wales) Act we have a similar role in relation to telephone tappers. Again, the Crime Commission is one of the agencies that we monitor in that respect.

**The Hon. PETER BREEN:** I notice that the number of complaints about police seems to be down and trending down.

**Mr BARBOUR:** No.

**The Hon. PETER BREEN:** I am looking at page 42, figure 22 in the annual report.

**Mr BARBOUR:** They have been increasing significantly over the past three reporting periods. The numbers are higher for the earlier periods because that was prior to us entering into a more detailed and more expansive class or kind of agreement to reduce the number of minor matters coming to the office. Referring to the increasing trend, we had a 17 per cent increase in complaints over the previous year. The reason in part that that is alarming is that we are looking only at the more serious complaints, if you like. To counter the reduction in the number of class or claimed agreements that are coming to us we conduct a significantly increased audit program to ensure that those matters are being handled appropriately by police without notification to us.

**The Hon. PETER BREEN:** In relation to complaints about Corrective Services I notice that since the Office of the Inspector General ceased to exist the number of complaints you have received about Corrections Services matters has almost doubled.

**Mr BARBOUR:** I am just looking at the numbers. Which reference are you looking at?

**The Hon. PETER BREEN:** It is in the Corrective Services section of the annual report.

**Mr BARBOUR:** I think you are referring to page 110. So the subtotal of formal matters has doubled, but that also includes juvenile justice and justice health. Then the informal matters are largely similar in number.

**The Hon. PETER BREEN:** That is figure 49.

**Mr BARBOUR:** That is figure 49; that is right.

**The Hon. PETER BREEN:** It seems evident that even after excluding justice health and juvenile justice there still appears to be a doubling in the number of complaints about correctional centres and corrections issues generally?

**Mr BARBOUR:** I think part of that is explained by the significant increase in the prison population as well. There are more than 9,000 prisoners in the State, and that number is trending up. Also, I think that with the advent of our corrections unit, we have had a great deal more exposure now than we have ever had. Although we have been involved in dealing with Corrections matters for the entire 30 years of the operation of the office, we now have, as a consequence of the demise of the Inspector General's office, a dedicated Corrections unit and we are actively visiting centres. I think that greater awareness of people has probably contributed in part to that as well. Greg, are you aware of any additional matters that might have led to the increase?

**Mr ANDREWS:** Even during the time the Inspector General existed we received far more complaints about Corrections matters than the Inspector General would have received. With the demise of his office, there certainly has been an increase in complaints. There were certainly a number of people who took their complaints to the Inspector General; now that he does not exist, they are coming to us as well. But the number of complaints has always been relatively higher in that area.

**The Hon. PETER BREEN:** Have you noticed any particular area of Corrections where the complaints are increasing more so than other areas?



**Mr ANDREWS:** No. As you will see from the table that is also on page 110, the complaints cover a large range of issues. Over the years, if you go back on our previous annual reports you will probably find a similar spread of the nature of what the complaints are about. They range from simple matters about food to allegations of misconduct by officers, so there is a huge range.

**The Hon. PETER BREEN:** Have you noticed any increase in the complaints about segregation? It seems to me on anecdotal evidence that more and more prisoners are being placed in segregation for one reason or another. At Goulburn, for example, people are segregated according to their race. Have there been complaints about this aspect of prison administration?

**Mr ANDREWS:** We have always had complaints about segregation. I do not think there has been a particular rise in the number of those complaints. One of the significant reforms that we were able to bring about quite a few years ago now was to introduce into the legislation an appeal right. For those who are subject to segregation orders, there is an appeal right to the Serious Offenders Review Council. That decreased the number of complaints about segregation that previously did come to our office, and we certainly encourage people to take advantage of that appeal right where necessary.

**The Hon. PETER BREEN:** Does that appeal right apply to all prisoners, or just to serious offenders?

**Mr ANDREWS:** Only those under a formal segregation order. The term you are using about the "yarding" of people at Goulburn is not technically correct in terms of segregation. Segregation is a specific order that is issued by the Commissioner or his delegate to restrict the access an individual prisoner has to other prisoners. The "yarding" system, where people of different ethnic groups are managed at Goulburn, is really just mainstream prison administration.

**The Hon. PETER BREEN:** Why is that the policy used at Goulburn; it is not used in any of the other prisons?

**Mr ANDREWS:** I am not exactly sure, except to say that they have found that to be the most productive way they can manage the mix of people at Goulburn.

**The Hon. PETER BREEN:** When I refer to segregation, I refer to prisoners being placed in cells on their own. I think the technical term is "limited association". They might be able to mix with one or two other prisoners. In my view, this seems to be an increasing problem: prisoners are put into what I call segregation for disciplinary purposes and there is no real provision for it under the legislation or the regulations.

**Mr ANDREWS:** You may be referring to some of the specialist programs that have been introduced over recent years, which do limit association. Technically they are not regarded as segregation but as a specialist management program. There is certainly a program that has been designed to deal with gangs in gaols, and a number of those programs are having some reasonably good outcomes. But they certainly do limit association rights, and also rights to privileges and out-of-cell time.

**The Hon. PETER BREEN:** It is the equivalent of the old solitary confinement. I have met prisoners who have spent up to six months in this isolated state where they are not permitted to associate with other prisoners.

**Mr ANDREWS:** I think solitary confinement is prohibited under the present legislation, and I would be very concerned to hear about any individual case of anyone being in solitary confinement. We would certainly look at that.

**The Hon. PETER BREEN:** If a prisoner is in his or her cell and can only come out to make phone calls, surely that is, by any definition, some form of solitary confinement. Phone calls and legal visits are the only opportunity they have to come out of their cells. There are a lot of prisoners in that category.

**Mr ANDREWS:** Most prisoners who would be in that category would probably be required to be on a segregation order.

**The Hon. PETER BREEN:** Do we know how many of those orders there are?

**Mr ANDREWS:** I do not know offhand.

**The Hon. PETER BREEN:** Would you take that question on notice: How many prisoners are the subject of segregation orders?

**Mr ANDREWS:** Yes.

**Mr MALCOLM KERR:** Mr Barbour, you mentioned the preparation of a document relating to the budget. Could that document be produced to the Committee?

**Mr BARBOUR:** Yes, I have no difficulty producing it. It has formed the basis of our submission to Treasury, and I will organise for a copy to be provided.

**The Hon. DAVID CLARKE:** Mr Barbour, I think you said earlier that your office received many complaints about the complaints system used by the State Transit Authority, is that correct?

**Mr BARBOUR:** No.

**The Hon. DAVID CLARKE:** I may have misunderstood you.

**Mr BARBOUR:** We do not receive many complaints about that specific system, but we have done a detailed investigation into it and we have received a few complaints about it.

**The Hon. DAVID CLARKE:** I think you said that the quality of the system they had in place was "appalling"?

**Mr BARBOUR:** Yes. We were very concerned about the quality of the system of handling these complaints.

**The Hon. DAVID CLARKE:** Have you made your concerns known to the State Transit Authority?

**Mr BARBOUR:** To RailCorp, absolutely, and the Minister. The details are documented in our annual reports, and I referred to that specifically in my opening statement.

**The Hon. DAVID CLARKE:** You have raised your concerns with RailCorp over a period of time?

**Mr BARBOUR:** We have raised the concerns following our investigation. We have another investigation on foot, and we have had some meetings since then. The total period of time, I cannot give you a figure on. The original detailed investigation, which audited more than 200 matters, took some time.

**Mr COHEN:** The original investigation commenced in July last year. The audit took place in November and December. A provisional report was provided to RailCorp in February this year, and the final report was provided to the Minister and to Mr Graham in August this year.

**The Hon. DAVID CLARKE:** Are you satisfied with RailCorp's response to the concerns you have raised?

**Mr BARBOUR:** As I have indicated, one of the major recommendations we made was that there be an independent oversight system, and that still seems to be under negotiation. But I am hopeful, given the commitment the Minister has made, that that will happen. In terms of the improvements on the ground to the system, we are monitoring and we are getting responses from them. But, as I also indicated earlier, we have had a subsequent matter referred to us which we are currently investigating, and it causes me concern because the way in which the matter has been handled postdates the issues we raised with RailCorp. So I am, I suppose, not as optimistic that the reforms are as widespread as we would like, and we are certainly continuing to monitor those reforms.

**CHAIR:** Mr Barbour, for the benefit of those who have not read the answers you have already provided to us in written form, it is true to say that your answer on this topic is as follows:

Our report about the investigation by RailCorp of complaints against transit officers made 6 recommendations, all of which have been accepted. I have been pleased with the genuine commitment by senior RailCorp managers to implement those recommendations.

**Mr BARBOUR:** Yes. There is no doubt that there is commitment there to do it. As I say, our only concern is that the most recent investigation seems to suggest that perhaps things on the ground are not working as effectively. We recognise that in changing any complaints system, when you have 600 officers and you are receiving hundreds of complaints, it is going to take time for those measures to go through. So I remain optimistic that that will happen, but certainly it is an area that will benefit from appropriate external oversight.

**Mr MALCOLM KERR:** On page 31 of the report there is a photograph of a publication titled "YAPRap". Who produces that?

**Mr BARBOUR:** It is the newsletter of the Youth Action and Policy Association NSW, and they are called YAPA. I believe that that is a copy of a document which referred to publicity that attended our review.

**Mr MALCOLM KERR:** Of RailCorp?

**Mr BARBOUR:** That is correct.

**Mr MALCOLM KERR:** Would it be possible for the Committee to be provided with a copy of that publication?

**Mr BARBOUR:** I do not want to mislead the Committee. Mr Cohen has just indicated to me that YAPA was one of the organisations that raised concerns specifically about the complaints system and the conduct of RailCorp officers. So that is probably referring to that, rather than our direct involvement. I assume we have a copy of it, and I am happy to get it. If we do not have a copy, I will get it from YAPA for you.

**CHAIR:** A little while ago you spoke about the class in kind agreement between the Police Integrity Commission and the Ombudsman. Is there any need to review that?

**Mr BARBOUR:** Obviously, we constantly revisit those particular agreements, and we have reviewed it not that long ago. But I might ask Simon Cohen to detail for the Committee what we have done.

**Mr COHEN:** With the legislative changes in 2001, meaning that not all complaints from members of the public have to be notified to the Ombudsman, some immediate amendments were made to the class in kind agreement at that time to facilitate the legislative change. There was a long period of discussion with the Commission and with NSW Police about a new and simpler class in kind agreement, and that was signed off by the Ombudsman and the Police Integrity Commissioner on 1 October 2004. As part of our business processes for 2006, we propose to undertake a review of the impact of the class in kind agreement as part of an overall review of the reasons for the increase in complaints on that which we have received in the past period of time.

**CHAIR:** While we are talking about police complaints, I am still a little astonished, as I assume a few other people are, that the ICAC managed not to refer to you 600 police complaints matters. I also note your advice that the ICAC has not managed to provide a detailed explanation as to how they manage to do that, or manage not to do that. Over what period of time has the ICAC's failure extended? Has it been from the time the jurisdiction first changed? Is that the range of the period we are talking about?

**Mr BARBOUR:** Yes. Our understanding is that at the time of the changes to the legislation and the new obligation on the ICAC to refer to the Police Integrity Commission or us any police-related matter, that simply was not in a formal and widespread way put into operation. But from time to time there were matters that were referred to us, so—

**CHAIR:** So the ICAC did send some matters to you?

**Mr BARBOUR:** Yes, some. That is why it was not apparent to either the Police Integrity Commission or ourselves that there was a large number that had not been. Many of these matters, of course, are not just about police; they relate to allegations of a range of conduct, and police might play a role in it. So that also probably mitigated to some extent—if the Commission focused on a particular different part of the complaint, not realising that the other part might need to be referred on for appropriate investigation. But I am not sure the Commission knows—and I think that, given that it extended over a period of time, it would be very difficult for them to provide a comprehensive answer. But the consequences are not particularly good.

**CHAIR:** Why do you think it happened?

**Mr BARBOUR:** Because of a lack of awareness of their obligations to send those matters over, and perhaps a lack of clarity about the fact that corruption allegations, on the face of them, might relate to more than just the obvious.

**CHAIR:** So, they did not know what they were supposed to do?

**Mr BARBOUR:** That is one way of putting it.

**CHAIR:** I am assuming that members of the Committee do not have any other questions arising out of the opening address. I propose to ask some questions about the answers to questions on notice. In your answers you indicate that a review of the Police Team Intelligence Plan is being completed and that that will enable the Police Team to focus on police officers and commands of most concern. What is involved in that review? How will it help the Police Team to set the strategic directions?

**Mr COHEN:** Two reviews have been conducted in relation to our intelligence capacity. The first was that conducted as part of the overall review of the Police Team's activities that suggested that we could better imbed the use of intelligence products into our oversight and general work with police. The second was a review of the original intelligence plan that was put in place in 2001 to ensure that it was meeting the objectives that we had set out at that time for an intelligence capacity to meet. We think that the sorts of changes that we will see will focus on ensuring that we obtain the best information that we can from our oversight and our fieldwork, and that we are actively using that information in our oversight and targeting of command work.

Increasingly as we look to become more efficient in dealing with complaints and focus on the most serious or those areas that present the most risk, the better the intelligence we have about officers and about commands and the better we are able to ensure that our resources are focused on those areas. We would hope towards the middle next year to have bedded in all the changes that should result from those two reviews.

**CHAIR:** Does the Ombudsman have a view of the early warning system in relation to police that the Committee proposed and the police decision to propose an alternative risk assessment system?

**Mr COHEN:** I think it is fair to say that the report that was produced by NSW Police consequent to the recommendations of the Committee that research be done in that respect did not suggest a clear path forward to a comprehensive early warning system for police officers. We have seen the early work that police had done in terms of the new risk assessment processes and we have been consulted. We are yet to see the results of the pilot, but it appears anecdotally from what we have heard and from what we know about those commands, that the officers who present the most risk may well be being identified through that process. It is somewhat short, I think, of what the Committee and we were hoping out of it. We will certainly look to work with what police have put on the table and look to the, I think they call it the computer operated police system [COPS] 2 project, or the mainframe replacement project, to provide better computer capacity to facilitate a better warning system going into the future.

**CHAIR:** One other area of interest arises out of the answers you gave in relation to the questions on police. You advised that domestic violence by police officers is an area requiring significant attention by the police service. What initiatives do you think ought be considered by the police?

**Mr BARBOUR:** We are actually targeting the issue of domestic violence in a significant project. That project is going to examine a wide range of issues and that will potentially be one of those issues. We see domestic violence arising across a range of our areas of responsibility, not just in terms of police and their particular conduct in perpetrating domestic violence, but also of course in responding to it and dealing with the issues that arise when they respond. That correlates to our work in relation to reviewing child deaths and also our work in relation to the Department of Community Services [DoCS]. There are clear crossovers in terms of those particular issues. There are also significant issues in Aboriginal communities about the extent of domestic violence and so we are actually developing a fairly significant project, which will look at domestic violence. Once we have the terms of that settled I would be happy to provide the Committee with some further details if the Committee is interested in that.

**Mr COHEN:** One of the primary focuses of the project to date is to look at the guidelines that are given to police when they are dealing with domestic violence, and look at how they are actually being applied in the field to see whether, for practitioners, the sort of arrangements that are in place—both legislatively and procedurally—are appropriate to permit them to be able to intervene, in a criminal justice sense but also in a preventative sense. That is our primary focus at the moment.

**CHAIR:** I think the Committee would appreciate being kept up-to-date with that information.

**Mr BARBOUR:** Can I just add something here because we have mentioned the project. I do not want to labour the point about budget and money, but the dilemma we face at the office at the moment is that much of our project work, which we see as being extremely important and adding significant value to agencies and the New South Wales community in general, is probably one of the areas that is going to be most significantly affected by budgetary constraints because it is discretionary. I do not want to put in place systems that reduce further the number of complaints we are able to attend to or the number of issues that we need to deal with which are particularly covered in our statutory obligations. So I just

flag that we have already reduced our project list and our project work because of this, and it may well be that, despite what we see as being the importance of some of this project work, we may need to look at that in the future. I just put the Committee on notice about that. Certainly, this is not a project that we have identified that we would have to pull, but it is something that is under active consideration at all times.

**CHAIR:** I suppose the problem is that as you have become more and more reactive and less proactive you deal more with complaints and less with the broader projects that in the long run might actually be more productive but which you cannot afford to pursue because you have to keep focusing on complaints.

**Mr BARBOUR:** That is exactly right. Certainly during my term as Ombudsman I have increasingly taken the office into a much more proactive environment and role, and I see that being genuinely the real future of Ombudsman offices. However, the core of our work is always going to be reactive. We have statutory responsibilities that we must adhere to and to the best of our ability. Much of our proactive work is discretionary so that is an area that we constantly have to revisit.

**CHAIR:** While we are dealing with police I will turn to the dissemination of telephone intercept [TI] product. As I understand your answers, NSW Police has a view that the dissemination of TI product to the Ombudsman is not a permitted purpose. Do you understand the reasoning behind that proposition?

**Mr BARBOUR:** I can update the Committee a little bit in terms of the answer to our question, but I do not have a formal resolution to the issue. NSW Police have been reluctant to provide us with the information because they genuinely believe that the legislation created sufficient ambiguity about whether they can lawfully give it to us. We tried to remedy that situation by getting an opinion from the Solicitor General. The Solicitor General's opinion came down largely on the view that they were in fact able to provide that information. Nonetheless, there were some concerns that, unless there was formal agreement to them being able to do that, from the Commonwealth authorities, they were very reluctant to do it.

Literally only in the last week or so we have had a further meeting about this issue with NSW Police, my staff and staff from the Commonwealth Attorney General's Office. The Staff of the Commonwealth Attorney General's Office have indicated to police that they believe the police can provide information to us and that they would not prosecute, or move to prosecute, if they did. I think that the police position, once that advice is confirmed in writing, might change and we might as a consequence be provided with the information, but until such time as I see it in writing I am reluctant to say that it has been sewn up.

The dilemma, of course, for us is that we cannot perform our oversight role effectively if a particular investigation has used TI product and reached particular conclusions. Without access to that we just simply would not be able to do our job properly. But we are hopeful. We have been working on it now for about 18 months and we are hopeful that we will shortly have a resolution to the problem. I am very happy to keep the Committee up to date with that.

**CHAIR:** The Committee would find interest in that. The issue is the federal legislation, is that not the case?

**Mr BARBOUR:** That is correct.

**CHAIR:** It is almost identical, by the sound of it, to the problem with the Inspector of the Police Integrity Commission a couple of years ago.

**Mr BARBOUR:** Yes.

**CHAIR:** That was eventually resolved with federal amendments, I think.

**Mr BARBOUR:** Yes. The difficulty was that, although amendments to the Act were contemplated, they were not actually going to deal with that specific issue.

**CHAIR:** Are there any cases at the moment, or any specific instances, where this is a practical problem?

**Mr BARBOUR:** We have a number of matters where we need to have this resolved as quickly as possible and they have been delayed to some degree as a result of uncertainty about this, but not many. As you can imagine, there would not be that many matters that we would need this for.

**CHAIR:** While we are still on police, the targeted approach, it would seem from your answers, has had a fairly positive impact on delays in the completion of police complaint investigations by the police. What progress has NSW Police made on the internal measures that have been recommended by the Ombudsman?

**Mr COHEN:** I cannot give you a precise date, but only in the last short period have NSW Police formally adopted performance measures for timeliness in complaints handling, although those measures have been informally adopted by the Professional Standards Command prior to that period of time. They require the vast majority of complaints to be dealt with within 90 days, and set a benchmark figure for that. The capacity of NSW Police to monitor that is increasing, and some of the products that they have produced to chase up old investigations seem to be working very well. It is an area that they have focused on because of our interest in it. Our view is the results of that are being demonstrated in more timely investigations, particularly in resolving delayed investigations by NSW Police.

**Mr BARBOUR:** Simon is being particularly polite in his description of the issue. Had we not gone to the step of doing what we did and investigating it, we do not believe that NSW Police would have given the issue of delays the appropriate attention.

**CHAIR:** You actually conducted an investigation into the delay?

**Mr BARBOUR:** We got into the practice of investigating formally, by way of notice, all of the delayed matters as to why they were delayed. We had to do that repeatedly to get them to respond—in our view appropriately—to the issue.

**CHAIR:** Are there any other fields where that approach might be useful?

**Mr BARBOUR:** For NSW Police?



**CHAIR:** Well, perhaps start with them, yes.

**Mr BARBOUR:** We believe that, over the past few years in particular, we have become a lot more strategic in the way we use our resources and our powers. You will have seen from our annual report that last year we conducted 67 formal investigations, which is probably more than in any other recent time. So far this year we have 55 investigations on foot. What we are trying to do is not only investigate those matters that we have traditionally needed to investigate, but we are trying to use our powers in a very strategic way to deal with systems issues and with particular systemic problems that we identify in any agency that is within our jurisdiction. We would certainly adopt that sort of practice where it was necessary.

**The Hon. PETER BREEN:** Could I interpose for a moment?

**CHAIR:** Certainly.

**The Hon. PETER BREEN:** I know we have discussed this before, but I am afraid I have just lost it for a moment. What is the protocol when someone makes a complaint about police? Do they go to the Ombudsman, or to the police? What is the way in which the complaint is identified as being one suitable for the Professional Standards Command or for the Ombudsman?

**Mr BARBOUR:** People can make a complaint to the Ombudsman, to the Police Integrity Commission or to police directly. Unless it is a matter that the Police Integrity Commission wants to deal with directly, the vast majority of complaints are dealt with by police in the first instance and oversighted by my office—we oversight about 99 per cent of all complaints. We do not do initial investigations, although if we chose to do a particular investigation at some stage during the course of the police investigation we can technically take over if we want. Our focus is on oversight of the systems and making sure those work effectively. There are various protocols in place for how those matters are dealt with. Unless the matters are particularly serious they are not done by Professional Standards Command; they are done in the local regions and are the responsibility of the Local Area Commanders and their particular complaint management teams.

**The Hon. DAVID CLARKE:** I think your office was required to monitor the provisions of the Police Powers Vehicles Amendment Act 2001, is that right?

**Mr BARBOUR:** Yes.

**The Hon. DAVID CLARKE:** And I think you did that and you provided your report to the Minister for Police, it says here in September 2003.

**Mr BARBOUR:** Yes.

**The Hon. DAVID CLARKE:** And then I think the Minister is to table that report to Parliament, is that correct?

**Mr BARBOUR:** No, as we have indicated in our answers to the questions. Question 10 is specifically on it, and that particular issue is dealt with in my answer. There is no formal

requirement in that particular legislation for the Minister to table the report in Parliament, but certainly our expectation would be that he would do so.

**The Hon. DAVID CLARKE:** So you provided that in 2003. Are you aware of whether or not he will table that report?

**Mr BARBOUR:** We have certainly requested that the report be tabled, as we do with all reports. The report was originally provided to the former Minister, Minister Watkins, but as I say the legislation does not require the Minister to table it in Parliament.

**The Hon. DAVID CLARKE:** When did you request that it be tabled?

**Mr BARBOUR:** I do not know. When we forward these to the Minister we always ask that they be tabled as soon as appropriate by the Minister. So it probably would have been when we forwarded it in 2003.

**The Hon. DAVID CLARKE:** Could you take that question on notice and come back to us as to when you requested that it be tabled?

**Mr BARBOUR:** I am happy to take that on notice. I am also reminded that recently Hon. Catherine Cusack passed a motion in the Upper House—

**The Hon. PETER BREEN:** I think she only gave notice of it.

**Mr BARBOUR:** Gave notice of it? Okay. No I think it was agreed to. You may not have been there on that day. The Hon. Catherine Cusack has identified from our annual report the concern that we have about the number of reports still with Ministers that have not yet been tabled and she has moved a motion, which has been agreed to, that those particular reports be provided.

**The Hon. DAVID CLARKE:** You are not sure when you made that request to the Minister that this report be tabled in Parliament but you think it would have been at the time that the report was made available to the Minister.

**Mr BARBOUR:** I am just referring to our standard practice, and our standard practice when we provide review reports is to request that they be tabled as soon as possible. From time to time we further write to Ministers to give them a progress report and we set out by way of a table what reports have been completed and are with them and which are yet to be tabled and those reports that we are currently working on. So at various times responsible Ministers would be aware of the relevant time line in relation to all of the reviews, both those complete and provided to the Minister and those that we are currently working on. So there would be a number of times where we have identified those particular issues to each of the relevant Ministers.

**The Hon. DAVID CLARKE:** So in response to your report on the Police Powers Vehicles Amendment Act and your request to the Minister that this be tabled in Parliament, have you received any response from the Minister since you made that request of him?

**Mr BARBOUR:** I am not in a position to be able to indicate that at this stage. As I said, it was the former Minister. I am not sure what the former Minister said and I am not sure whether I have received a direct response about the issue from the current Minister. So I would need to check that, and I am happy to take that on notice and get back to the Committee.

**The Hon. DAVID CLARKE:** As to whether there has been any response from the previous Minister or the present Minister for Police.

**Mr BARBOUR:** Certainly.

**CHAIR:** The concerns in your report about the non-tabling of your review reports has been a matter of concern to this Committee over a period of time. As you know, we have essentially supported your position. In that context, I am quite impressed by the ingenuity of your answer to question 10, where you make the point that rather than banging on the desk with Ministers demanding that reports be tabled, what you are now doing is checking to see whether the recommendations in reports are actually being adopted. It seems to me from this answer that the report that we have just been talking about made three recommendations, all of which have been adopted, which to some extent means that the tabling of the report is not such a big deal. But what I am interested in particularly is whether you are doing that with all the other reports that have not been tabled, that you are effectively getting the same result by a different course.

**Mr BARBOUR:** We are where recommendations are agreed to. The process of the preparation of these reviews, as you can imagine, they take a great deal of time to prepare and they are frequently very detailed. At the conclusion of the preparation of a draft document we will provide it to the relevant agency to comment upon, and at that stage we will have draft recommendations. Once we formalise that process we then hold the agency to the recommendations. We see no reason why they should not be complying with those if they have already accepted them. So where it is possible to do that, we are doing that.

**CHAIR:** Do you have a general power to table reports to Parliament on topics that are of relevance that are within your jurisdiction?

**Mr BARBOUR:** We have a capacity to issue reports to Parliament on areas where we are concerned and believe that they should be made the subject of a report to Parliament. If your question is directed towards the review issue, the dilemma is that there is a statutory framework which requires us to actually report to the Minister, and I think until such time as there is reflected in the statute an opportunity for us to do something within a time period if the Minister does not table it, the Act allows the Minister to table it, generally the wording is "as soon as practicable". So it would be rather difficult for us to go behind the Minister to do that. I think the appropriate course is to try to follow the course we have talked about in terms of getting the recommendations complied with and to also regularly advise the Minister that we are still concerned that the report has not been tabled.

**CHAIR:** And you have a capacity if the case was serious enough to do a report on the non-tabling of a report you had reviewed.

**Mr BARBOUR:** That would be about ministerial conduct and that would be something that I would need to consider because technically ministerial conduct is outside our jurisdiction. Can I say though that sometimes there are competing issues which are not really just simply about, as one would assume, a Minister being tardy in tabling it or not having good reason to. Because we are dealing with reviews that are being prepared after a significant period of time there has often been supplementary legislation, reviews of practice, new legislation introduced and so the relevance sometimes of the review reports or how they might be dealt with in that context of a new legislative framework becomes much more complicated and I think perhaps some of the reviews, that has arisen because of the LEPR legislation and so on. So I am certainly not making excuses for the Ministers but I expect that there may be some issues of that kind which interfere with the smooth timing of tabling.

**The Hon. DAVID CLARKE:** Following on from that, are you aware of any reason why your report provided in September 2003 regarding the Police Powers Vehicles Amendment Act would not have been tabled by now?

**Mr BARBOUR:** No. I am on record previously with this Committee and also in other public forums of indicating that I believe it is in the best interests of everybody to have our reviews tabled as promptly as possible.

**CHAIR:** When do you expect to report to Parliament on forensic procedures?

**Mr BARBOUR:** The final report is currently under way, I think by December.

**Mr COHEN:** We should have a draft report completed by December of this year, and we will consult with NSW Police and other agencies in the early part of next year with a view, we would have thought, to having finalised the report hopefully by March or April of 2006.

**The Hon. PETER BREEN:** That is a different report to the one referred to in this brochure, which is Crimes (Forensic Procedures) Act report which has already been tabled.

**Mr COHEN:** There are two parts to the review. The report that has been tabled deals specifically with the forensic testing of serious and indictable offenders. In addition to that the Forensic Procedures Act deals with suspects and volunteers, and the report that is being finalised at the moment deals with the impacts of the new legislation on those categories of people. There was an additional period of time provided to permit the review to specifically include volunteers.

**The Hon. PETER BREEN:** I notice that in your answers to the questions you refer to a problem with the Department of Analytical Laboratories regarding preservation or testing of forensic material. Is that dealt with in the report which you are currently undertaking?

**Mr COHEN:** It is. It was touched on in the previous report and in terms of the inconsistency in information held by the Department of Analytical Laboratories [DAL] and NSW Police, and that is a matter that we indicated we would consider further in the current review, and it will be canvassed in the report.

**Mr BARBOUR:** We are also in the process of completing a separate investigation into issues relating to the laboratory. As indicated in answer to question nine, that statement of provisional findings and recommendations was provided to the DAL in August.

**The Hon. PETER BREEN:** There has been a recommendation by other committees for an independent forensic science laboratory separate from the Department of Health and NSW Police. Is that an issue that you would be considering, or would that be regarded as a policy matter?

**Mr BARBOUR:** It is not something that we are considering. Certainly, during the course of the review a range of options have been put forward and depending on who you talk to different views are put forward. Some people believe it should be done in house by police; other people believe it should be done completely independently; and other people believe the current structure is okay but just needs to improve in a systems sense. But we are not specifically looking at that issue in terms of our review. We are looking at the efficacy of the legislation and how it is being implemented by police.

**The Hon. PETER BREEN:** The issue of the preservation of forensic material by the Department of Analytical Laboratories came up in the old version of the Innocence Panel where police were providing information as to what was held by the DAL and then the DAL was providing different information as to what it held. There is a new version of the Innocence Panel on the agenda. Have you been consulted in relation to the proposed DNA review panel?

**Mr BARBOUR:** No.

**The Hon. PETER BREEN:** Has the old Innocence Panel been the subject of any review by the Ombudsman, particularly in the context of that question of forensic material being held by the DAL?

**Mr BARBOUR:** No.

**CHAIR:** Does the Ombudsman have any indication of when the Child Protection (Offenders Registration) Act review report is likely to be tabled?

**Mr BARBOUR:** No. I am reminded that that is one of the reports that is included in the Hon. Catherine Cusack's order, so it may well be that that will lead to the tabling of it.

**CHAIR:** What has been the response of NSW Police to your request to review standard operating procedures in relation to the recording of COPS events in the context of knife searches and so on?

**Mr COHEN:** The request originally arose out of not only our legislative review work but also a separate complaint matter that we received about inflated knife search figures for a particular local area command. NSW Police has indicated that it has revised the standard operating procedures for those. We have not seen a copy of those procedures yet and have requested them, and we will review them to ensure that they meet the issues that were raised both in our reviews and in our report following our review of knife search investigation by police.

**CHAIR:** I think there is an attempt to modernise COPS. Will you keep an eye on the standard of record keeping as that process goes on?

**Mr COHEN:** The difficulty with the record keeping to date has been across so many different areas. We do not think that police are perhaps receiving as much training as they might about how to make records. There appears to be inconsistent practice amongst police about how records are created or whether in fact a record should be created. Those things make it very difficult sometimes to analyse information usefully to identify good and poor practice or particular issues in relation to searches. So we are particularly interested with the new review that we have under the Law Enforcement (Powers and Responsibilities) legislation [LEPRA] to look at how police are implementing the recording of searches that they undertake as part of the review that we have in relation to the general search powers after arrest. So we will certainly be closely following how police implement the new legislation in terms of their recording, and we think that will have an overlap with the new mainframe replacement program. So we will certainly be looking at that in that context.

**CHAIR:** Have you had any discussions with the police about potential difficulties from the new controlled operations scheme with the two tiers?

**Mr BARBOUR:** There are concerns about how it might operate. I am happy for Greg to take the question.

**Mr ANDREWS:** The proposal here is to create two tiers in a streamlined application and authorisation process for what is termed the less serious matters. We were consulted on a draft bill earlier in the year and our assessment at that stage was that what was termed the less serious matters would be about 95 per cent of the controlled operations that take place. Until the new amended Act and the procedures particularly followed by NSW Police are made known to us it is hard to really access how we are going to approach it. At the moment all the authorities and records are centralised, they are kept in one place, and the reasonably detailed application format and the authority format used is fairly conducive to the auditing process.

We certainly have concerns that that may not be the case under the new system. Obviously it is an attempt to decentralise the authorisation process so that means potentially the records will be kept at each Local Area Command, which means we may have to go around to each Local Area Command to inspect the records as we are required to under the Act. We are also concerned that a streamlined application may not make it obvious how the mandatory considerations that the authorising officer has to address may have been taken into account, which is one of the things we have to check out. So, at the moment we are a bit in the dark. I received a call earlier in the week from someone from a particular agency who was commenting on a Cabinet minute, so apparently something is happening at this moment so it may be before you as members very shortly.

**Mr BARBOUR:** Can I just add, in relation to controlled operations, we anticipate tabling our annual report on Monday 5 December at this stage.

**CHAIR:** The answer you gave to the question on notice about controlled operations referred to a thing called a surveillance devices bill. What is that?

**Mr ANDREWS:** At the moment there is a Listening Devices Act which authorises various law enforcement agencies to plant listening devices. Under that Act, apart from the approval of the warrants by a judicial officer in the first instance, there is no monitoring regime as there is for telecommunications interception or controlled operations. Following September 11 and various Council of Australian Governments [COAG] meetings and an attempt to develop a national approach to cross-border investigations and terrorism and so forth, there was a push for some uniform surveillance devices legislation. It has already happened in the Commonwealth and progressively it is going around the States, and that includes introducing a monitoring regime similar to the other Acts. We were consulted by NSW Police—I think in December last year. They were starting to put together a proposal for New South Wales. We have heard nothing since about it. So, we do not know where it has gone and where it is up to.

**Mr BARBOUR:** Importantly, at that meeting I was not present, but I understand that the suggestion was made that when it was introduced we would have a monitoring or oversight role similar to some of our other roles in relation to it.

**CHAIR:** Are there significant differences in the National model they are proposing and what we currently have?

**Mr ANDREWS:** From memory, there are some minor differences which are to do with the regularity of reporting and who the reports are made to. At the moment, under the telecommunications interception legislation, we have to make an annual report to the Attorney General who in turn has the report to the Commonwealth Attorney-General. With controlled operations we make an annual report to Parliament. I think from memory the new Commonwealth legislation requires reports not from the independent agency but the agency reports to the agencies it is monitoring and they report to the Minister. We would not favour that, of course, but we are not sure what will happen in New South Wales.

**CHAIR:** Has the department released its neglect policy yet?

**Mr BARBOUR:** No, not yet. We anticipate, from the most recent information, we can expect it soon.

**CHAIR:** Has the department clarified the difference between informal undertakings and care plans not registered with Children's Court?

**Mr BARBOUR:** That is a very good question. Before specifically answering that, can I make the observation that with the reforms currently under way within the department sometimes the policy and reform process has yet to be seen in evidence in practice in the particular community services centres and in the case work. We will be raising in our reviewable death report our concern that in some of the cases we reviewed the practice of informal undertakings was still being used in cases where we thought that was inappropriate and which appeared on the face to be inconsistent with current policy within the department. Certainly the policy is that informal undertakings should not be used any further, and my understanding is that the department is committed to that.

**Mr KINMOND:** On the question of informal undertakings, whether they are registered care plans or informal undertakings, the key issue really relates to the risk assessment

associated with that and the monitoring, even if one has a formal undertaking that is a care plan that is registered with the court. If, for example, you have an issue of ongoing substance abuse, the real question is what monitoring is in place to ascertain whether the commitments that have been made are being met. So, we see that as a real issue.

**CHAIR:** Is the Ombudsman going to continue to monitor the Department of Community Services compliance of with data entry requirements?

**Mr BARBOUR:** Yes. Certainly the introduction of KIDS has been an extraordinary challenge for DoCS, and we monitor regularly how it is working. Steve Kinmond and I and another staff member recently attended three community service centres and talked to staff. One of the things we talked about was how the system was working, whether or not it was user-friendly, whether or not they found it takes too long to use the system, and so on. DoCS has indicated it is continuing to monitor the development. As you can imagine, a system that size and scale will have problems with it, but we will continue to see how it impacts either positively or negatively.

**The Hon. PETER BREEN:** Can I ask about that proposed surveillance legislation, Mr Andrews? If I understood correctly, that has been agreed to by COAG?

**Mr ANDREWS:** Yes. COAG set up a working group that proposed model legislation and there is a report, which is probably in the Parliamentary Library somewhere, setting that out.

**The Hon. PETER BREEN:** Will it effectively replace the Listening Devices Act?

**Mr ANDREWS:** Yes. It will not only cover listening devices but other optical devices as well, tracking devices and things like that.

**The Hon. PETER BREEN:** The Listening Devices Act deals with, amongst other things, private individuals recording conversations with other people without their consent. Will the new surveillance legislation deal with that situation?

**Mr ANDREWS:** I have not seen the proposed legislation for New South Wales, so I do not know.

**The Hon. PETER BREEN:** So you do not know whether it has come up as an issue?

**Mr ANDREWS:** No.

**The Hon. PETER BREEN:** I raise that because there are some deficiencies in the Listening Devices Act in that area of people recording other people conversations. It seems to me if they are going to review the legislation or replace it, it would be an opportunity to deal with those issues. On another matter, the monitoring of the HRMU at Goulburn, which you undertake, do you have any record of complaints by prisoners about access to legal advice?

**Mr ANDREWS:** Sorry, offhand I am only familiar with one particular complaint that raised that issue. I would have to check our complaints records to see if it was more general. That particular complaint related to an allegation that there had been a contravention by a legal officer in terms of the alleged passing of contraband, and they were subsequently



banned from visiting that particular prisoner or any correctional centre. I think that got some publicity at that time, a year or so ago. I think that is the only one I am familiar with.

**The Hon. PETER BREEN:** I do not recall the publicity, but I take it that involved the lawyer bringing contraband in, did it?

**Mr ANDREWS:** From memory, there was an allegation that the prisoner had been observed passing something that was unauthorised to the lawyer.

**The Hon. PETER BREEN:** The reason I raise the issue is that there is a practice at the HRMU in the case of a couple of prisoners and/or a couple of lawyers that they will not let the lawyer interview the prisoner at the HRMU and they take the prisoner from the HRMU through the back lanes of the prison into the multipurpose unit in the main prison. In order to do that they have to close down the whole unit in the HRMU because they need four or five officers to escort the prisoner across to the multipurpose unit. It seems to me that that process is quite arbitrary in relation to the lawyers and/or the prisoners and does not seem to have any security basis for it. I wonder whether you, in the course of investigating the HRMU, have been aware of that issue?

**Mr ANDREWS:** No, I am not aware of that. I can only presume they are doing it for security reasons.

**The Hon. PETER BREEN:** It is hard to imagine whose security is at risk—the lawyers', the prisoners' or the department's.

**Mr ANDREWS:** I am sorry, I am not aware of it. I do not know.

**The Hon. PETER BREEN:** So, it is not an issue that has come up with you?

**Mr ANDREWS:** No.

(Conclusion of public hearing. Hearing continued in camera)



## Chapter Five - Response to Questions Taken on Notice

25 November 2005

Mr Paul Lynch, MP  
Chairman  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Level 20 - 1 Castlereagh Street  
SYDNEY NSW 2000

Dear Mr Lynch

**Re: Response to matters taken on Notice**

At the General Meeting of the Committee on Wednesday, 23 November 2005, we undertook to provide the Committee with certain information and documentation.

**One matter taken on notice was the number of inmates held on segregation.**

Sections 9-22 of the *Crimes (Administration of Sentences) Act* detail the provisions enabling the Commissioner of Corrective Services and his delegates to place certain prisoners in segregation or in protective custody arrangements.

In particular, s.10 provides:

***10 Segregated custody of inmates***

- (1) *The Commissioner may direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to:*
  - (a) *the personal safety of any other person, or*
  - (b) *the security of a correctional centre, or*
  - (c) *good order and discipline within a correctional centre.*
- (2) *The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the segregated custody direction was given.*
- (3) *A segregated custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.*

*(4) Subsection (3) is subject to section 15.*

Section 12 provides:

**12 Effect of segregated or protective custody direction**

*(1) An inmate subject to a segregated or protective custody direction is to be detained:*

*(a) in isolation from all other inmates, or*

*(b) in association only with such other inmates as the Commissioner (or the governor of the correctional centre in the exercise of the Commissioner's functions under section 10 or 11) may determine.*

*(2) An inmate who is held in segregated or protective custody:*

*(a) is not to suffer any reduction of diet, and*

*(b) is not to be deprived of any rights or privileges other than those determined by the Commissioner (or the governor in the exercise of the Commissioner's functions under section 10 or 11), either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated or protective custody.*

Other sections of the Act provide for the review and reporting of segregation.

According to the Offender Population Report produced by the Department of Corrective Services for the week ending 13 November 2005, there were 9050 people in full time custody on that day. There were 54 males and 4 female inmates on administrative segregation orders and 1399 male and 36 female inmates on protective custody orders.

Of those on segregation orders, they were held at the following centres: Goulburn main 11; HRMU 4; Metro Medical Transient Centre 3; MRRC 8; Mulawa 3; Parklea 7; Bathurst 4; Broken Hill 1; Grafton 3; Kariong 1; Mid-North Coast 2; Tamworth 1; and 4 at Glen Innes.

**Two further questions taken on notice were the date on which the Ombudsman asked the Minister of Police to table the report into the *Police Powers (Vehicles) Amendment Act 2001*, and whether there had been any response from the previous Minister or present Minister to that request.**

The Ombudsman wrote to the Minister for Police on 22 September 2003 noting that although the Act does not require the Minister to furnish a copy of the report of the Ombudsman's review of the *Police Powers (Vehicles) Amendment Act 2001* to Parliament, 'I would appreciate if a copy of the report is furnished to the Parliament at your earliest convenience.'

On 15 October 2004, the Minister for Police wrote to the Ombudsman stating that NSW Police was considering its response to the report, and that 'I will be pleased to table the report prepared by your Office in Parliament in the near future'.

In addition, the report was noted as having not yet been tabled in three recent letters to the Minister updating him on the status of all legislative reviews. These letters were dated 13 May 2005, 17 August 2005 and 16 November 2005.

**A fourth matter concerned the funding submission made by this Office in relation to budget cuts.**

Please find attached a copy of the funding submission which was provided to the Premier, the Director General of The Cabinet Office and to Treasury officials.

**A fifth question taken on notice related to documents concerning our budgetary position.**

Please find attached a copy of the relevant parts of our forward estimates submission for the 2005/2006 financial year.

**The sixth question related to the YAPPA publication referred to on page 31 of our 2004/2005 Annual Report.**

Please find attached a copy of that publication.

I believe that this information and documentation addresses each of the questions taken on notice at the General Meeting.

Yours sincerely

Bruce Barbour  
**Ombudsman**

Encs

**Enclosures:**

## **Part A – Funding crisis**

It has long been recognised that the NSW Ombudsman provides a “value for money” service to the people of NSW. The Parliament has repeatedly acknowledged this, along with the professionalism and competence of the Office, by the gradual expansion of the Ombudsman’s jurisdiction and powers over time. *[See Part C for comparisons with other watchdog agencies]*

Our focus has always been on establishing and maintaining a high standard in both our work and the service that we provide. Our reputation for maintaining high standards in administrative conduct is important because it helps ensure that agencies accept our advice and implement our recommendations.

However, over time we have had to modify our standards and reduce the level of service that we provide. This decline is not of our making – it is because of the decline in our funding base (in real terms). This issue has been flagged in the formal budget process; however, the situation has now become critical with continual and substantial increases in work coupled with budget cuts and unfunded pay increases meaning that we have no capacity to adequately respond to the increased volume of work that we receive.

Written complaints are also becoming more complex as agencies become more proficient and effective at dealing with simple complaints in the first instance. Complex complaints take more time and use more resources to finalise than the less complex matters. This impacts on our capacity to deal appropriately with the numbers of matters that we receive, contributing to a further decline in our service to the public.

We understand that NSW faces tight fiscal conditions, with the onus on agencies to improve efficiency and redirect funds to frontline services. We are supportive of this policy. We have continually improved our efficiency over the past 5 years. We have redirected resources to frontline services. In an environment of static complaint numbers our efforts could have been enough to cover the public sector salary increases and even the “forced” or “global” savings requirements imposed in recent budget allocations.

We have been advised that our budget is to be cut by 1% or \$164,000 in the 2006-2007 year. This is on top of a similar cut in 2005-2006 and a 3% cut the year before. These “forced” or “global” savings requirements are significant when accumulated, particularly when we have had to absorb pay increases to staff that have not been funded by government. The loss to the office of funding due to the government imposed “savings” since 2002-2003 is:

- 2002-2003 and every year thereafter – \$34,000 – cumulative amount \$34,000
- 2003-2004 and every year thereafter – \$58,000 – cumulative amount \$92,000
- 2004-2005 and every year thereafter – \$500,000 (3%) – cumulative amount \$592,000
- 2005-2006 and every year thereafter – \$164,000 (1%) – cumulative amount \$756,000
- 2006-2007 and every year thereafter – \$164,000 (1%) – cumulative amount \$920,000

With increases in all areas of our work together with budget reductions in real terms, we are facing a crisis – a crisis which will result in critical and sensitive matters not being properly dealt with.

## **Part B – Areas of work most affected by funding crisis**

Our Results and Services Plan highlights a number of areas of our work that require additional resources. We recognise that our needs can be prioritised. The following are the areas most affected by our current funding crisis. Each of these areas of operation receive a significant amount of critical attention from the Parliament, media and are areas of considerable public interest.

In addition, although it has not been raised before, legal expenses has become an increasingly significant issue for the Ombudsman. The details are set out below (see section 4).

## 1. Reviewable Deaths function

In December 2004 the Ombudsman tabled his first annual report on Reviewable Deaths (ie the review of the deaths of certain children and those people with a disability that died in care). This new function, which was given to the Ombudsman at the time of the amalgamation of the former Community Services Commission, focuses largely on systemic issues arising from reviewable deaths, reviewing trends and patterns and recommending changes to policies and practices that might prevent or reduce untimely deaths. In establishing and performing this function, it has become clear that we must review deaths not only at a systemic level but also the circumstances surrounding individual deaths. This is an onerous and complex function.

The number of deaths that are captured by the legislation and the amount of work required for each review far exceeds the indicative assessments that were made when the Ombudsman was given this function. The funding provided by the Government, which was based on these indicative assessments, is inadequate to perform this function appropriately. The function is non-discretionary and the focus of considerable public scrutiny.

At the time we were given responsibility for reviewable deaths, it was expected that there would be approximately 70-80 child deaths to be reviewed. In our first review period (which was 13 months) 161 child deaths were reviewable under the Ombudsman's reviewable death function. We closely examined 137 of these deaths as they related to abuse, neglect or suspicious circumstances. A number of these cases warranted further inquiries and we commenced investigations into eight deaths, five using the formal powers of the Ombudsman. The outcome of one of these investigations resulted in a Special Report to Parliament in December 2002.

During the 13 month review period, we also received notification of 110 deaths of people with a disability in care. We conducted more detailed reviews including a group review of 33 deaths that were the result of respiratory illness.

There is both a parliamentary and community expectation that the Ombudsman will continue to give this work priority. This expectation cannot be met within the resources provided by government. The Ombudsman needs at least three additional staff to adequately perform this function.

**Funding required 2005-2006: \$300,000**

## 2. Community visitors

The Official Community Visitor function is severely under resourced, with regular annual requests to increase the funding having been rejected. Official Community Visitors are appointed by the Minister for Community Services to attend places providing accommodation services for children, young people and people with a disability. Visitors have a key role in monitoring the quality of services provided to residents, and work collaboratively with services to achieve enhanced outcomes for residents. Visitors inform both the Minister and the Ombudsman on the quality of the services being provided. The work of visiting is essential to the Ombudsman being able to meet his community services obligations.

In 2001-2002 the NSW Treasury and the former Community Services Commission agreed to a "responsible visiting rate" of an average of four by four hourly visits to each visitable service per year. At present there is a total of 11,000 hours funded for approximately 1198 visitable services – the equivalent of 9 visitable hours per service instead of the agreed 16 hours. Trends indicate that the number of visitable services will increase over time, making this situation worse.

The budget constraints has meant that visitors have not been able to spend enough time during each visit to do their work effectively with some services being visited so infrequently or not at all that it is impossible for visitors to effectively monitor the quality of the service provided. About 22% of eligible services were not visited during the 2003-2004 financial year and about 30% were not visited in 2004-2005.

With the limited resources for this program, visitors have not received an appropriate level of training and support, which has impacted on the quality of service provided.

The Ombudsman believes that this situation has resulted in an unacceptable risk for the most vulnerable in our community including children, young people and people with a disability in care. The Ombudsman needs additional resources, at least to the previously agreed level, to adequately perform this function.

**Funding required 2005-2006: \$314,000**

**3. Complaints number increases – particularly complaints about police**

We continue to experience increases in our complaint levels despite the proactive strategies we put in place to keep numbers stable. Complaints about police increased over 23% in the 2004-05 financial year while complaints in our community services jurisdiction increased by over 31%. Complaint numbers in our general and child protection jurisdictions remained constant, despite further initiatives to reduce them, which equates to an increase in real terms.

Our proactive strategies include negotiating agreements with NSW Police and some agencies in our child protection jurisdiction where low risk or less serious matters need not be notified as would otherwise be required by the relevant legislation. However, we still must effectively oversight how these matters are handled through an increasingly extensive program of audits.

The impact of the agreement in the police jurisdiction can be seen in the sharp decline in complaints in the 2000-2001 financial year – the complaint numbers dropped from over 5,000 to 3,600. Since that time however complaint numbers have continued to increase. Complaints now notified are the more serious complaints about police, not the less serious matters, which remain excluded from notification by agreement with the NSW Police. This office continues to oversight approximately 99% of all complaints about NSW Police with the remaining 1% being oversighted by the Police Integrity Commission (PIC).

In the same period of time the number of complaints audited has increased from 1,443 in 2000-2001 to 6,000 in 2004-2005.

We sought additional resources for complaint handling in the 2005-2006 budget process but were unsuccessful. We flagged that without additional resources our service capabilities will decline. Delay will occur in the handling of complaints and there will be the potential for serious issues to remain undetected, which creates an unacceptable risk for the NSW community.

As well, the proactive work undertaken by the Office is at risk due to the under resourcing of our complaint function. Our capacity to undertake complaint related and other projects has been curtailed. We have been required to cease a significant project about police whistleblowers because it was necessary to reallocate resources into complaint handling. We have not been able to commence other planned complaint related projects. This lack of capacity to undertake important systems reviews has the clear potential to increase costs to police officers, government and the community in the long term.

This year an error by the ICAC will see an additional 600 police complaints being referred to the office. These complaints were received at the ICAC over a number of years and were not forwarded to this office or the PIC as required by the legislation. Without additional resources to appropriately deal with these complaints we will need to divert already stretched complaint handling resources from other areas, having a significant negative impact on our complaint handling work.

The Ombudsman needs at least four additional staff to adequately perform his complaint handling function.

**Funding required 2005-2006: \$401,000**

**4. Legal expenses**

A current issue for the Office relates to the provision of legal services, particularly our ongoing ability to use the Crown Solicitor for advice or legal representation. The Ombudsman and his staff are generally immune from legal proceedings without leave of the Supreme Court – this means we are rarely involved in litigation. Our main requirement for legal services is to assist with legal, operational



and tactical decisions in complaint handling, investigation and oversight functions. We primarily perform these functions using internal legal resources.

The Crown Solicitor provides advice to most government agencies within the jurisdiction of the Ombudsman and often has a relationship with agencies, as their legal service provider, which is longstanding and extensive. In our experience, the Crown Solicitor almost always has or will provide advice to government agencies where they are in disagreement with us over a particular issue. It is therefore not appropriate for the Crown Solicitor, due to this conflict of interest, to then provide advice to the Ombudsman, on the same or similar issues.

In the two most recent matters where the Ombudsman has been in litigation, the Crown Solicitor has acted for the other party, and therefore in any event, could not act for the Ombudsman.

These matters taken together make it inappropriate for the Ombudsman to obtain legal advice or representation from the Crown Solicitor on any matter. It is not our contention that the Crown Solicitor is acting improperly. Instead, our view is that it is not an option available to us to obtain legal advice from the Crown Solicitor, as they will usually have a conflict, having already given advice to the other party.

The direct financial impact of this situation is that the Ombudsman's legal expenses are not met through the Attorney General's fund that covers the cost of core legal work undertaken by the Crown Solicitor – which is available to other agencies. The Ombudsman must instead bear these costs directly, putting us in a disadvantageous position. Because of this, we believe that appropriate funding arrangements for core work performed on behalf of the Ombudsman by an external legal provider other than the Crown Solicitor is necessary. Funding needed for this work is based on specific costs borne by the Office in recent litigation, using private legal representation.

**Funding required 2005-2006: \$80,000**

#### **5. Summary of funding required**

<b>Issue</b>	<b>Amount required</b>
Reviewable Deaths function	\$300,000
Community Visitors	\$314,000
Complaint Handling	\$401,000
Legal Services	\$80,000
<b>Total</b>	<b>\$1,095,000</b>

## Part C – Comparison with other watchdog agencies

The inadequate level of funding provided to the Ombudsman becomes obvious and stark when comparisons are made between the Office and the following “watchdog” agencies:

- the Independent Commission Against Corruption (ICAC)
- the Health Care Complaints Commission (HCCC)
- the Police Integrity Commission (PIC)
- the Judicial Commission
- the Commission for Children and Young People (CCYP)

The information below has been sourced from publicly available documents including the Budget Papers, annual reports and websites. We have used this information in good faith, but can’t attest to its accuracy.

### 1. General information about watchdog agencies

#### (a) Ombudsman

The NSW Ombudsman is an independent and impartial watchdog body whose job is to make sure that the public and private sector agencies and employees within jurisdiction fulfil their functions properly. The Ombudsman helps agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

The key aim of the Ombudsman is to improve the delivery of services, including community services, by NSW agencies and service providers. The office’s mandate is to improve the conduct and decision-making of agencies within jurisdiction. Traditionally, the office has responded by dealing with complaints and overseeing investigations - recommending improvements to the way agencies perform in relation to individual matters and broader issues. Over the years the Ombudsman’s functions have become much wider.

The office now oversees the investigation of complaints about police, the handling of child abuse allegations and convictions by persons and agencies within jurisdiction, and the use of powers to conduct controlled operations.

The office reviews the delivery of community services, the causes and patterns of deaths of certain children and people with a disability in care, the determination of FOI applications and the operation of a number of new pieces of legislation conferring additional powers on police and correctional officers.

The Ombudsman audits complaint handling systems of NSW agencies and community service providers, and telephone interception records held by agencies who are authorised to intercept telephonic communications.

Ombudsman - Key performance indicators				
<b>1. Budget papers (highlights only)</b>				
Year	2004-05	2003-04	2002-03	2001-02
Written complaints and notifications received*	11,357	10,402	10,810	9,970
Telephone inquiries	24,000	26,000	26,000	27,000
Direct formal investigations~	41	40	51	
Police Complaints audited	6,000	7,529	7,701	2,623
Agency audits - child protection	24	12	14	16
Legislative reviews in progress	9	10	9	#
Community visits undertaken	3,100	3,121	2,938	2,996
Deaths in care assessed	230	247	103	85
Child deaths notified	559	600	245	NA
Reviews of services complaint handling systems	50	20	36	35
S13 reviews of people in care	30	67	83	88
* total of all budget programs – formal and informal complaints under community service program included here				
~ does not include formal investigations in the community services program				
# not reported in this year				
<b>2. Annual Report 2003-2004</b>				
<ul style="list-style-type: none"> <li>• 9,167 formal complaints received</li> <li>• 26,521 informal complaints received</li> <li>• 9,239 formal complaints finalised</li> <li>• Finalised 46 investigations, 6 concerning the provision of community services</li> <li>• Monitored 39 police investigations, requiring our attendance at police interviews of the complaints, witnesses and with the police officer subject of the complaint</li> <li>• Tabled 2 Special Reports to Parliament, one about services provided by DADHC and the second about SAAP services</li> <li>• Closely reviewed the deaths of 137 children and 110 people with a disability</li> <li>• Published 8 discussion papers on legislation we are reviewing</li> <li>• Published an issues paper on the adequacy of the Protected Disclosures Act</li> <li>• Revised, updated and published seven guidelines</li> <li>• Made 31 visits to 21 correctional centres and 17 visits to juvenile justice centres</li> </ul>				
<b>3. Budget allocation 2005-2006</b>				
• Recurrent	=	\$17,529,000		
• Capital	=	\$ 715,000		

**(b) ICAC**

The aims of the Independent Commission Against Corruption (ICAC) are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. ICAC has significant powers and discretion to:

- expose corruption through investigations which can include public hearings
- prevent corruption by giving advice and developing resistance to corrupt practices in public sector organisations
- educate the public sector and the community about corruption and the role of the ICAC.

These functions aim to expose and minimise corruption that is within and affects the NSW public sector.

With the establishment of the Police Integrity Commission (PIC) the jurisdiction of the ICAC was significantly reduced. From 1 January 1997 corruption allegations about police, which accounted for 30% of all allegations reported by the public and over 75% of all corruption allegations reported by public authorities, ceased to be the responsibility of the ICAC and became the responsibility of the PIC.

There was only a \$135,000 reduction to the ICAC budget following the transfer of what was the bulk of their work to the PIC.

**(c) HCCC**

The NSW Health Care Complaints Commission (HCCC) acts in the public interest by receiving, reviewing and investigating complaints about health care in NSW. The HCCC:

- receives and deals with complaints concerning the care and treatment provided by health practitioners and health services
- resolves complaints with parties
- provides opportunities and support for people to resolve their complaints and concerns locally
- investigates complaints and takes appropriate action
- prosecutes cases before disciplinary bodies
- advises the Minister and others on trends in complaints
- consults with consumers and other key stakeholders.

<b>ICAC - Key performance indicators</b>				
<b>1. Budget papers</b>				
Year	2004-05	2003-04	2002-03	2001-02
Received – public	900	901	691	683
Received – employees	265	306	213	154
Received – principal officers	535	677	620	394
Formal investigation	9	12	17	16
<b>2. Annual Report 2003-2004</b>				
<ul style="list-style-type: none"> <li>• Received and assessed 2,886 matters</li> <li>• Conducted initial enquiries for 203 matters and undertook 254 preliminary enquiries</li> <li>• Commenced 34 formal investigations and 136 preliminary investigations</li> <li>• Responded to 32 requests for speakers and provided 37 training sessions to agencies</li> <li>• Undertook 43 public speaking engagements and briefings on the ICAC's work</li> <li>• Responded to 322 telephone requests and 53 requests for corruption prevention advice</li> <li>• Provided corruption prevention advice in relation to 53 complaints/reports of corruption</li> </ul>				
<b>3. Budget allocation 2005-2006</b>				
• Recurrent	=	\$15,347,000		
• Capital	=	\$ 579,000		

<b>HCCC – Key performance indicators</b>				
<b>1. Budget papers</b>				
	2004-05	2003-04	2002-03	2001-02
Received	2,500	2,817	2,718	2,673
Finalised	3,100	2,777	2,943	2,780
Investigation	750	321	387	363
Referred - Prosecution	90	67	73	86
Referred - Disciplinary	150	80	107	94
Telephone inquiries	5,000	4,893	4,445	5,310
Patient support service clients	3,500	4,149	3,883	3,842
<b>2. Annual Report 2003-2004</b>				
<ul style="list-style-type: none"> <li>• 2,673 complaints were received of which 52.5% were about clinical standards</li> <li>• 1,213 or 45.4% of complaints are referred to another body or person and 502 or 18.8% are declined</li> <li>• Investigated 212 or 7.9% of complaints</li> <li>• Conducted 47 training courses to 18 health services</li> </ul>				
<b>3. Budget allocation 2005 –2006</b>				
• Recurrent	=	\$9,423,000		
• Capital	=	\$ 118,000		

**(d) PIC**

The Police Integrity Commission (PIC) was established in 1996 upon the recommendation of the Royal Commission in to the New South Wales Police Service. *The Police Integrity Commission Act 1996* (the Act) sets out the following principal functions:

- preventing, detecting or investigating serious police misconduct; and
- managing or overseeing other agencies in the detection and investigation of serious police misconduct and other police misconduct.

PIC is, as far as practicable, required to turn its attention particularly to serious police misconduct and may investigate police conduct that falls within any one of the following classes:

- perverting the course of justice;
- being involved in crimes attracting a minimum of five years imprisonment;
- soliciting or accepting bribes;
- improperly interfering in an investigation carried out by another police officer;
- improperly investigating a complaint against another officer; and
- being involved in the manufacture, cultivation, or supply of prohibited drugs.

Other functions of the PIC relate to police activities and education programs; the qualitative and strategic audit of the reform process; and the collection of evidence and information.

<b>PIC - Key performance indicators</b>	
<b>1. Budget papers</b>	
There are no performance indicators for PIC in the Budget Papers.	
<b>2. Annual Report 2003-2004</b>	
<ul style="list-style-type: none"> <li>• Assessed a total of 833 complaints – of which 501 were category 1 complaints, 291 category 2 complaints and 41 were not related to the work of the PIC.</li> <li>• Referred 436 or 87% of category 1 complaints to the Ombudsman</li> <li>• Investigated 10 complaints</li> <li>• Oversighted 9 complaints</li> </ul>	
<b>3. Budget allocation 2005 –2006</b>	
• Recurrent	= \$14,774,000
• Capital	= \$ 1,050,000

**(e) Judicial Commission**

The Judicial Commission’s principal functions are to:

- assist the courts to achieve consistency in sentencing;
- organise and supervise an appropriate scheme of continuing education and training of judicial officers; and
- examine complaints against judicial officers.

The Commission may also:

- give advice to the Attorney General on such matters as the Commission thinks appropriate; and
- liaise with persons and organisations in connection with the performance of any of its functions.

<b>Judicial Commission – Key performance indicators</b>	
<b>1. Budget papers</b>	
There are no performance indicators for the Commission in the Budget Papers.	
<b>2. Annual Report 2003-2004</b>	
<ul style="list-style-type: none"> <li>• Conducted 1,267 judicial education days</li> <li>• Published 11 issues of <i>Judicial Officers’ Bulletin</i> and 2 issues of <i>The Judicial Review</i>.</li> <li>• Published 3 Sentencing Trends and Issues and 3 monographs</li> <li>• Conducted 136 computer training sessions</li> <li>• 87 complaints dealt with</li> </ul>	
<b>3. Budget allocation 2005 –2006</b>	
• Recurrent	= \$3,751,000
• Capital	= \$ 48,000

One of the responsibilities of the Judicial Commission is to deal with complaints made against judicial officers. The Commission’s function is to investigate a complaint, not to discipline a judicial officer. The goal of the complaints function is to promote judicial accountability through effective complaint handling.

The Commission can only investigate complaints about matters that concern or may concern the ability or behaviour of a judicial officer. It does not deal with allegations of criminal conduct or corruption against judicial officers nor any matter that may be reviewed by a court of appeal.

**(f) CCYP**

It is the aim of the Commission to initiate and influence broad, positive change for children and young people. The CCYP works to:

- improve the safety, welfare and well-being of all children and young people.
- speak up for kids to help their points of view be heard by adult decision makers.
- influence and initiate positive change by:
  - researching and monitoring trends in children's welfare, safety and well-being.
  - advising government and non-government agencies.
  - informing and educating children, the community and professionals.
  - conducting Inquiries into issues important to children.

The CCYP is responsible for implementing and monitoring laws that affect all people working with children and young people in NSW, to help make workplaces safe for kids. It also runs a voluntary accreditation scheme for counsellors who work with people who have committed sexual offences against children.

<b>CCYP – Key performance indicators</b>				
<b>1. Budget papers</b>				
	<b>2004-05</b>	<b>2003-04</b>	<b>2002-03</b>	<b>2001-02</b>
Inquiries completed	0	0	1	0
Employment screens	82,000	43,645	22,000	15,000
Counsellor accreditation	50	41	21	8
Reports & guidelines published	9	10	5	5
Training courses	15	14	18	12
Research projects	3	2	3	3
<b>2. Annual Report 2003-2004</b>				
<ul style="list-style-type: none"> <li>• Published 2 information sheets in the <i>Ask the Children</i> series</li> <li>• Conducted advocacy training to the young people's reference group and Killara High's SRC</li> <li>• Added 2 sections to the <i>TAKING PARTicipation seriously</i> resource kit</li> <li>• Facilitated the involvement of young people in conferences</li> <li>• Completed 215,792 background checks</li> <li>• Provided secretarial support to the Child Death Review Team</li> </ul>				
<b>3. Budget allocation 2005 –2006</b>				
• Recurrent	=	\$7,966,000		
• Capital	=	\$ 174,000		

**2. Comparison of budget allocations**

It is difficult to compare organisations that have different functions, legislative schemes and processes. The details provided above attempt to give a general overview of the volume and different types of work performed by each "watchdog agency".

Two constants with all of the listed watchdog agencies are that they receive financial support from the Consolidated Fund and that they employ staff. The following is a comparison of the budget allocations and staffing levels of the watchdog agencies. All information is taken from relevant Budget Papers, published on the NSW Treasury website.

**(a) Budget allocation per employee**

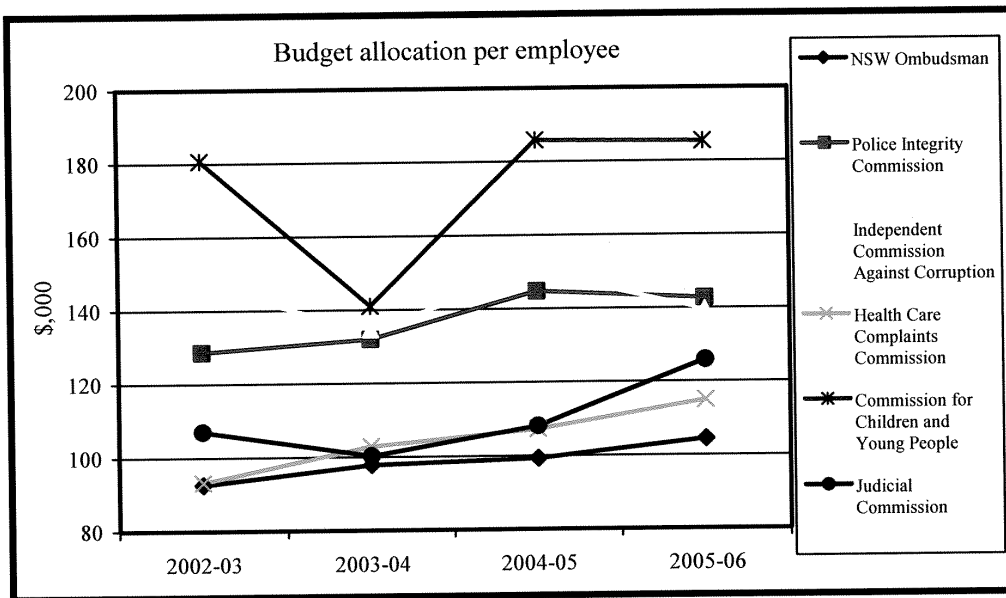
The following graph shows the budget allocation per employee of each of the watchdog agencies listed above from the 2002-2003 financial year. The figure for each year is calculated by dividing the budget allocation by the average staffing number.

As can be seen, in the 2005-2006 year the Ombudsman has the lowest allocation per employee – just over \$10,000 per employee less than the Health Care Complaints Commission which is the next lowest. The Commission for Children and Young People has the highest budget allocation per employee of the group, nearly \$81,000 per employee more than the Ombudsman.

If the Ombudsman's allocation per employee was equivalent to the Health Care Complaints Commission, the allocation would be increased by \$1,680,000 (ie \$10,000 x 168 (average staffing figure for 2005-2006)).

If the Ombudsman's allocation per employee was equivalent to the Police Integrity Commission, the allocation would be increased by \$6,384,000 (ie \$38,000 x 168 (average staffing figure for 2005-2006)).

If the Ombudsman's allocation per employee was equivalent to the Commission for Children and Young People, the allocation would be increased by \$13,608,000 (ie \$81,000 x 168 (average staffing figure for 2005-2006)).

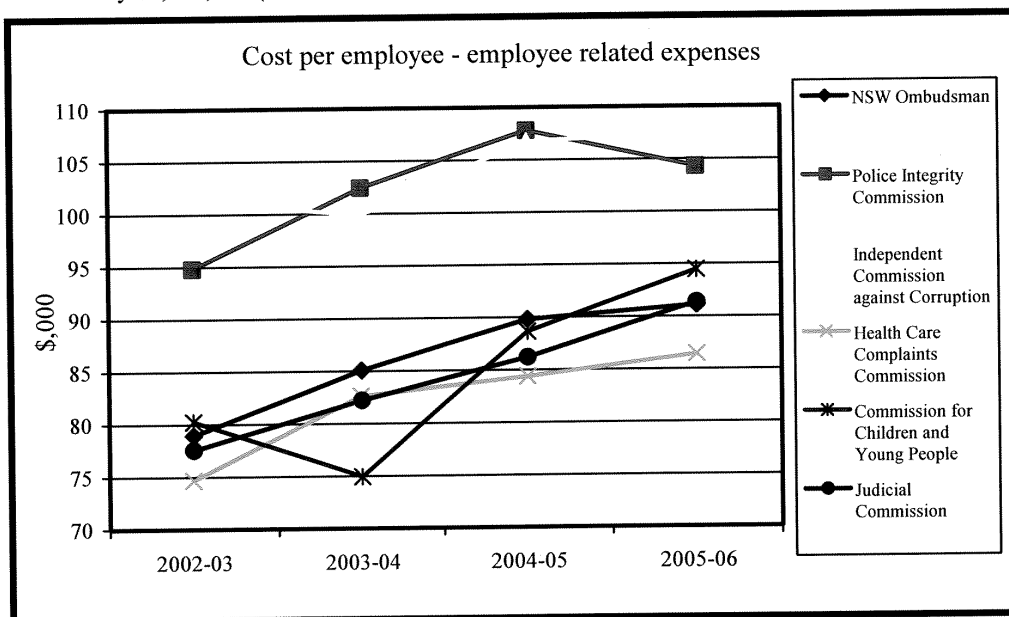


**(b) Cost per employee – employee related expenses**

The following graph shows the employee related expenses per employee for each of the watchdog agencies listed above from the 2002-2003 financial year. The figure for each year is calculated by dividing the total employee expenses by the average staffing number.

As can be seen, in the 2005-2006 year the Ombudsman’s cost per employee is the same as the Judicial Commission and higher than the Health Care Complaints Commission. The ICAC has the highest employee related expenses per employee of the group, with just over \$16,000 per employee more than the Ombudsman. It should be noted that the Ombudsman’s employee related expenses includes costs for the Official Community Visitors who are not employees and as such are not included in the average staffing numbers. When this is taken into consideration, the Ombudsman’s cost per employee is overstated.

If the Ombudsman’s allocation per employee was equivalent to the ICAC, the allocation would be increased by \$2,688,000 (ie \$16,000 x 168 (average staffing figure for 2005-2006)).



**3. Cost per employee – other operating expenses**

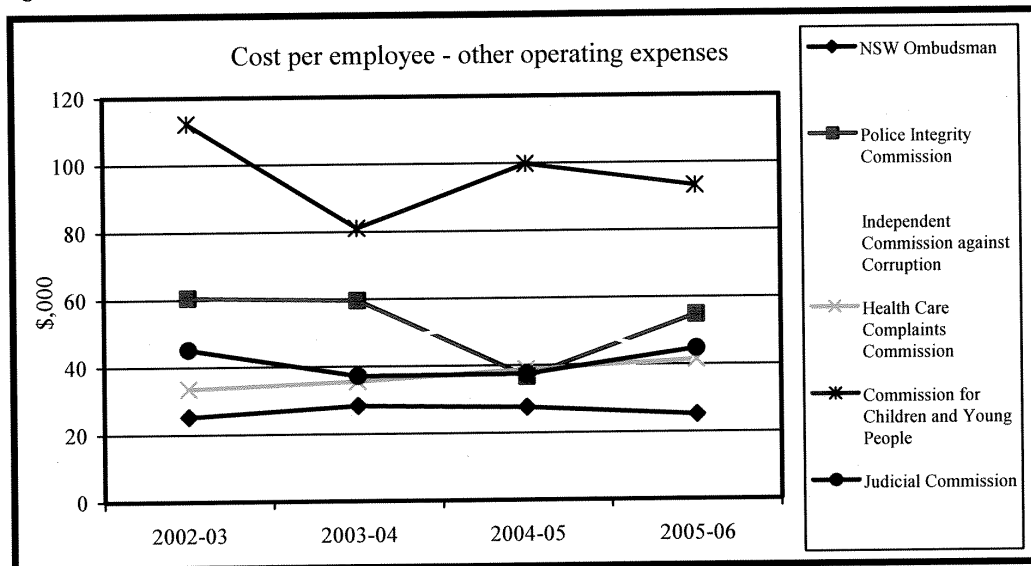
The following graph shows the other operating expenses (including maintenance and depreciation expenses) per employee for each of the watchdog agencies listed above from the 2002-2003 financial year. The figure for each year is calculated by dividing the other operating expenses by the average staffing number.

As can be seen, in the 2005-2006 year the Ombudsman has the lowest other operating expenses per employee – just over \$16,000 per employee less than the Health Care Complaints Commission and the ICAC which are the next lowest. The Commission for Children and Young People has the highest other operating expenses per employee of the group, nearly \$68,000 per employee more than the Ombudsman. Please note that the other operating expenses for the Commission for Children and Young People does not include the funding that they allocate as “Grants”.

It should be noted that the Ombudsman’s other operating expenses includes costs for the Official Community Visitors who are not employees and as such are not included in the average staffing numbers. When this is taken into consideration, the Ombudsman’s cost per employee is overstated.

If the Ombudsman’s allocation per employee was equivalent to the Health Care Complaints Commission, the allocation would be increased by \$2,688,000 (ie \$16,000 x 168 (average staffing figure for 2005-2006)).

If the Ombudsman’s allocation per employee was equivalent to the Commission for Children and Young People, the allocation would be increased by \$11,424,000 (ie \$68,000 x 168 (average staffing figure for 2005-2006)).





17 November 2004

Level 24 580 George Street  
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

ABN 76 325 886 267

The Hon R J Carr MP  
Premier  
Level 39  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Premier

**Re: Forward Estimates 2005-06 to 2008-09**

The attached documents are the forward estimates for the NSW Ombudsman's Office for the four financial years commencing 2005-06. I have provided a copy of these documents directly to the NSW Treasury.

***Recurrent Expenditure proposals***

I am seeking three recurrent maintenance increases for the 2005-06 year. The first to cover the increase in the rent of our current premises, the second seeks additional resources for our complaint handling functions and the third to enable the Official Community Visitors to visit at a responsible level.

***Asset Acquisition Program Proposals***

I am seeking three capital maintenance increases for the 2005-06 year. The first to upgrade our computer room air-conditioning system, the second is a general increase in our minor works annual provision, and the third to upgrade our case management system.

***Results and Services Plan***

I have attached our results and services plans for the Ombudsman functions.

I would be happy to discuss the estimates or to provide additional information on any of the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to read "B. Barbour".

Bruce Barbour  
Ombudsman





NSW Ombudsman

17 November 2004

Level 24 580 George Street  
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

ABN 76 325 886 267

Mr J Pierce  
Secretary  
NSW Treasury  
Level 27  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Mr Pierce

**Re: Forward Estimates 2005-06 to 2008-09**

Attached please find a copy of my budget estimates for 2005-06 submitted to the Premier as the Minister responsible for this Office. TOES data has been sent separately to the NSW Treasury as requested.

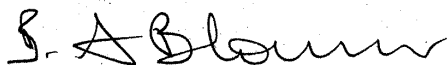
You will note that in my letter to the Premier I have submitted three maintenance disputes – one to cover the increase in the rent of our current premises, the second seeks additional resources for our complaint handling functions and the third to enable the Official Community Visitors to visit at a responsible level.

I have also submitted three capital maintenance increases for the 2005-06 year. The first to upgrade our computer room air-conditioning system, the second is a general increase in our minor works annual provision and the third to upgrade our case management system.

Also, I have attached our results and services plans for the Ombudsman functions.

Please contact me on (02) 9286 1001 if you wish to discuss these matters.

Yours faithfully



Bruce Barbour  
Ombudsman

Attachment B1

**AGENCY: Ombudsman's Office**

**Priority Listing for Recurrent Expenditure Maintenance Proposals**

Priority	Proposal	Impact on Controlled Net Cost of Services*			Impact on Consolidated Fund Recurrent Support				
		05/06 \$000	06/07 \$000	07/08 \$000	08/09 \$000	05/06 \$000	06/07 \$000	07/08 \$000	08/09 \$000
1	Rent Review	53	104	138	192	53	104	138	192
2	Complaint Handling	227	303	303	303	227	303	303	303
3	Official Community Visitor	298	328	357	388	298	328	357	388
<b>Total of Maintenance Proposals</b>		<b>578</b>	<b>735</b>	<b>798</b>	<b>883</b>	<b>578</b>	<b>735</b>	<b>798</b>	<b>883</b>

Amounts shown are in 2005-06 dollars  
 \* Controlled Net Cost of Services is defined in Treasury Circular 01/21 "Budget Controls - Net Cost of Services" issued 10 October 2001

Attachment B

**MAINTENANCE OF EFFORT****RECURRENT PROPOSAL**

**MINISTER:** The Premier  
**AGENCY:** Ombudsman's Office  
**PROPOSAL NAME:** Rent Review  
**PRIORITY:** 1

**BRIEF DESCRIPTION OF PROPOSAL**

The proposal funds the expected rent increase at the Ombudsman's current premises.

Under the Ombudsman's lease, which was negotiated by the then Department of Public Works and Services (DPWS), rent reviews are due in December 2005 and 2007 for Level 26 and October 2006 and October 2008 for Levels 23/24. Each of the reviews are either to market or "cap and collar" so we have used a conservative estimate of a 5% increase. If the results of the reviews are substantially different to expectations, we will either seek a further supplementation or return funding to Treasury.

The Ombudsman deals with complaints and inquiries from the NSW public. They will benefit by this proposal as the Ombudsman's limited resources for complaint handling will not have to be diverted to cover the cost of this rent increase.

The government is formally committed to this proposal as there is a contractual arrangement (lease) enabling the building owner to review rent levels. The lease was negotiated by the Department of Public Works and Services on behalf of the Crown.

The proposal will enable the Ombudsman to use existing resources for complaint handling. If not approved, the Ombudsman will have to direct funds from complaint handling to cover the expected increase. The funds available for complaint handling are already insufficient to cover recent increases in complaints. Please refer to the Ombudsman's recurrent proposal to increase the funding for complaint handling.

**Expected change in Results and Services**

<b>Results and Services or Key Performance Indicators</b>	<b>2004-05 Base</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>
<b>a) With this proposal:</b> • Number of complaints handled	35,688	35,688	35,688	35,688	35,688
<b>b) Without this proposal:</b> • Number of complaints handled	35,688	34,473	35,267	35,129	34,910

**BUDGET SAVINGS**

No savings are likely from this proposal.

**RISKS ASSOCIATED WITH THE PROPOSAL**

There are no risks associated with proceeding with this proposal.

As there is pressure on complaint handling due to increased complaint numbers and the impact of staff losses due to unfunded pay increases and budget cuts, the risks to the Office are significant if the proposal does not proceed. The Ombudsman would need to divert funds from complaint handling activities reducing service delivery and increasing the percentage of complaints declined due to lack of resources. As well, our ability to quickly respond to public interest issues would also be diminished.

**DEPENDENCIES**

There are no other agencies involved in the proposal.

**ALTERNATIVE SOLUTIONS**

*Reduce the amount of office space* - the Office is facing a space shortage as a result of the number of legislative reviews requested by Parliament. We are below the government target of 15m<sup>2</sup> per person.

*Relocate to cheaper premises* - there is still seven years remaining with the lease of the Ombudsman's premises. To relocate would require funding for fitout (including the need to build a separately air conditioned computer room), relocation expenses and the possibility of double rent until a suitable tenant could be found to sub lease the existing office space.

*Divert resources from core business* - this is not an option as there are continual pressures on core business particularly with increasing complaint levels.

**SUMMARY OF RECURRENT COSTS ASSOCIATED WITH THE PROPOSAL***Values should be entered in 2005-06 dollars.*

	2005-06 \$000	2006-07 \$000	2007-08 \$000	2008-09 \$000	Total \$000
Expenses associated with this proposal comprise:					
• Employee related expenses					
o Salaries					
o Superannuation (A)					
o Long Service Leave (B)	-	-	-	-	-
o Other					
• Physical Assets Maintenance *					
• Other Operating Expenses	53	104	138	192	486
<b>Total Expenses</b>	<b>53</b>	<b>104</b>	<b>138</b>	<b>192</b>	<b>486</b>
Less any offsetting expense savings					
Less any increases in retained revenues					
<b>Equals Accounting Net Cost of Services Impact (C)</b>	<b>53</b>	<b>104</b>	<b>138</b>	<b>192</b>	<b>486</b>
Funded by:					
• Recurrent Consolidated Fund Support	53	104	138	192	486
• Commonwealth SPP					
• Agency Cash Balances					
• Other – specify					
<b>Total Funding</b>	<b>53</b>	<b>104</b>	<b>138</b>	<b>192</b>	<b>486</b>
<b>Controlled Net Cost of Services = C-A-B</b>	<b>53</b>	<b>104</b>	<b>138</b>	<b>192</b>	<b>486</b>
<b>Additional staff numbers associated with proposal</b>	-	-	-	-	-

\* Recurrent expenses associated with the maintenance of existing physical assets only.

**MAINTENANCE OF EFFORT**

**RECURRENT PROPOSAL**

<b>MINISTER:</b>	The Premier
<b>AGENCY:</b>	Ombudsman's Office
<b>PROPOSAL NAME:</b>	Complaint Handling
<b>PRIORITY:</b>	2

**BRIEF DESCRIPTION OF PROPOSAL**

**The proposal**

This proposal seeks additional resources for the following three service groups as detailed in the Ombudsman's Results and Services Plan:

- Investigate and resolve complaints
- Assess notifications, review handling of complaints and monitor investigations
- Keep systems under scrutiny.

Every member of the public has the right to complain to us, accordingly, much of our work is generated by complaints. We use complaints received by the public to help agencies in the public sector, and some private sector organisations, to address any problems that arise in the exercise of their functions and discharge of their responsibilities. We use our experience and knowledge to help organisations and individuals within our jurisdiction to comply with relevant legal obligations, to be aware of their responsibilities to the public and to act reasonably. We do this by assisting them to identify problems in their systems and operations, solve those problems and improve the way they function.

Our mandate is to improve the conduct and decision-making of organisations and individuals within our jurisdiction. Traditionally, we fulfilled this mandate by responding to complaints and overseeing investigations of complaints by others - recommending improvements to the way organisations perform in relation to individual matters and broader issues. Over the years our functions have become much wider.

We now oversee the investigation of complaints about police, the handling of child abuse allegations and convictions by persons and agencies within jurisdiction, and the use of powers to conduct controlled operations. We review the delivery of and investigate complaints about community services. We review the causes and patterns of deaths of certain children and people with a disability in care. We also review the determination of FOI applications and the operation of a number of new pieces of legislation conferring additional powers on police and correctional officers. We audit complaint handling systems of the NSW Police, organisations with responsibilities to protect children and community service providers. We also audit telephone interception records held by agencies who are authorised to intercept telephonic communications.

As previously highlighted to the NSW Treasury, the Ombudsman has been proactive where possible in keeping complaint numbers manageable. This has included pursuing legislative amendments,

entering into agreements with agencies such as the NSW Police whereby certain complaints need not be notified, and providing training and guidance to agencies in complaint handling. Even with these measures complaint numbers have continued to rise, particularly in the Ombudsman's police and general jurisdictions.

In the 12 months ending 30 June 2004, formal complaints received about police increased by 15% and complaints about public authorities (ie our general jurisdiction) rose by 12%. Informal complaints received in both jurisdictions also increased by 7%. Indications this financial year are that complaint numbers are continuing to rise.

Improvements have been made to work practices in both the police and general jurisdictions – evidenced by the ability of the Ombudsman to manage workload issues to date. The increase in complaint levels now requires additional resources – without which the Office will not be able to appropriately deal with complaints, will need to decline more matters, do less investigations and systems auditing and put on hold our scheduled project work.

This proposal seeks an increase staff in the police and general jurisdictions by three positions in 2004-2005 and a further increase of one position in 2005-2006. The Ombudsman proposes to review the need for further resources when preparing his forward estimates for the 2006-2007 year. This proposal should be reviewed with the proposal for additional funding due to rent increases. If the rent proposal is not approved, resources will have to be directed from complaint handling and other Ombudsman activities to cover rent increases. If this happens, there will be a further impact on the Ombudsman's capacity to handle complaints received. The following expected change in results and services is based on the rent proposal being approved.

#### Expected change in Results and Services

Results and Services or Key Performance Indicators	2004-05 Base	2005-06	2006-07	2007-08	2008-09
<b>a) With this proposal:</b>					
• Complaints received - Police & general jurisdictions (only)#	7041	7393	8132	8946	9840
• Complaints finalised - Police & general jurisdictions (only)	7041	7393	8132	8946	9480
<b>b) Without this proposal:</b>					
• Complaints received - Police & general jurisdictions (only)	7401	7393	8132	8946	9840
• Complaints finalised - Police & general jurisdictions (only)*	6401	6401	6401	6401	6401

# the increase in complaints in 2004-05 has been projected at 10% for both the police and general jurisdictions. For future years a 5% increase has been used.

\* the figure reported here is the number of complaints received in the police and general jurisdictions for the 12 months to 30 June 2004. Without additional resources we will not be able to deal with any increase in complaints from 30 June 2004 financial year.

#### Services already provided, target beneficiaries, size of the target group and the way in which the proposal will address their needs

The proposal seeks funding to support services already provided by the Ombudsman. These services include dealing with complaints about NSW public sector agencies including local councils and government departments, dealing with complaints about police officers and complaints about the way such complaints are handled by police and keeping under scrutiny the systems established by police to deal with complaints. These services are all legislative based, requiring the Ombudsman to respond in some way. The increase in complaints, without any additional resources,

will mean that the standard of service that the Ombudsman provides will decline. This would be regrettable considering the steps taken by the Ombudsman to improve systems and service delivery.

The NSW public would benefit as their complaints about public authorities and the police would be appropriately addressed. Fewer deserving matters would be declined at outset and more indepth investigations and reviews would be possible.

**Is the Government formally committed to the proposal?**

There is no formal commitment of Government to this proposal.

**Benefits realised for people in regional and rural NSW**

The proposal will help people in regional and rural NSW. A significant proportion of complaints received are from people who live outside the metropolitan area. Without proper support for this proposal, these complaints will not be adequately addressed.

**Environmental facts which have prompted this proposal**

There are no environmental factors that have prompted this proposal.

**BUDGET SAVINGS**

There will be no saving generated from this proposal.

**RISKS ASSOCIATED WITH THE PROPOSAL**

**Risks of proceeding**

There are no risks associated with proceeding with this proposal.

**Risks of not proceeding**

The Office does not have the capacity to deal with the number of complaints received that deserve attention. Delay may occur in the handling of complaints and there will be the potential for serious issues to remain undetected.

The proactive work undertaken by the Ombudsman's police and general jurisdictions is at risk if the proposal does not proceed. This proactive work includes the identification through the analysis of complaint statistics and intelligence gatherings of police officers of concern as well as complaint performance of Local Area Commands. Our ability to assist agencies in improving their complaint handling processes will be significantly reduced.

Another threat is staff taking industrial action if additional resources are not provided. Staff are currently dealing with an extremely high caseload. We have reached the point of acceptable caseload limits with staff seeking reassurances that they will not have to absorb additional work due to increased complaint levels and staffing issues.



**Sensitivity analysis on key proposal variables**

This proposal seeks funding for additional staff. The major input cost – salary – is currently the subject of negotiation at the Industrial Commission. Other employee related costs will be affected by any changes to salary costs.

As previously mentioned, complaint numbers are increasing which is a trend that is likely to continue into the future.

**DEPENDENCIES**

This proposal is not dependent on any other agency.

**ALTERNATIVE SOLUTIONS**

**Demand Management:** The Ombudsman has been working with agencies to improve their internal complaints management systems. We have done this for a number of reasons including the need to reduce the number of complaints referred to us. In assessing complaints, the Office strictly applies the criteria for determining whether a matter is within our jurisdiction. We also have also a vigorous decline policy. Even with proactive strategies in place, complaint numbers continue to rise. There is an ever increasing demand by the public for agency accountability and our office is a portal for their complaints and frustrations. Education and other government strategies are increasing the public's awareness of their rights, which in turn fuel referrals to our office.

**Supply Alternatives:** The options available to the Ombudsman if additional resources were not provided include transferring resources from other activities such as dealing with complaints about child protection or the provision of community services or reviewing the deaths of certain children and young people and people with a disability in care. The Ombudsman could also decline more complaints at outset, however this course of action would generate concern with the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission, who have flagged this as an issue.

**SUMMARY OF RECURRENT COSTS ASSOCIATED WITH THE PROPOSAL***Values should be entered in 2005-06 dollars.*

	2005-06 \$000	2006-07 \$000	2007-08 \$000	2008-09 \$000	Total \$000
Expenses associated with this proposal comprise:					
• Employee related expenses					
o Salaries	202	269	269	269	269
o Superannuation (A)	17	23	23	23	23
o Long Service Leave (B)	12	16	16	16	16
o Other	17	23	23	23	23
• Physical Assets Maintenance *	1	1	1	1	1
• Other Operating Expenses	7	10	10	10	10
<b>Total Expenses</b>	<b>256</b>	<b>342</b>	<b>342</b>	<b>342</b>	<b>342</b>
Less any offsetting expense savings	0	0	0	0	0
Less any increases in retained revenues	0	0	0	0	0
<b>Equals Accounting Net Cost of Services Impact (C)</b>	<b>256</b>	<b>342</b>	<b>342</b>	<b>342</b>	<b>342</b>
Funded by:					
• Recurrent Consolidated Fund Support	227	303	303	303	303
• Commonwealth SPP					
• Agency Cash Balances					
• Other – Superannuation & LSL	29	39	39	39	39
<b>Total Funding</b>	<b>256</b>	<b>342</b>	<b>342</b>	<b>342</b>	<b>342</b>
<b>Controlled Net Cost of Services = C-A-B</b>	<b>227</b>	<b>303</b>	<b>303</b>	<b>303</b>	<b>303</b>
<b>Additional staff numbers associated with proposal</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>

\* Recurrent expenses associated with the maintenance of existing physical assets only.

Attachment B

**MAINTENANCE OF EFFORT****RECURRENT PROPOSAL**

**MINISTER:** The Premier

**AGENCY:** Ombudsman's Office

**PROPOSAL NAME:** Official Community Visitor scheme

**PRIORITY:** 3

**BRIEF DESCRIPTION OF PROPOSAL**

The proposal is to provide additional maintenance funding for the Official Community Visitor (OCV) scheme, based on the current number of services eligible for visiting exceeding the *responsible minimum visiting rate* of an average of four by four hourly visits to each visitable service per annum (this formula was agreed by Treasury and the former Community Services Commission in the context of the 2000-01 budget).

The OCV scheme is administered by the NSW Ombudsman, in accordance with the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. Visitors are part-time statutory appointees of the Minister for Community Services, Ageing and Disability Services.

*Visitable services* are accommodation services for children, young people and people with a disability that are provided by the Department of Community Services; or the Department of Ageing, Disability and Home Care; or by a non-government or private agency funded, licensed or authorised by the Minister.

Objectives of the OCV scheme are to –

- Inform the Minister and Ombudsman about the quality of services for children, young people and people with a disability in care
- Promote the rights of residents
- Identify and seek prompt resolution of issues raised by residents
- Provide information
- Help resolve complaints made by, or on behalf of, residents about service provision.

**Expected change in Results and Services**

Results and Services or Key Performance Indicators	2004-05 Base	2005-06	2006-07	2007-08	2008-09
<b>a) With this proposal:</b>					
• # visitable services	1,169 (est.)	1,198 (est.)	1,235 (est.)	1,272 (est.)	1,309 (est.)
• # services to be visited	910	1,198	1,235	1,272	1,309
• # visit hours	11,000 hrs	19,168 hrs	19,760 hrs	20,352 hrs	20,944 hrs
• # of community visits undertaken *	2,750	4,792	4,940	5,088	5,236
<b>b) Without this proposal:</b>					
• # visitable services	1,169 (est.)	1,198 (est.)	1,235 (est.)	1,272 (est.)	1,309 (est.)
• # services to be visited	910	910	910	910	910
• # visit hours	11,000 hrs	11,000 hrs	11,000 hrs	11,000 hrs	11,000 hrs
• # of community visits undertaken*	2,750	2,750	2,750	2,750	2,750

- These numbers assume that each visit is four hours.

**Services already provided, target beneficiaries, size of the target group and the way in which the proposal will address their needs**

During the 2003-04 year –

- There were a total of 1,169 services eligible to be visited, accommodating the target population of 6,628 people - 111 services for 266 children and young people; 99 services for 467 children and young people with a disability; and 959 services for 5,895 adults with a disability (including 62 licensed boarding houses with 970 residents).
- On the basis of available resources, 80% of services in NSW were allocated a minimum of two visits in 2003-04 – well below the agreed formula. Extra visits were allocated to some services according to the vulnerability of residents – more visits to services where children and young people live, and to services with a large number of residents.
- Visitors made 3,121 visits to 915 services, and 254 eligible services were not visited.

For the 2004-05 year -

- As in the previous year, a total of 11,000 visit hours has been allocated to 80% of services eligible to be visited.
- From January 2005, the services that are currently not being visited will be allocated visiting resources, and a different group of services will be excluded for a period of time.
- Services that are allocated resources have a minimum of two by four hourly visits per annum – well below the agreed formula. As in previous years, additional visits are allocated to services with more vulnerable residents.
- In addition, the hourly visiting rate has been increased by Premier's Department from \$25.13 to \$25.88 effective from 1 November 2004. This is second increase in the visiting hourly rate since the inception of the scheme, for which there has been no increase in funding.

The proposal for maintenance funding will bring visiting to the responsible minimum visiting rate, and enable all people in care to have access to independent Visitors who can promote their needs, interests and rights to quality services.

The proposal will also help children, young people and people with a disability who enter residential care in 2005-06; the family and friends of current and future residents; and the staff and management in visitable services. Visitors have a key role in monitoring the quality of services provided to residents, and work collaboratively with services to achieve enhanced outcomes for residents.

**Is the Government formally committed to the proposal?**

The proposal is discretionary, however it rises in part from –

- The government's policy of devolving large residential centres for people with a disability, and transferring them to community based accommodation services;
- The continuation of a fee-for-service model of out-of-home care for children and young people by the Department of Community Services.

The proposal is also consistent with the government's Social Justice Directions Statement, and the priority accorded to support for children, young people and people with a disability.

**Benefits realised for people in regional and rural NSW**

The majority of Visitors are located in regional and rural areas of NSW, and there are 504 eligible services (251 services in the Hunter and North Coast regions, 145 services in the New England, Orana and Far West regions, and 108 services in the Illawarra and Riverina/ Murray regions).

During 2003-04, the allocation of visiting resources to 80% of eligible services is also affecting services in these regions.

The proposal will enable all services in NSW to have access to the monitoring and local problem-solving activities of Visitors.

**Environmental facts which have prompted this proposal**

This proposal is prompted by the increasing number of services eligible for visiting over the past several years – an average of 37 new services that are eligible to be visited each year. The most recent budget enhancement of \$92,000 was provided in 2002-03 to incorporate the new jurisdiction of 62 licensed boarding houses.

During 2003-04, the Ombudsman received several complaints about visitable services that had not been allocated visiting resources. If Visitors had been visiting those services, the issues may have been identified sooner and resolved at the local level.

This proposal is also prompted by the likely impact of increased resources allocated to the Department of Community Services, thereby expanding the number of eligible services for children and young people.

Despite previous budget enhancements, there are insufficient resources to allocate visiting to approximately 250 currently eligible services according to the agreed formula.

**BUDGET SAVINGS**

The proposal will not result in any budget savings, nor decrease the cost of existing OCV services.

**RISKS ASSOCIATED WITH THE PROPOSAL**

**Risks of proceeding**

- There are no significant risks anticipated that would impact on the proposal's success.
- The key cost driver will be remuneration of Visitors and related travel costs. The Ombudsman will continue its practice of conducting random audits of Visitors' activities and monitoring performance and budget expenditure.

**Risks of not proceeding**

- Vulnerable children, young people and people with a disability in care will continue to have progressively less access to independent monitoring by Visitors. This group generally has less access to other forms of accountability and monitoring, and are less likely to complain about poor service provision.
- The Minister and government will be seen as lacking commitment to ensure that the OCV scheme is an effective monitoring arrangement.
- The Minister and government will have less access to data about the quality of service provision by government, funded non-government, and licensed or authorised services.
- Stakeholder dissatisfaction with the effectiveness of the scheme if the frequency of visiting does not enable Visitors to fulfil their functions effectively.
- Unresolved issues for residents may escalate and become more difficult for services to resolve, compared to early intervention by a Visitor at a local level.

**DEPENDENCIES**

- No other agencies are involved in this proposal.
- No actions are required of other agencies should this proposal proceed.
- The proposal, if approved, will impact on the Department of Community Services, Department of Ageing, Disability and Home Care, and non-government and licensed service providers, because visiting to their residential services will increase, and there is likely to be an increase in issues reported to Visitors that require resolution.

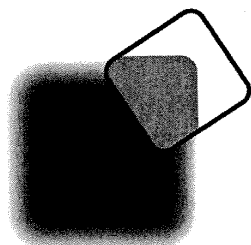
**ALTERNATIVE SOLUTIONS**

- Manage demand by excluding a proportion of eligible services from the allocation visiting resources, on a rotational basis and depending on the relative level of residents' vulnerability. The impact is that residents are denied access to an independent Visitor. The proportion of services that are not allocated visiting resources will increase as the number of eligible services increase each year.
- Reduce the time spent by Visitors on each visit, thereby limiting the time available for resolving residents' issues and eroding the effectiveness of the scheme as a monitoring and advocacy mechanism.

**SUMMARY OF RECURRENT COSTS ASSOCIATED WITH THE PROPOSAL***Values should be entered in 2005-06 dollars.*

	2005-06 \$000	2006-07 \$000	2007-08 \$000	2008-09 \$000	Total \$000
Expenses associated with this proposal comprise:					
• Employee related expenses					
o Salaries	185	204	222	241	852
o Superannuation (A)	16	17	19	20	72
o Long Service Leave (B)	-	-	-	-	-
o Other	12	13	14	16	55
• Physical Assets Maintenance *					
• Other Operating Expenses	101	111	121	131	464
<b>Total Expenses</b>	<b>314</b>	<b>345</b>	<b>376</b>	<b>408</b>	<b>1,443</b>
Less any offsetting expense savings					
Less any increases in retained revenues					
<b>Equals Accounting Net Cost of Services Impact (C)</b>	<b>314</b>	<b>345</b>	<b>376</b>	<b>408</b>	<b>1,443</b>
Funded by:					
• Recurrent Consolidated Fund Support	298	328	357	388	1,371
• Commonwealth SPP					
• Agency Cash Balances					
• Other – Superannuation	16	17	19	20	72
<b>Total Funding</b>	<b>314</b>	<b>345</b>	<b>376</b>	<b>408</b>	<b>1,443</b>
<b>Controlled Net Cost of Services = C-A-B</b>	<b>298</b>	<b>328</b>	<b>357</b>	<b>388</b>	<b>1,371</b>
<b>Additional staff numbers associated with proposal</b>	-	-	-	-	-

\* Recurrent expenses associated with the maintenance of existing physical assets only.



NSW Ombudsman

# Results and Services Plan

## 2005-2006



## **Part 1 – Priorities, Results and Services**

The NSW Ombudsman is an independent and impartial watchdog body. Our job is to make sure that the public and private sector agencies and employees we watch over fulfil their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

We are independent of the government of the day and accountable to the public through the NSW Parliament.

Every member of the public has the right to complain to us, so much of our work is generated by complaints. We believe that complaints are one of the best sources of client and staff feedback on how an agency is performing. This is why we encourage agencies to set up and maintain effective complaint handling systems so that they can use the information in complaints to improve the way they function.

Our key aim is to improve the delivery of services, including community services, by NSW agencies and service providers and our corporate goals reflect this objective.

Our office helps agencies in the public sector, and some in the private sector, to address any problems that arise in the exercise of their functions and discharge of their responsibilities. We use our experience and knowledge to help agencies and individuals become aware of their responsibilities to the public, to act reasonably as well as lawfully. We do this by assisting them to identify problems in their systems and operations, solve those problems and improve the way they function.

Our mandate is to improve the conduct and decision-making of agencies within our jurisdiction. Traditionally, we fulfilled this mandate by responding to complaints and overseeing investigations - recommending improvements to the way agencies perform in relation to individual matters and broader issues. Over the years our functions have become much wider.

We now oversee the investigation of complaints about police, the handling of child abuse allegations and convictions by persons and agencies within jurisdiction, and the use of powers to conduct controlled operations.

We review the delivery of community services, the causes and patterns of deaths of certain children and people with a disability in care, the determination of FOI applications and the operation of a number of new pieces of legislation conferring additional powers on police and correctional officers.

We audit complaint handling systems of NSW agencies and community service providers, and telephone interception records held by agencies who are authorised to intercept telephonic communications.

We do not charge for our services, other than for some of our publications and fee for service training.

Attachment A, *NSW Ombudsman's Results and Services*, shows the services we provide with our budget allocation and the results to which they contribute.

Attachment D details our legislative functions, grouped under the services that we provide.

## **Part 2 – Result Indicators and Service Measures**

We pride ourselves on the quality of our work and the standard of our service. Our reputation for maintaining high standards in administrative conduct is important because it helps ensure that agencies accept our advice and implement our recommendations. We aim to lead by example and focus on practical outcomes that do the most good for the most people.

Our office is accountable to the public in much the same way as any other NSW public sector agency. We come under the scrutiny of agencies such as the Auditor-General, the Independent Commission

Against Corruption, the Privacy Commissioner, the Anti-Discrimination Board, State Records and Treasury.

In addition, the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (commonly known as the PJC) has broad responsibilities for monitoring and reviewing how we exercise our functions. The PJC is made up of parliamentarians from different political parties and both houses of Parliament. This ensures that we are accountable to Parliament, not to the government of the day, and is crucial to maintaining our independence.

The PJC can examine our policies, practices and systems, review our reports and performance measures, examine complaints made about us, and suggest ways in which we could improve how we operate. It cannot review substantive decisions we have made about individual complaints, but it can criticise the process by which those decisions were made.

Another important accountability measure is the requirement under section 15 of the Ombudsman Act to give each complainant reasons for refusing to investigate or conciliate their complaint or for discontinuing an investigation. We do give detailed reasons to agencies for decisions to discontinue investigations and in support of any findings or recommendations made. This has helped us establish a public reputation for making fair and well-reasoned decisions. As a result of this reputation, we have greater credibility when we make recommendations to agencies and our recommendations are more likely to be followed. Our need to be accountable actually helps to make us more effective.

Due to significant differences jurisdiction, processes and policies it is difficult for us to appropriately benchmark with other Ombudsman offices or with other NSW watchdog agencies. However, where similarities exist do we benchmark, both formally and informally. This benchmarking reinforces the leadership role we play in the field of accountable public administration. Networking with these agencies also gives us the opportunity to learn from their experience, share our own knowledge, provide mutual support and promote the importance of the Ombudsman concept in all jurisdictions.

Attachments B and C show the performance indicators and measures that will allow us to demonstrate our success. The funding allocation on Attachment C is an estimate, as internally we do not allocate funding according to services but rather on a broad functional program basis – i.e. police, child protection, community services and general jurisdictions.

### **Part 3 – Emerging and Strategic Issues**

The critical issues impacting on the Office are:

- **Funding issues - cuts to the Ombudsman's budget**

The decision to cut our budget by 3% in 2004-2005 is the most critical issue facing the Office. This decision, coupled with the recent public sector unfunded pay increases, means that the Ombudsman will have to reduce staffing levels by over 5%. Such a substantial reduction in staff will have an immediate impact on the nature and scope of the work of the Ombudsman as well as limiting our service delivery to Parliament and the community. This impact is made all the more acute by the substantial increase in complaints received in 2003-2004 and the expected increase this financial year.

Already we have had to rethink the continuation of some of our complaint and scrutiny work as budget cuts have resulted in a decrease in our capacity to undertake projects, particularly projects to review police systems and practices. This curtailing of work has also been exacerbated by the recent increase in complaints. In addition to reducing new projects, we have put on hold a very significant project examining how police whistleblowers' complaints are managed, to increase the focus of our reduced resources on complaint handling and overseeing police investigations.

- **Funding issues – cuts to other agencies budgets**

A likely impact of the budget cuts across the public sector is that there will be a reduction in the level of service provided to the community. The public however have certain expectations about the level of

service they are entitled to receive and if this expectation is not met they will complain to us. We therefore expect an increase in complaint levels over and above the increase detailed in point 3.

- **Increasing demand for services**

We continue to experience increases in our complaint levels despite the proactive strategies we put in place to keep numbers stable. These proactive strategies include negotiating agreements with NSW Police and some agencies in our child protection jurisdiction where low risk matters need not be notified.

Complaints about police increased over 15% last financial year while complaints in our general jurisdiction increased by over 12%. There was a decrease in numbers in our child protection jurisdiction, however this seems to be an anomaly - the initial impact of the negotiation of new agreements with some agencies. Unfortunately numbers so far this financial year seem to be consistent with pre agreement figures.

One positive indicator is that complaints outside our jurisdiction declined in 2003-2004. However, as they are not matters we would deal with in any event there is no positive impact on us.

- **Legislative amendments**

Recent amendments to Part 3A of the Ombudsman Act have placed an additional burden on our child protection jurisdiction. These amendments put the onus on agencies to determine, at the local level, what matters are exempted under the legislation. We are required to audit the local level decision making processes and policies such as the code of conduct rather than our current practice of auditing central or head offices. We have 7000 agencies under our child protection legislation. There will be a significant increase in the number of audits that we undertake.

#### **Part 4 – Improving Value for Money**

The environment in which we operate is never static so we have developed the ability to be flexible and adapt to change. We continually monitor our performance to identify areas for improvement and then work towards making those improvements.

One of our corporate goals is to be a cohesive and effective organisation. Information about the quantity, quality, timeliness and impact of our work is essential to achieving this goal. Performance benchmarks measuring these factors are established at the corporate, team and individual staff level and workflow statistics are used to inform procedural changes.

We track our performance at two levels — in relation to individual files and in relation to our systems and structures for completing work.

Data from our case management system is used to monitor turnaround times and identify where there may be backlogs, delays or inefficiencies. For example, we periodically review all files that have been open for more than six months and develop strategies to address any issues that may be causing unnecessary delay.

With many of our complaints and notifications, we need to factor in the time it takes for an agency to provide us with information. This could be answers to inquiries or a response to a draft investigation report. Sometimes an agency's tardiness is the main cause of a delay. However, we do have a responsibility to escalate certain matters in the interest of all parties potentially affected by an investigation, particularly the complainant and the subject of the allegations. We try to reduce the risk that, if a matter takes too long to resolve, all parties may be unsatisfied and it may be too late for any of our recommendations to be implemented.

The integrity and accuracy of the data we keep is crucial to the effectiveness of our work and our ability to monitor our performance. We periodically conduct internal audits of the recording of information on our case management system to check that it is accurate.

Our assessment of complaints and notifications also needs to be sound and consistent. We have systems for consultation and discussion to ensure that the appropriate decision is made at the outset. We also make sure that if a complainant asks for a review of our decision, a more senior member of staff conducts the review.

We use close supervision and periodic file audits to review the quality and consistency of our work. This helps ensure that the decisions we make are sound and the management of files is efficient and effective.

It is also important that any correspondence and reports we send out are factually accurate and properly reasoned. We have rigorous procedures for supervising, checking and authorising these documents.

Parliament has determined that the services performed by the Ombudsman are necessary as all services are subject to legislation. Legislative change would be required before the Ombudsman could scale back or temporarily suspend any service as to do so without Parliament's endorsement would result in the Ombudsman failing to meet both Parliamentary expectations and legal obligations.

Attachment D details the legislative basis of the work undertaken by the Ombudsman.

### **Part 5 – Policy or Regulatory Constraints**

All of the functions of the Ombudsman are subject to legislative powers and limitations. At any time that we feel that our work is being hindered by any provision of any Act under which we operate, the matter is raised with either the government as part of its legislative review program or with Parliament through our Parliamentary Joint Committee.

In our non-core business activities we are subject, as is any public sector agency or business in Australia, to an array of legislation, regulation or policy, some of which may be seen as constraining us in our work. However, we are mindful that such legislation is in the public interest and we accept and undertake our responsibilities.

### **Part 6 – Risks and Risk Management**

Risk assessment is part of everyday work practice for Ombudsman staff. This includes decisions made when answering inquiries, writing letters and reports and representing the Ombudsman at external meetings. Risk assessments also are part of our decision-making framework, for example whether to conduct an investigation, or a project, or to develop a new internal policy.

Much risk assessment is intuitive and informal, and is part of the unspoken process of making decisions. Sometimes, however, there is a need to document the risk assessment of an individual matter, or the process of risk assessment to be used by officers for particular functions.

The major risks and constraints that we face and the strategies to manage those risks are:

- **damage to the credibility of our work or to our reputation**

We rely on our reputation for maintaining high standards in administrative conduct and for focusing on practical outcomes as it helps ensure that agencies accept our advice and implement our recommendations. We continually monitor our performance to ensure our work is of a high standard. We develop relationships with agencies to ensure that we understand the environment in which they operate, which assist us to focus on practical solutions to issues complained about.

- **increasing complaint levels**

It would be easy to be overwhelmed by the sheer number of complaints received. To address the volume, we have moved our focus from dealing with individual complaints to looking at systemic issues. This means that we can have a greater impact, improving systems and outcomes for the public as a whole. We have negotiated class or kind agreements with a number of agencies, which reduces the number of matters to be notified to the office. We have developed training course on complaints

handling to assist agencies improve their performance in this area. We have also published guidelines on a range of topics including good public administration. We have developed a number of memorandums of understanding with key agencies as well as other watchdog agencies. This reduces the likelihood of duplication, particularly where there is overlap in jurisdiction.

- **unauthorised disclosure of information**

Our work is subject to the secrecy provisions of the Ombudsman Act and other legislation under which we operate. We understand that inappropriate or unauthorised disclosure of information can have a detrimental impact on an individual, agency or Minister. It can also have a detrimental impact on the credibility of the Office and reduce our effectiveness. We have in place a number of strategies to reduce any unauthorised disclosure. We have also been certified under the Australian Information Security Standard AS7799, which means that we were able to demonstrate that we have appropriate systems and policies in place to protect our information. We were the first public sector agency to be certified under the standard.

## Part 7 – Organisational Capability

Our organisational capability issues include:

- **Condition and implication of current fixed asset and IT infrastructure**

Approximately 60% of physical assets have been purchased within the last three years and ninety percent within the last six years. Our significant assets purchases relate to our participation in the Police Complaints Case Management Project (PCCM), the development of a common database for complaints about Police and the improvement/upgrade of other systems of the participating agencies.

Our IT Strategic Plan that identifies projects we will implement over the next three years to improve or better align our IT systems to our service delivery strategies.

- **Structural changes required to achieve planned service delivery and results**

The result of the recent budget cuts will be a substantial reduction in our staff number. This change will significantly affect our service delivery, particularly as the numbers of complaints we receive are continually increasing. As a response to these cuts, we will have to forgo most of our project oriented work, particularly projects to review police systems and practices. This will jeopardise opportunities that may arise for this office to proactively work with other agencies to improve public administration generally.

- **Adequacy of management information systems**

Our IT strategic plan identifies projects that will be implemented to support the continuous improvement of our IT systems including our management information and reporting systems. Our electronic document management system, Context, will be the tools by which we will improve the collection, sharing and retention of information. We will also enhance our intranet to facilitate the monitoring of our core business activities.

We are concerned by the current status of c@ts.i; one of the PCCM developed databases. Some time ago we stopped using this system as it has significant flaws which were impacting negatively on our work in the police jurisdiction. We understand that NSW Police are preparing a business case for funding to fix this system. Until this occurs we continue to rely on pre PCCM systems.

- **Improvements in workforce skills and knowledge required to achieve planned service delivery performance and results**

We have been focusing on the skill levels of staff and in this regard have developed an in-house investigation skills training course. Over time all investigative staff will attend this training. We have also had external agencies attend this training and others who have expressed interest in doing so.

Response to Questions Taken on Notice

We have identified the need to employ a training officer and although our budget was cut, our core business areas agreed to contribute to fund this vital position. The training officer will undertake a skills audit and develop organisational wide and individual training programs.

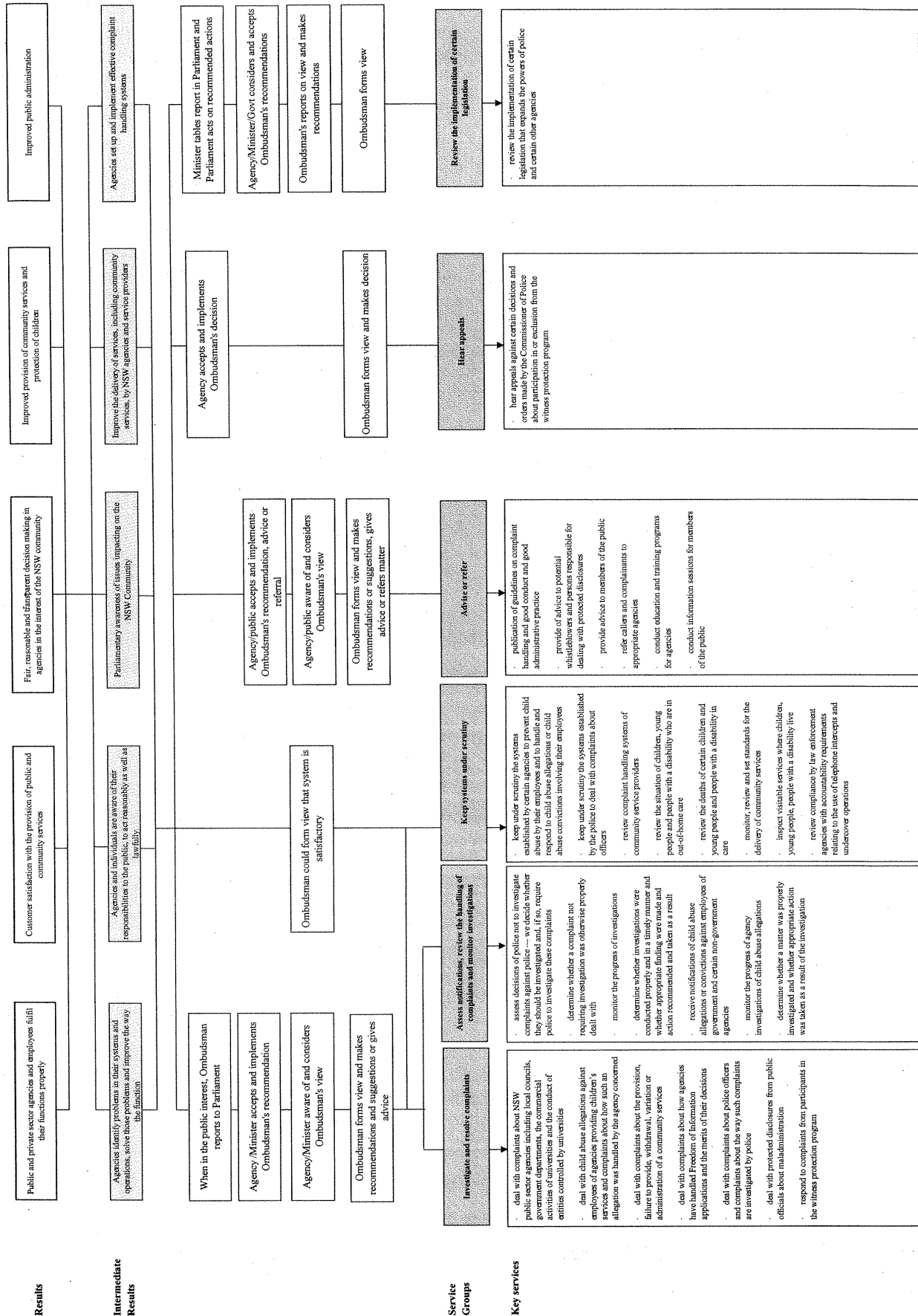
We have developed a range of materials for staff to use in their day to day work – including policies and procedure manuals.

We recently reviewed and amended our corporate plan. Our core business areas will be developing their business plans and we will be reviewing our organisational, business and individual performance indicators to reflect the new corporate goals. This will ensure that all staff are aware of our direction, service delivery standards and their obligations.

**This page has been left blank intentionally**

Response to Questions Taken on Notice

**NSW OMBUDSMAN  
Attachment A - Results and Services**





**Attachment B: planned results**

Planned Results	Results indicators*	2002-03 Actual	2003-04 Actual	2004-05 Estimate	2005-06 Estimate	2006-07 Estimate	2007-08 Estimate
<ul style="list-style-type: none"> <li>Public and private sector agencies and employees fulfil their functions properly</li> <li>Customer satisfaction with the provision of public and community services</li> <li>Fair, reasonable and transparent decision making in agencies in the interest of the NSW community</li> <li>Improved provision of community services and protection of children</li> <li>Improved public administration</li> </ul>	<ul style="list-style-type: none"> <li>number of complaints and notifications about public sector and certain non government agencies ^                             <ul style="list-style-type: none"> <li>written</li> <li>oral</li> </ul> </li> </ul>	8739 26067	9167 26521	9700 28000	10000 28000	10000 29000	10000 29000
Intermediate result:							
<ul style="list-style-type: none"> <li>Agencies identify problems in their systems and operations, solve those problems and improve the way the function</li> <li>Agencies and individuals are aware of their responsibilities to the public, to act reasonably as well as lawfully.</li> </ul>	<ul style="list-style-type: none"> <li>% of recommendations made in general jurisdiction that have been implemented by agency</li> <li>% of recommendations made in police jurisdiction that have been implemented by agency</li> <li>% of recommendations made in child protection jurisdiction that have been implemented by agency</li> </ul>	100%	93.3%	90%	90%	90%	90%
<ul style="list-style-type: none"> <li>Improve the delivery of services, including community services, by NSW agencies and service providers</li> </ul>	<ul style="list-style-type: none"> <li>number of agencies subject to Mystery shopper audit</li> </ul>	1	1	1	1	1	1
<ul style="list-style-type: none"> <li>Agencies set up and implement effective complaint handling systems</li> </ul>	<ul style="list-style-type: none"> <li>audit of complaint handling systems</li> </ul>	#					
<ul style="list-style-type: none"> <li>Parliamentary awareness of issues impacting on the NSW Community</li> </ul>	<ul style="list-style-type: none"> <li>reports to Parliament on public interest issues</li> </ul>	2	2	4	4	4	4

^2002-2003 does not include complaints about community services

\* measures apply to more than one result; some performance measures may only give partial picture; some of the results could be better measured if resources were available to develop collection systems

# audits of complaint handling systems conducted on request

**Attachment C: Planned Service Delivery**

Services delivered	2004-05 Budget \$'000	Service measure	2003-04 Revised	2004-05 Estimate	2005-06 Estimate	Services are principally aimed at delivering these planned results*
<p><b>1. Investigate and resolve complaints</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>deal with complaints</li> <li>deal with child abuse allegations against employees of agencies</li> <li>deal with complaints about the provision, failure to provide, withdrawal, variation or administration of a community services</li> </ul>	\$6205	<ul style="list-style-type: none"> <li>% of general jurisdiction reports recommending changes to law, policy or procedure</li> <li>% of police jurisdiction reports recommending changes to law, policy or procedure</li> <li>% of child protection jurisdiction reports recommending changes to law, policy or procedure</li> <li>% of complaints in the general jurisdiction resolved through the provision of advice or constructive action by public sector agencies</li> <li>number of direct investigations in police jurisdiction completed</li> <li>average number of weeks taken to determine general jurisdiction complaints</li> </ul>	<ul style="list-style-type: none"> <li>85.7%</li> <li>90%</li> <li>100%</li> <li>61.1%</li> <li>21</li> <li>5.1</li> </ul>	<ul style="list-style-type: none"> <li>80%</li> <li>70%</li> <li>90%</li> <li>65%</li> <li>25</li> <li>7</li> </ul>	<ul style="list-style-type: none"> <li>80%</li> <li>70%</li> <li>90%</li> <li>65%</li> <li>25</li> <li>7</li> </ul>	<ul style="list-style-type: none"> <li>Public and private sector agencies and employees fulfil their functions properly</li> <li>Customer satisfaction with the provision of public and community services</li> <li>Fair, reasonable and transparent decision making in agencies in the interest of the NSW community</li> <li>Improved provision of community services and protection of children</li> <li>Improved public administration</li> </ul>
<p><b>2. Assess notifications, review the handling of complaints and monitor investigations</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>assess decisions of police not to investigate complaints against police</li> <li>receive notifications of child abuse allegations or convictions against employees of government and certain non-government agencies</li> <li>monitor the progress of investigations</li> <li>determine whether investigations were conducted</li> </ul>	\$3601	<ul style="list-style-type: none"> <li>number of police investigations directly monitored</li> <li>average number of days taken to assess child protection notifications</li> </ul>	<ul style="list-style-type: none"> <li>39</li> <li>5</li> </ul>	<ul style="list-style-type: none"> <li>20</li> <li>5</li> </ul>	<ul style="list-style-type: none"> <li>20</li> <li>5</li> </ul>	

Services delivered	2004-05 Budget \$'000	Service measure	2003-04 Revised	2004-05 Estimate	2005-06 Estimate	Services are principally aimed at delivering these planned results*
properly and in a timely manner and whether appropriate finding were made and action recommended and taken as a result		<ul style="list-style-type: none"> <li>average number of days taken to assess final child protection investigation reports</li> </ul>	38	30	30	
<p><b>3. Keep systems under scrutiny</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>keep under scrutiny the systems established by certain agencies to prevent child abuse by their employees and to handle and respond to child abuse allegations or child abuse convictions involving their employees</li> <li>keep under scrutiny the systems established by the police to deal with complaints about officers</li> <li>review complaint handling systems of community service providers</li> <li>review the situation of children, young people and people with a disability who are in out-of-home care</li> <li>review the deaths of certain children and young people and people with a disability in care</li> <li>monitor, review and set standards for the delivery of community services</li> <li>inspect visitable services where children, young people, people with a disability live</li> </ul>	\$6174	<ul style="list-style-type: none"> <li>number of audits conducted in police jurisdiction</li> <li>number of audits conducted in the child protection jurisdiction (excluding class and kind audits)</li> <li>number of hours spent on visiting services</li> <li>number of reviews of community services complaint handling systems</li> <li>number of individual section 11 reviews of people in care</li> <li>number of deaths in care notified (calendar year ie 31/12)</li> <li>number of deaths in care reviewable (calendar year ie 31/12)</li> <li>number of child deaths notified (calendar year ie 31/12)</li> <li>number of child deaths reviewable (calendar year ie 31/12)</li> </ul>	7529	6000	6000	
<p><b>4. Advise or refer</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>provide advice to members of the public</li> <li>refer callers and complainants to appropriate agencies</li> </ul>	\$2098	<ul style="list-style-type: none"> <li>number of telephone inquiries/ complaints received</li> </ul>	26521	28000	28000	

Services delivered	2004-05 Budget \$'000	Service measure	2003-04 Revised	2004-05 Estimate	2005-06 Estimate	Services are principally aimed at delivering these planned results*
<ul style="list-style-type: none"> <li>provide of advice to potential whistleblowers and persons responsible for dealing with protected disclosures</li> <li>publish guidelines on complaint handling and good conduct and good administrative practice</li> <li>conduct education and training programs for agencies</li> <li>conduct information sessions for members of the public</li> </ul>		<ul style="list-style-type: none"> <li>number of complaint handling courses conducted</li> </ul>	13	20	20	
<p><b>5. Hear appeals</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>hear appeals against certain decisions and orders made by the Commissioner of Police about participation in or exclusion from the witness protection program</li> </ul>	\$53	<ul style="list-style-type: none"> <li>% of appeals determined within 7 days</li> </ul>	100%	100%	100%	
<p><b>6. Review the implementation of certain legislation</b></p> <p>Key services:</p> <ul style="list-style-type: none"> <li>Review the implementation of certain legislation that expands the powers of police and certain other agencies</li> </ul>	\$594	<ul style="list-style-type: none"> <li>% of the reports on our review including finding prepared within timeframe</li> </ul>	100%	100%	100%	
<b>Total Expenses</b>	<b>\$18724</b>					

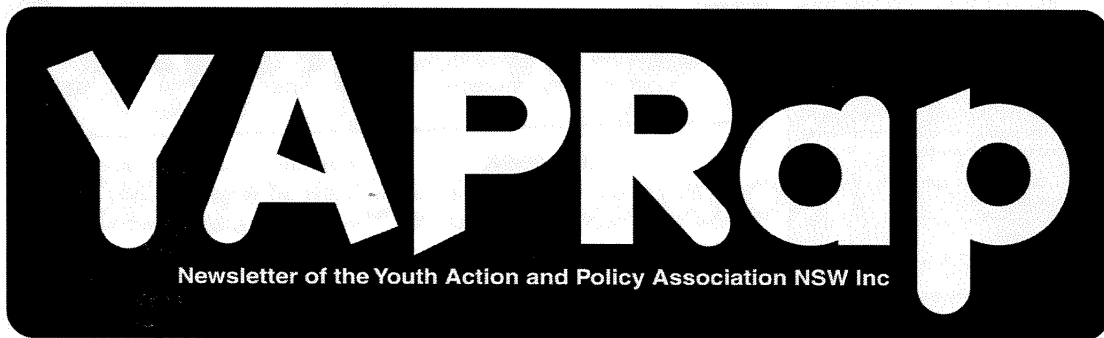
\* Services provided are applicable to all planned result

**Attachment D: Our legislative functions**

<b>Investigating and resolving complaints</b>	
<ul style="list-style-type: none"> <li>deal with complaints about NSW public sector agencies including local councils, government departments, the commercial activities of universities and the conduct of entities controlled by universities</li> <li>deal with child abuse allegations against employees of agencies providing children's services and complaints about how such an allegation was handled by the agency concerned</li> <li>deal with complaints about the provision, failure to provide, withdrawal, variation or administration of a community services</li> </ul>	Ombudsman Act 1974 Community Services (Complaints, Reviews & Monitoring) Act 1993 Enabling legislation for each NSW university, as amended by the Universities Legislation Amendment (Financial and Other Powers) Act 2001
<ul style="list-style-type: none"> <li>deal with complaints about how agencies have handled freedom of information applications and the merits of their decisions</li> </ul>	Freedom of Information Act 1989
<ul style="list-style-type: none"> <li>deal with complaints about police officers and complaints about the way such complaints are investigated by police</li> </ul>	Police Act 1990 (formerly the Police Service Act 1990)
<ul style="list-style-type: none"> <li>deal with protected disclosures from public sector staff / officials about maladministration</li> </ul>	Protected Disclosures Act 1994
<ul style="list-style-type: none"> <li>respond to complaints from participants in the witness protection program</li> </ul>	Witness Protection Act 1995
<b>Assessing notifications, reviewing the handling of complaints and monitoring investigations</b>	
<ul style="list-style-type: none"> <li>receive notifications of child abuse allegations or convictions against employees of government and certain non-government agencies</li> <li>monitor the progress of agency investigations of child abuse allegations</li> <li>determine whether a matter was properly investigated and whether appropriate action was taken as a result of the investigation</li> </ul>	Ombudsman Act
<ul style="list-style-type: none"> <li>assess decisions of police not to investigate complaints against police — we decide whether they should be investigated and, if so, require police to investigate these complaints</li> <li>determine whether a complaint not requiring investigation was otherwise properly dealt with</li> <li>monitor the progress of investigations</li> <li>determine whether investigations were conducted properly and in a timely manner and whether appropriate action was recommended and taken as a result</li> </ul>	Police Act
<b>Keeping systems under scrutiny</b>	
<ul style="list-style-type: none"> <li>keep under scrutiny the systems established by certain agencies to prevent child abuse by their employees and to handle and respond to child abuse allegations or child abuse convictions involving their employees</li> </ul>	Ombudsman Act
<ul style="list-style-type: none"> <li>keep under scrutiny the systems established by the police to deal with complaints about officers</li> </ul>	Police Act
<ul style="list-style-type: none"> <li>review complaint handling systems of community service providers</li> <li>review the situation of children, young people and people with a disability who are in out-of-home care</li> <li>review the deaths of certain children and young people and people with a disability in care</li> <li>monitor, review and set standards for the delivery of community services</li> <li>inspect visitable services where children, young people, people with a disability live</li> </ul>	Community Services (Complaints, Reviews & Monitoring) Act
<ul style="list-style-type: none"> <li>review compliance by law enforcement agencies with accountability requirements relating to the use of telephone intercepts and undercover operations</li> </ul>	Law Enforcement (Controlled Operations) Act 1997 Telecommunications (Interception)(NSW) Act 1987
<b>Advice or refer</b>	
<ul style="list-style-type: none"> <li>publication of guidelines on complaint handling and good conduct and good administrative practice</li> <li>provide of advice to potential whistleblowers and persons responsible for dealing with protected disclosures</li> </ul>	Ombudsman Act Community Services (Complaints, Reviews & Monitoring) Act

<ul style="list-style-type: none"> <li>• provide advice to members of the public</li> <li>• refer callers and complainants to appropriate agencies</li> <li>• conduct education and training programs for agencies</li> <li>• conduct information sessions for members of the public</li> </ul>	
<b>Hearing appeals</b>	
<ul style="list-style-type: none"> <li>• hear appeals against certain decisions and orders made by the Commissioner of Police about participation in or exclusion from the witness protection program</li> </ul>	Witness Protection Act
<b>Reviewing the implementation of certain legislation</b>	
<ul style="list-style-type: none"> <li>• review and report on the implementation of various Acts that give greater powers to police and correctional officers and certain other people</li> </ul>	<p>Child Protection (Offenders Registration) Act 2000                      Children (Criminal Proceedings) Act 1987 – as amended by the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001                      Crimes (Administration of Sentences) Amendment Act 2002                      Crimes (Forensic Procedures) Act 2000                      Crimes Legislation Amendment Act 2002 (Schedule 10)                      Crimes Legislation Amendment (Penalty Notices) Act 2002                      Firearms Amendment (Public Safety) Act 2002                      Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001                      Law Enforcement (Powers and Responsibilities) Act 2002 – legislation scheduled to take effect in 2004                      Police Powers (Drug Detection Dogs) Act 2001                      Police Powers (Drug Premises) Act 2001                      Police Powers (Internally Concealed Drugs) Act 2001                      Police Powers (Vehicles Act) 1998 - as amended by the Police Powers (Vehicles) Act 2001                      Summary Offences Amendment (Places of Detention) Act 2002.</p>

Relevant extracts from YAPRap (full copy of the newsletter was provided to the Committee):



Vol 15 No 5 May 2005

# Fair go RailCorp!

**YAPA's recent research into young people's experiences of railway transit officers shows that young people are not getting a fair deal. They are penalised in situations where older travellers are not, and they don't always get the protection which the Transit Officers are meant to provide. Jennifer Anne, YAPA's Policy and Training Officer, has just completed this report, *Young people and transit security*.**

YAPA believes that law enforcement action in regards to young people should be

proportionate, educative, rehabilitative and deterrent in nature. Law enforcement action should take into account the unique social, cultural, financial and developmental circumstances of young people.

At the Big Day Out 2005 YAPA staff and volunteers gathered 276 surveys about young people's experience of security and policing on trains and other public transport.

The surveys gathered information about young people's age, sex, ethnicity and details of incidents (including when, where, who and what) and young people's opinions about how transit security treats young people.

Young people were assisted in filling in the surveys by a list describing various uniforms.

The surveys were not intended to provide statistical information, but rather to help build up a picture

of how young people experience their interaction with law enforcement on public transport, and provide insight into how relations between law enforcement and young people can be improved.

In addition to these surveys, this report draws on other case studies and information gathered about young people's experience of official security on trains and other public transport.

From this, we can make the following broad observations.

- Young people identify unfair age related targeting and discrimination as a serious concern in their interaction with transit security and law enforcement.

(continued on page 9)



## In this issue:

News Hound	2
Youth helpz youth	3
NSW Ombudsman	4
National Hepatitis C project	6
What's On	13

## Youth helpz youth: Holroyd Peer Education Project

(continued from previous page)

actually have leadership qualities however, I don't show them often" said one of the peer educators.

The peer educators will now undertake a 10 week training courses focusing on areas including, Sexual acceptance and sexuality, safe sex and STIs, body image, mental health, drugs & alcohol, bullying & pressure and developing creative resources and workshops.


The training is being held at Holroyd City Council and

facilitated by great youth and health professionals who are involved in the project's working party. These include FPA Health, ACON, High St Youth Health Service, Youth off the Streets, FYRST Parramatta and Holroyd Council's Youth Services Team.

Following this training, the peer educators will share their wealth of knowledge and experience with their friends, peers and family to help other youth in Holroyd area.

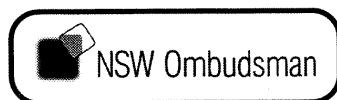
We are looking for any

opportunities where these peer educators could get involved in providing community education activities. These include co-facilitating workshops, assisting with project development and implementation and developing educational youth friendly resources.

If you have ideas and resources to assist the project, or would like more information, please contact Jennifer Bulley on (02) 9840 9939, [jennifer.bulley@holroyd.nsw.gov.au](mailto:jennifer.bulley@holroyd.nsw.gov.au). 

# NSW Ombudsman

Mandy Loundar – Youth Liaison Officer, NSW  
Ombudsman's Office



**The NSW Ombudsman is an impartial and independent watchdog of government agencies, some community services, and their employees.**

We handle complaints about agencies such as NSW Police, Department of Health, local councils, and community services

funded, licensed, or authorised by NSW Department of Community Services (DoCS) and NSW Department of Ageing, Disability and Home Care (DADHC). The Ombudsman receives complaints about maladministration or conduct where an agency or service provider has acted unreasonably. We can oversee, monitor, or conduct investigations, and may make recommendations for improvements.

A key focus of the Office is our commitment to young people. We are keen to help young people access our services. We also want to work with government departments and youth services, to encourage them to be more open and accountable to young people. This is where my role comes in as the new Youth Liaison Officer at the Ombudsman's Office. I liaise with young people and youth services to identify key youth issues, which are







Mandy with some young people at Nowra Youth Festival

then fed back to the Office for possible action. Another large part of my role is to educate youth services on how to empower young people to make complaints when they are not receiving their rights.

It is important for services to empower their consumers by informing them of their rights and responsibilities. Consumers have the right to understand the complaints system of the service and how to use it.

### Empowering young people in your service

- Develop guidelines and protocols for receiving and responding to youth complaints about your service, and include young people in the development of the guidelines.
- Promote your service's complaint handling systems to your consumers so they know how to use it.
- See complaints as an opportunity to grow and improve your service.

### Benefits of complaining

- Increases the chances that the


young person will get an outcome they want

- Reveals problems with existing policies, procedures and practices
- Helps others in similar situations
- Helps to improve services
- Helps to raise bigger issues, like policy and funding issues

Youth workers can also be great advocates for young people especially in relation to complaints about government agencies. It is important for youth workers to encourage young people to not just talk about the actions of government agencies but to empower them to make a formal complaint. Explain to them the benefits of complaining. If young people are not confident enough to make a complaint themselves then youth workers or Members of Parliament can make a complaint on their behalf.

Currently I am working closely with the Police Team in the Office to develop a practical fact sheet for people who work with young people want to complain about police. The fact sheet will give advice on how to make a complaint, how youth workers can help them do this, how

complaints are handled, and how to overcome negative perceptions. The fact sheet will soon be available on the Ombudsman's website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au) or by contacting me on (02) 9286 1094.

For more information about empowering young people to make complaints, to discuss current youth issues, or to invite me to conduct a presentation to young people or youth workers please call me, Mandy Loundar on (02) 9286 1094 or [mloundar@ombo.nsw.gov.au](mailto:mloundar@ombo.nsw.gov.au). 

### More more more...

- Young people and youth workers can give also feedback to YAPA about police, security guards and railway Transit Officers using [goodcopbadcop](http://goodcopbadcop). Go to [www.yapa.org.au/youth/cop](http://www.yapa.org.au/youth/cop), or if you prefer, ring Jennifer Anne at YAPA to tell your story. Ext. 8, (02) 9319 1100 or 1800 627 323.
- YAPA's Model Policies include a Complaints Policy which you can adapt to suit your youth agency. Go to [www.yapa.org.au/youthwork/modelpolicies](http://www.yapa.org.au/youthwork/modelpolicies) and scroll down to the PDF file *Rights and responsibilities*.
- YAPA's Model Policies include a Crime and Police Policy which you can adapt to suit your youth agency. Go to [www.yapa.org.au/youthwork/modelpolicies](http://www.yapa.org.au/youthwork/modelpolicies) and scroll down to the PDF file *Safety*.



# Fair go RailCorp!

(continued from page 1)

- Young people are disproportionately and inappropriately adversely affected by fining for transit related offences.
- Young people are concerned generally about the administration of the transit security system including concerns around safety and procedural fairness.

## 1. Unfair targeting

### Young people feel they are being unfairly targeted because they are young.

A number of respondents indicated either that they (or someone they knew) were targeted because of their age or that young people in general are targeted because of age.

Specific concern was also expressed about the targeting of certain sub-cultures (typically youth sub-cultures) – ie., goth, alternative, punk.

- *Sitting with friends doing nothing. Where targeted by transit officers for tickets. Happens all the time. (17 y/o male)*
- *Sitting with friends transit officers came up to me and asked for a ticket and I showed them my ticket, they checked and started asking for ID I showed them and there were girls sitting next to me and they didn't ask them (17 y/o male)*
- *On train with friend, friend dropped his skateboard, officers came up to us and were questioning us. And they didn't ask anyone else on the train. (17 y/o male)*
- *I was catching the train back from work (as usual) and was asked by*

*a train security officer to check my ticket. I produced the ticket and it was all cool. Five minutes later I was asked again, then 10 minutes after that. 3 times in the one trip is a little excessive, especially when the middle aged/elderly DID NOT GET ASKED ONCE!!! (22 y/o female)*

- *Hassling teenage commuter so much more than any other age group! Targeting us, even when we're doing the right thing. (18 y/o woman)*
- *The trains are forever late – apart from that the security guards checked tickets of select members of the carriage. He did not hassle older members – just teenagers and the young pregnant mother on the carriage. (15 y/o woman)*

### Young people entitled to student concession travel feel the current system disadvantages them unfairly.

- *Victimised for forgetting my student ID and had concession ticket – 90c difference – broke. Marched out at Redfern by 4 traffic police – searched – wallet searched, housemates called and interrogated by them. (23 y/o woman)*
- *I didn't have a concession ticket but I had a child's ticket. Got abused by an officer (City Rail) because I didn't have a card when you have to be 16 to have one. (15 y/o male)*
- *Train guards bullied till I cried 'cos I could not find my concession card (but I have one), I was so upset because I really thought I had it – I was so stressed out I couldn't find it due to the stress of it. (19 y/o woman)*
- *When you forget your rail pass for*

*school, if we are in uniform then we should be allowed on. Security guy yelled at us. (17 y/o woman)*

### Young people (like other commuters) experience and witness arbitrary and unofficial 'discretion'.

A number of young people recounted incidences where they had behaved in a way that merited a fine but were 'let off' with a warning. This is interesting given publicity by (former) Minister for Transport Michael Costa that Transit Officers are specifically denied by internal policy any power to exercise discretion in fining.

The experience and witnessing of arbitrary and unofficial discretion compounds the experience of feeling targeted on the basis of age.

### Young people sometimes feel that security guards on trains unfairly target and harass young (and older) people of culturally and linguistically diverse backgrounds.

A number of respondents indicated that they had experienced specific incidents or had a general feeling that transit officers disproportionately target people of CALD backgrounds, and treated these people unfairly.

- *General 'Smart arse' attitude, particularly to ethnic and physically small friends, personally as a taller and stronger male, they act as if it is a threat to them and bully us and attempt to start fights*
- *Three security guards harassed a woman in a burka for a ticket she already had, but continued to question her.*

(continued over page)



# Fair go RailCorp!

(continued from previous page)

Youth workers have expressed concern that certain ethnic groups were being specifically targeted: including Pacific Islander young people, African (specifically refugee background) young people and Indigenous young people.

## 2. Disproportionate adverse impact because of age

### Inability to meet payment of fines

Young people have less access to resources to pay fines. Many young people report that their parents paid their fine or otherwise arranged for the fine to be dropped. This has the effect of penalising the parents vicariously for the offences of their children.

Young people in general receive low or no income, and rarely have an income under the age of 16. Their very low or non-existent income means that even a single fine at the minimum level represents a significant proportion of their income. This has wide reaching implications, the most basic of which is that young people are faced with an enforceable debt that potentially draws their already scarce resources away from essential living expenses such as housing, and food. Further more, should young people fail to pay a fine, the referral and debt recovery process have a disproportionate adverse affect on young people because of their age.

*on my way home from work and uncover cop did me for drinking on*

*the train \$500 that was my whole wage for the week. (21 y/o male)*  
*I was stubbing out a cigarette in the platform bin when a transit officer came and spoke to me, I showed him my license, we chatted. No ticket or advice a ticket would be issued. Announcement didn't mention covered areas only trains, waiting rooms & underground platform. He issues a fine, to my old address (current was on back of license), 9 months later get a letter from office state debt recovery, license suspended, car rego cancelled, sheriff's office now after me, matter still in dispute with infringement P.B. \$400- now up to \$600*

Young people and youth services have reported other worrying implications, including that the levying of fine and consequent debts against young people may begin a shift towards crime in that young people may resort to theft in order to meet the fines against them.

### Young people are particularly adversely affected by the experience of multiple fining.

Many young people report receiving multiple fines – both in the one instant and over a period of time.

*\$400 (smoking) plus \$100 for giving them my full name that is in Spanish and they thought I was lying. (16 y/o male)*

Youth workers have reported several instances where young people have accumulated several thousand dollars worth of fines. In all instances young people cannot pay off these fines. In many instances these young people are homeless or considered at risk of homelessness.

### Double jeopardy: young people are subject to private sanctions in addition to fines

Young people are unique amongst commuters in that they do not typically have independent access to financial resources. They are also typically subject to the authority of their parents or guardian – particularly under the age of 18. A consequence of young people's dependence on their parents is young people are sometime also informally subject to sanction by their parent for transit related offences. One youth worker has reported that a 16 year old male client was severely beaten by his parents as a result of receiving a fine. His parents will not pay the fine. Other young people have reported being 'grounded' for incurring fines. That a second informal and unmonitored system of punishment exists beyond fining is unique to young people.

### Lack of knowledge about appeals and defences

In many of the instances described by young people the Rail Safety Act or Regulations provides for defences to fines. Most young people surveyed clearly were not aware of their options for appealing or having fines set aside on the grounds of those defences.

## 3. Administration and fairness of current security system

There are two key issues here: firstly, a concern that young people



feel their safety as commuters is not adequately prioritised by security on trains, and secondly, the administration of the current system is substantively and procedurally unfair (in ways that are not related to age).

**Young people sometimes feel unsafe and feel that officers do not provide ‘security’ on trains.**

Transit Officers are responsible for the detection of offences against Rail regulations, apprehension of persons who commit behavioural offences including acts of vandalism to RailCorp property and security on trains. It is concerning that many young people recounted their experience of unsafe travel, where they or their friends were put at risk or came to harm and no security was available to assist them.

- A man came up to me on my way home from school and felt me up – my breasts – the security guard didn’t believe me!! They didn’t go after the guy, and he got away. (17 y/o woman)
- Once travelling from Sydney to Lithgow my bag was stolen. When I went to security they said not my problem and asked me for my ticket only it was in my bag. I received a fine as they didn’t believe me. (21 y/o female)
- 2 boys came to me, but nothing happened. I still felt uncomfortable, cause if there would have happened anything there was no chance of getting help. (17 y/o female)
- In year 10 (2001), me and my friend got mugged while the transit officers were just sitting in the next carriage because they couldn’t be bothered patrolling. No-one even bothered to check the security tapes to identify the guys (19 y/o male)
- Not enough security on night rail, was a bit scary the other night on my way home from work on train

late at night. I was near guards compartment but there was some threatening men about (22 y/o female)

- I was on the train with a friend and a weird guy laid down on the ground (on the train) to look up our skirts. (16 y/o female)
- We were on the train – about 5 of the girls – and a massive group of guys came up and started being really gross. Security came up just walked straight pass despite one of the girls telling the guys to get lost. (17 y/o woman)
- it actually happened to a good friend of mine, she is an 18 year old female (was 15 at the time) but long story short she was raped by two men and security nor police was nowhere to be seen! Before, during or after. In short security on trains suck!
- A friend of mine was on her own and an old man was the only other person on the carriage and he moved right next to her and was looking at her legs and whenever security would come he’d move, but when they’d left he’d move right back (22 y/o woman)

**Young people feel that the ‘system’ lets them down, is poorly administered and poorly run.**

This highlights concerns that the ‘system’ is unfair, but in ways that are not necessarily related to age related discrimination. This includes concerns that decisions to fine are arbitrary, that contradictory messages are received from different security and other transit employees, that security officers ‘set up’ and engage in other duplicitous and ‘corrupt’ behaviour.

- I was waiting for a train at Granville and felt like a smoke so I went to the uncovered area to have it and

I just happened to be under an extension for some sort of construction, the transit dude came and asked me to put it out and gave me a fine even though I asked before-hand and a guard said it was okay to smoke there. (16 y/o male)

- I had my feet on the seats and he came and gave me a ticket but then took my train ticket with him so I got another fine for not having a ticket. (21 y/o woman)
- Changed platforms smoking – busted – told to put out – couldn’t litter, told wouldn’t fine – but let go – went back to ask cop why he picked on smoking – two days later fined in mail. The other smokers didn’t get fined
- Fined for having feet on seats, didn’t have feet on seats at all.
- Security attacked me then charged me. After I was the one who called the police. (19 y/o woman)
- He asked for my ticket threw it out the window and said I didn’t have a ticket
- I got fined late at night when they reckon I had my feet on the seat. I distinctly heard them say “that’s my quota”
- Two of my friends got fines for having their feet on the seat – just on the metal part below the seat! How unfair! (19 y/o woman)

**Where to from here?**

These experiences suggest that the current transit security approach is inappropriate for young people, both procedurally and culturally.

In consultation with youth workers and young people, YAPA is developing a series of recommendations to improve the interaction between transit security and young people.

(continued over page)



# Fair go RailCorp!

(continued from previous page)

## Internal RailCorp Policy

- Increase and improve training in working with young people, including raising awareness of the specific issues of young people from diverse cultural backgrounds, including refugee and newly arrived immigrants. This training could be modelled on the current YAPA training package *Resource Manual and Self-Paced Learning Package for Shopping Centre Security Guards* and/or face to face training *Preventing Conflict with Young People* developed for security guards by Garner Clancey (CHD Partners).
- Increase the emphasis and training of guards in safety and security over and above revenue protection. Training should focus more on positive intervention and identification of potentially unsafe situations, particularly for young women commuters.
- Include details of the Legal Aid Hotline for under 18 year olds and Law Access with or on the fine notice itself. This would help young people to know of their legal appeal options and how to seek assistance in that process. This in turn could help reduce the number of fines defaulted on as fines would be removed or young people would have a better idea of their options in terms of payment.
- Amend and publicise internal policy so that it is clear that Transit Officers do have discretion to choose not to issue a fine.
- Introduce a system like on the

private bus providers that where a student forgets a concession card or is entitled to concession travel they can fill in a form declaring their entitlement, to be checked prior to fining for travelling with an invalid ticket.

## Rail Safety Act

- Introduce options for alternative penalties and sanctions including: warnings, cautions and conferencing, as well as other non-financial penalties such as cleaning up trains.
- Set a minimum age for fining, below which young people cannot receive financial penalty for offences. We suggest an age minimum of 16 as prior to this age young people tend not be earning an independent income and hence bearing the financial penalty themselves.

## Fines Act

- Remove options under s 65 of the *Fines Act* around enforcement action with respect to driver's licences. In particular there should be no action taken on young people under the age of 18 that would prevent them obtaining a licence.

## Young Offenders Act

- The definition of 'prescribed officer' in s 21 of the *Young Offenders Act* should be extended to include transit officers. This would bring their powers are in line with the principles of the *Young Offenders Act* and the

rehabilitative focus of the juvenile justice system in general.

## Police Policy

- Police should be encouraged to exercise powers under the *Young Offenders Act* and pursue provided alternatives to fining.


## What's YAPA doing?

Versions of this report have been discussed with the Attorney General's Crime Prevention Unit, the NSW Ombudsman and RailCorp (the people who employ the Transit Officers!).

YAPA has also been supporting networks and individual services who are advocating on behalf of individual clients and young people generally.

## What can you do?

If you have ideas about how this report can be used or have further recommendations, case studies or opinions, please contact Jen on ext 8, (02) 9319 1100 or 1800 627 323 or email [jen@yapa.org.au](mailto:jen@yapa.org.au).

If you are a young person or youth worker who would like to anonymously feed back about an incident with security officers or police, go to [www.yapa.org.au/youth/cop](http://www.yapa.org.au/youth/cop) and tell us your story. 





## Appendix One: Committee Minutes

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 12 October 2005, 6:30pm  
Room 1043, Parliament House

#### **Members Present**

Mr Lynch (Chair), Mr Breen, Mr Clarke, Mr Corrigan, Mr Kerr

#### **Apologies:** Ms Burnswoods

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

.....

### **5. General Business**

.....

#### **Reports to Parliament:**

The Committee noted briefing papers on the Ombudsman's *Review of the Police Powers (Drug Premises) Act 2001* and the PIC's report on *Operation Abelia*.

**Resolved** on the motion of Mr Kerr, seconded Mr Corrigan, that:

Questions for General Meeting - the Committee question the Ombudsman at the General Meeting in November as to whether:

the poor quality of police recording on COPS, and record keeping generally, had a significant impact on the legislative review;

as a result of discussions with NSW Police about the implementation of the COPS audit recommendations, the Ombudsman is confident that information entered on the database will be more accurate and comprehensive in the future; and

the delay in gaining access to search warrant documents signified a lack of cooperation or a lack of appreciation by NSW Police of the requirements of the review process.

.....

---

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 9 November 2005, 6.30pm  
Room 1043, Parliament House

#### **Members Present**

Mr Lynch (Chair), Mr Breen, Ms Burnswoods, Mr Chaytor, and Mr Corrigan

**Apologies:** Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

The Chairman commenced proceedings at 6.37pm.

.....

**2. Inquiry Program**

*General Meetings with the Ombudsman and the PIC:*

Resolved on the motion of Mr Corrigan, seconded by Mr Chaytor, that the draft Questions on Notice sent by the Chair to the Ombudsman and the PIC be endorsed and formally confirmed with the Ombudsman and Commissioner of the PIC.

.....

---

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 23 November 2005, 10.00am

Room 814-5, Parliament House

**Members Present**

Mr Lynch (Chair), Mr Breen, Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr

**Witnesses present**

Mr Bruce Barbour (Ombudsman), Mr Greg Andrews, Ms Anne Barwick, Mr Simon Cohen, Mr Steven Kinmond, Mr Chris Wheeler

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves, Lluwannee George

**THIRTEENTH GENERAL MEETING WITH THE NSW OMBUDSMAN**

The Chair opened the public hearing at 10.05am.

Mr Bruce Alexander Barbour, New South Wales Ombudsman; Mr Christopher Charles Wheeler, Deputy Ombudsman; Mr Stephen John Kinmond, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner; Mr Gregory Robert Andrews, Assistant Ombudsman (General); and Mr Simon Justin Cohen, Assistant Ombudsman (Police): previously affirmed. Ms Anne Patricia Barwick, Assistant Ombudsman (Children and Young People) previously sworn.

With the exception of the answer to Question on Notice 17, which was confidential, the Ombudsman tabled his answers to the Questions on Notice for inclusion as part of his sworn



evidence, and the brochure *Legislative Reviews* (November 2005). The Ombudsman then made an opening statement.

The Chair commenced questioning of the witnesses followed by other Members of the Committee.

At 12.00 noon, the public evidence concluded and the Committee went into deliberative session.

### **DELIBERATIVE SESSION**

At the Committee's invitation the Ombudsman and other witnesses were present. Also present from the Ombudsman's staff was Ms Anita Whittaker.

.....

### **IN CAMERA EVIDENCE**

The Chair commenced the in camera hearing at 12.02pm for the purpose of clarifying matters arising from the recent correspondence.

.....

Evidence concluded, the Ombudsman and other statutory officers and Ombudsman staff departed at 12.10pm.

.....

---

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

Thursday 1 December 2005 at 10.00am  
Room 1153, Parliament House

#### **Members Present**

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Chaytor, Mr Clarke, Mr Corrigan and Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves.

The Chairman commenced proceedings at 10.05am.

.....

### **3. Inquiry Program**

*Thirteenth General Meeting with the NSW Ombudsman*

Resolved on the motion of Mr Chaytor, seconded by Mr Corrigan, that:

- i. the Committee's report on the Thirteenth General Meeting with the NSW Ombudsman shall consist of:
  - the questions on notice and the Ombudsman's answers, dated 18 November 2005;
  - the corrected transcript of the evidence given by the NSW Ombudsman and his senior staff during the public hearing on 23 November 2005;
  - the commentary circulated by the Chair to the Committee Members, which is the subject of consensus by the Members, highlighting issues such as: budgetary issues in relation to the reviewable deaths function, Community Visitor's Program, Police Area, special projects e.g. police and domestic violence, controlled operations, tabling of the Ombudsman's reports, DoCS record keeping and child protection systems, Police COPS 2 System, Early Warning System for police officers, proposed PIC oversight of Counter Terror measures, accountability mechanisms in the proposed surveillance legislation, ICAC and police complaints not referred to Ombudsman, dissemination of TI material to the Ombudsman as a permitted purpose.
  - relevant information (that is not confidential) as provided by the Ombudsman in response to matters taken on notice during the hearing;
- ii. the report, so comprised, be adopted as the report of the Committee and that it be signed by the Chair and presented to the House, together with the minutes of evidence;
- iii. the Chair and Committee Manager be permitted to correct stylistic, typographical and grammatical errors.

.....

---

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 5 April 2006 at 6.30pm

Room 1043, Parliament House

**Members Present**

Mr Lynch (Chair), Mr Breen, Mr Chaytor, Mr Clarke, and Mr Corrigan

**Apologies**

Ms Burnswoods, Mr Kerr

In attendance: Helen Minnican, Pru Sheaves, Jennifer North.

The Chairman commenced proceedings at 6.30pm.

.....

**3. Inquiry Program: Reports and new inquiries**

- (a) **13<sup>th</sup> General Meeting with the NSW Ombudsman:** The Committee deliberated on the draft report, as previously circulated to Committee Members. The Committee

proceeded to consider the schedule of proposed amendments to the *Commentary* of the report as circulated and addressed by the Chairman.

The Committee considered the Commentary of the report.

Recommendation 1 adopted.

Section entitled "ICAC and the 500 non-referred complaints" as amended, adopted.

Section entitled "Ombudsman's new functions under the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005*" as amended, adopted.

Section entitled "Telecommunications Interception (TI)" as amended, adopted.

The remainder of the report adopted as stands.

The Committee resolved on the motion of Mr Corrigan, seconded Mr Breen, that: the draft report as amended be the Report of the Committee and that it be signed by the Chairman and presented to the House, together with the minutes of evidence; and, the Chairman, Committee Manager and Senior Committee Officer be permitted to correct minor stylistic, typographical and grammatical errors.

.....