

**PARLIAMENT
OF
NEW SOUTH WALES**

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

**INQUIRY INTO THE
FUNDS AND RESOURCES
AVAILABLE TO THE
OFFICE OF THE OMBUDSMAN**

TOGETHER WITH MINUTES OF PROCEEDINGS

SEPTEMBER 1993

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COMPANION VOLUME:

- A - The Independence and Accountability of the Ombudsman, Report to Parliament under Section 31 of the Ombudsman Act, 19 July 1990.
- B - The Effective Functioning of the Office of the Ombudsman, Report to Parliament under Section 31 of the Ombudsman Act, 21 June 1991.
- C - Management Review of the NSW Office of the Ombudsman, Final Report (Volume I), 16 July 1993, KPMG Peat Marwick Consultants (Sydney).
- D - Management Review of the NSW Office of the Ombudsman. Appendices (Volume II), 16 July 1993, KPMG Peat Marwick Consultants (Sydney).
- E - Final Report Addendum from KPMG Peat Marwick Consultants, dated 23 July, 1993.
- F - Office of the Ombudsman, Preliminary Submission to Joint Committee on the Ombudsman - KPMG Peat Marwick Final Report, 20 July, 1993.
- G - Office of the Ombudsman, Submission to Joint Committee on the Ombudsman - KPMG Peat Marwick Final Report, 2 August, 1993.

COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY

Mr John Turner MP	<i>Chairman</i>
Mr Malcolm Kerr MP	
Mr Barry Morris MP	
Mr Kevin Moss MP	
Mr Carl Scully MP	
Mr Anthony Windsor MP	

LEGISLATIVE COUNCIL

The Hon Dr Meredith Burgmann MLC	
The Hon Lloyd Coleman MLC	
The Hon Stephen Mutch MLC	<i>Vice-Chairman</i>

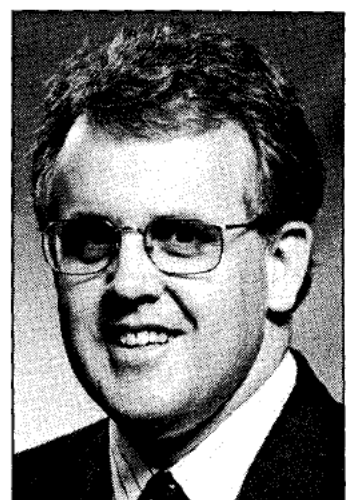
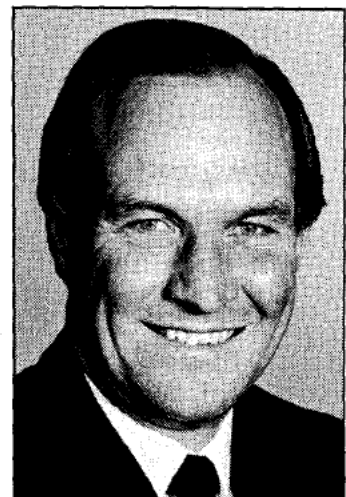
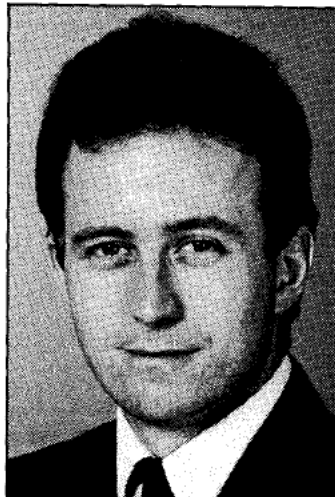
SECRETARIAT

Ms Helen Minnican BA (Hons)	<i>Project Officer</i>
Ms Peita Burgess	<i>Assistant Committee Officer</i> (resigned 2.8.93)
Ms Grace Penrose	<i>Assistant Committee Officer</i>
Ms Ronda Miller	<i>Clerk to the Committee</i>

FINANCIAL CONSULTANT

Mr Bill Arkinstall, B.COM; CPA	<i>Managing Director</i> <i>Erindra Pty Limited</i> <i>Management Services</i>
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COMMITTEE PHOTOGRAPHS



Committee on the Office of the Ombudsman (Left to Right)
John Turner MP (Chairman), Malcolm Kerr MP, Barry Morris MP, Kevin Moss MP, Carl Scully MP, Anthony Windsor MP, The Hon Dr Meredith Burgmann MLC, The Hon Lloyd Coleman MLC, and The Hon Stephen Mutch MLC (Vice-Chairman).

CHAIRMAN'S FOREWORD

This Inquiry arose out of a motion from the "Police Inquiry" conducted in 1991/92 by the Joint Committee that the Committee examine the resources of the Ombudsman's Office.

The Ombudsman, at the time the motion was put forward, had indicated he had insufficient funds to adequately carry out, in his view, country visits and visits to detention centres and gaols.

The Committee once it began to look into the Ombudsman's Office on the more narrow aspects of country visits and goal and detention centre visits were of the view that an overall inquiry into the Ombudsman's financial situation was necessary.

The Ombudsman's Office was established in 1974 in New South Wales. In the nineteen years of operation a full and integrated examination of its operations has not been undertaken.

The Committee contracted KPMG Peat Marwick to review the overall operators of the Ombudsman's Office both at a management and financial level.

It was apparent from the Committee's enquiries and deliberations and the KPMG Report, that the Ombudsman's Office had developed in a hotch potch method and needed significant change.

This report endeavours to be constructive in its views in bringing to the Ombudsman's Office a level of performance and management that will make it foremost in its field of operations.

It is imperative that to service the public the Ombudsman's Office operates on lines that provide an efficient and cost efficient service to the public.

With the recommendations contained in this report the Committee believes it has set the ground rules which will enable the Ombudsman to streamline his office and bring it to a level which will maximise performance and productivity in the delivery of service to those in need of its service.

A measure of the success of any Committee report is the degree to which its recommendations are implemented. It is reassuring to the Committee that the Ombudsman has taken a constructive approach to several areas of the Inquiry, undertaking initiatives either in response to the catalyst of the Committee's enquiries or as part of the ongoing management of the Office. However, such initiatives will require consolidation and continual review in order to maximise the full potential of the Office as a mechanism for the redress of maladministration in the public sector.

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Until now this challenge has evaded the Office, however, it is anticipated that as a direct result of this Committee's Inquiry the Office of the Ombudsman will be assured a position foremost among its Australian and overseas counterparts. To quote the theme of the Fourth International Ombudsman Conference, "The Challenge of Change" has arrived for the Office of the Ombudsman in New South Wales.

I thank the Committee for its spirit of co-operation in seeking to ensure we have an Ombudsman's Office that is foremost in its field.

I also thank those who assisted the Committee in its work including all those who took the time to make submissions and appear before the Committee. Also KPMG Peat Marwick provided through their team, invaluable expert assistance to the Committee.

I also thank the Committee staff for the herculean effort of taking the Committee through all stages of this Inquiry. Project Officer Helen Minnican and Assistant Committee Officers Ms Peita Burgess and Grace Penrose together with Committee Clerk Ronda Miller and Committee Financial Consultant Bill Arkinstall all contributed greatly to the Committee's work as did Hansard in their activities at the public hearings.



John Turner MP
Chairman

FUNCTIONS AND POWERS OF THE COMMITTEE

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

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

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

The Committee is not authorised:

- ◆ to investigate a matter relating to particular conduct; or
- ◆ to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- ◆ to exercise any function referred to in subsection (1) in relation to any report under section 27; or

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- ◆ to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- ◆ to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.

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

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

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Under section 6A of the Ombudsman Act:

"6A(1) A person is not be appointed as Ombudsman until:

- (a) a proposal that the person be appointed has been referred to the Joint Committee under section 31BA; and
 - (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 31BA, "appointment" includes re-appointment.

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

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OMBUDSMAN ACT

Background During the second reading speech upon the original Ombudsman Bill debated in the Legislative Assembly on 27 August, 1974 the Minister for Justice outlined the purpose of an Ombudsman as envisaged by the Government. Mr Maddison declared that the proposed legislation closely mirrored the recommendations for an Ombudsman contained in the Law Reform Commission's report on Appeals in Administration. The Ombudsman was to satisfy "a need for an independent official who will approach in a consistent way, having regard to justice and the merits of each individual case, complaints made to him on administrative decisions".¹

As explained in his speech the Ombudsman was intended to function in the following three ways:

- (a) as an inexpensive and independent person to examine the basis of a decision;
- (b) as an independent official to examine the exercise of discretions by public officials; and,
- (c) to make decisions about matters increasingly delegated out of the Minister's hands and into the control of Public Servants.²

It was envisaged that "the Ombudsman would receive the complaints of members of the public about the conduct of public authorities, investigate the conduct complained of and, if he came to the conclusion that the conduct was wrong, recommend that correction be made".³

¹ Hansard, 29/8/74 p. 773.

² *ibid*, pp. 772-773.

³ *ibid*, p. 774.

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Since that time, however, the Ombudsman's jurisdiction has been expanded to include several other areas, for example, police complaints. This section briefly describes the Ombudsman's jurisdiction at the time of the Committee's inquiry and indicates several proposed changes to his jurisdiction. It makes no attempt to canvass the issue of whether these functions are appropriate or desirable for an Ombudsman as such a review would encompass a separate philosophical and conceptual debate which falls outside the terms of reference for the inquiry.

The following description of the functions and powers of the Ombudsman draws heavily on both of the submissions made by the Ombudsman to the Committee. A fuller treatment of each area of the Ombudsman's jurisdiction and any proposed changes to his jurisdiction may be found in Section 2 of the Ombudsman's first submission dated 28 August, 1992 which appears at Appendix 2.

OMBUDSMAN ACT 1974

This act was assented to on 18 October 1974 and with the exception of Part III, commenced on that day.

Ombudsman's Functions Under the Ombudsman Act, the Ombudsman is given jurisdiction to investigate the conduct of NSW public authorities as defined in S.5(1) Ombudsman Act. Conduct is defined as:

- (a) any action or inaction relating to a matter of administration, and
- (b) any alleged action or inaction relating to a matter of administration.

The definition of public authority in section 5(1) is an extended one encompassing virtually every NSW department, statutory authority and instrumentality. The Ombudsman's jurisdiction, however, is limited by the exclusion of the conduct of public authorities as specified in Schedule 1, of the Act. Local Government authorities were included in the Ombudsman's jurisdiction by the Ombudsman (Amendment) Act 1976 and this was extended in 1986 after further debate to include members and employees of such authorities.⁴

⁴ NSW Ombudsman Submission 1, pp. 8-9.

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Ombudsman's Powers - Right to investigate Section 12(1) confers a right to complain on any person (including a public authority) about the conduct of a public authority, subject to exceptions specified in paragraphs (a) to (d).

Section 13(1) provides that where it appears to the Ombudsman that any conduct of a public authority may be conduct referred to in s.26(1) he may, whether or not any person has complained to him, make the conduct the subject of an investigation: an "own motion" investigation.

Conduct referred to in s.26(1) includes: conduct which is contrary to law; unreasonable, unjust or improperly discriminatory; based wholly on improper motives; or based on a mistake of law or fact.

Discretion Section 13(4) gives the Ombudsman a wide discretion either to decline or to discontinue the investigation of any complaint under the Act on the basis that:

- ◆ the complaint is frivolous, vexatious or not in good faith;
- ◆ the conduct complained of is trivial;
- ◆ the conduct relates to the discharge of a function which is substantially a trading or commercial one;
- ◆ the conduct complained of occurred at too remote a time to justify investigation;
- ◆ there is or was an alternative and satisfactory means of redress;
- ◆ the complainant has no or insufficient interest in the conduct complained of;
- ◆ such matters as the Ombudsman thinks fit.

Section 15(1) provides that where the Ombudsman refuses to investigate, or discontinues the investigation of a complaint, he must inform the complainant in writing of the decision and the reasons for the decision.

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Schedule 1 specifies the conduct of public authorities which is excluded from the Ombudsman's jurisdiction and may be amended by proclamation published in the Government Gazette. The conduct of Ministers, the Legislature (in any aspect) and the Judiciary generally, is outside the Ombudsman's jurisdiction.⁵

Powers Section 18 authorises the Ombudsman to require a public authority to:

- ◆ give him a statement of information;
- ◆ produce to him any document or other thing;
- ◆ give him a copy of any document.

A requirement under this provision must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.⁶

Royal Commission Powers The Ombudsman also has coercive and Royal Commission powers under the Act the most far-reaching of which is a section 19 inquiry. Section 19(2) imports various provisions of the Royal Commission Act into the Ombudsman Act for the purposes of any inquiry under s.19(1), which is simply one method of conducting an investigation. The "royal commissions" power is the most extensive of the Ombudsman's powers and enables him to summons any person to attend and give evidence during an inquiry. Witnesses summonsed are, subject to the protections set out in s.21, required to answer all questions.⁷

Other Powers The Act also enables the Ombudsman to enter and inspect any premises and inspect any document in or on the premises occupied or used by a public authority, as a public authority, at any time during an investigation. No notice of the exercise of this power is required to be given. Moreover, section 21A(1) gives a discretion to the Supreme Court, on application by the Ombudsman, to grant an injunction restraining any conduct in which a public authority is engaging or in which a public authority appears

⁵ ibid, p. 14.

⁶ ibid, p. 16.

⁷ ibid, p. 17.

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likely to engage, where that conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Ombudsman. No application under s.21A(1) has ever been made. Section 23 authorises the Ombudsman, in an investigation, to engage the services of any person for the purposes of obtaining expert assistance.⁸

Adverse Findings Section 24(1) requires the Ombudsman to give an opportunity to make submissions on the conduct the subject of investigation, if practicable, to the public authority whose conduct is being investigated, as well as to any other person given a notice under section 16. In practice, the Ombudsman always gives this opportunity to individual public authorities. Section 24(2) provides that where, in an investigation, the Ombudsman considers that there are grounds for adverse comment in respect of any person, he shall, before making such comments in any report, so far as practicable, inform the person of the substance of the grounds of adverse comment and give him or her an opportunity to make submissions.

Section 26(1) requires the Ombudsman to make a report where he finds that the conduct the subject of investigation is any one or more of the kinds specified in that section. This provision is mandatory in that once the Ombudsman has concluded that conduct is one or more of the kinds specified he must report. Section 26(2) gives the Ombudsman a discretion to make wide ranging recommendations, including the amendment of any law and the payment of compensation. In the latter regard s.26A provides specific authorisation for the payment of such compensation.⁹

POLICE SERVICE (COMPLAINTS, DISCIPLINE AND APPEALS) AMENDMENT ACT 1993

Under section 5(1) of the Ombudsman Act, the Ombudsman was entitled to review administrative actions by police. However, the conduct of a police officer in the exercise of his powers as a constable was excluded from his jurisdiction until the enactment of the Police Regulation (Allegations of Misconduct) Act 1978 (PRAM Act).¹⁰

⁸ ibid.

⁹ ibid., p. 19.

¹⁰ ibid., p. 9.

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The Ombudsman's role in investigating complaints under the PRAM Act formed the subject of the Committee's first inquiry and the police complaints system subsequently was altered by the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993. Instead of amending the PRAM Act the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 repealed both the PRAM Act and the Police Regulations (Appeals) Act and incorporated the provisions of both acts into the Police Service Act 1990.

The new Act adhered closely to the recommendations of the Committee's report and strengthened the Ombudsman's role in the complaints process by the following changes:

- (a) **investigations** - Section 153(2) enables the Ombudsman to conduct a direct investigation of a complaint if he considers that it is in the public interest to do so at any stage prior to or during the police investigation.
- (b) **conciliation** - under sections 132 and 133 the conciliation of complaints of a "class or kind" is mandatory with certain exceptions, for example, indictable offences. Attempts can be made to conciliate other complaints provided the police officer responsible is satisfied that it would be successful. The definition of conciliation in clause 131 of the bill guarantees that conciliation in all instances must be dealt with in a manner acceptable to the complainant.

Section 135 enables the Ombudsman to attempt to conciliate a complaint made to him in the first instance. Subsection 135(3) provides that the conciliator, with the complainant's permission, may seek the assistance of a mediator.

- (c) **monitoring** - Section 138 of the Act enables the Ombudsman to conduct random audits of complaints police officers have dealt with by conciliation. It also empowers him to interview people including the complainant about matters relating to the conciliation.

Section 144 also extends the Ombudsman's monitoring powers by enabling either himself or one of his officer's to be present as an observer during investigation interviews conducted by police subject to the Commissioner's agreement on the arrangements involved.

The new legislative framework for police complaints commenced on 1 July, 1993.

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FREEDOM OF INFORMATION ACT 1989 - FOI ACT

Under section 52(1) of the FOI Act the Ombudsman has an external review function in relation to FOI decisions. This section of the Act provides that:

"The conduct of any person or body in relation to a determination made by an agency under this Act may be the subject of a complaint and may (subject to this section) be investigated by the Ombudsman, under the Ombudsman Act 1974".

These powers are subject to certain restrictions, in particular, the Ombudsman shall not investigate the conduct of any person or body in relation to a determination by an agency under the FOI Act while:

- ◆ the determination is subject to a right of internal review;
- ◆ any appeal concerning the determination is before the District Court.

The Ombudsman is prevented from exercising his powers under sections 18, 19 and 20 in respect of any document the subject of a Ministerial certificate, and is also prohibited from disclosing any exempt FOI matter during an investigation under the Ombudsman Act.

Finally, section 52(5) prohibits the Ombudsman from investigating the conduct of any person or body in relation to:

- ◆ the issue of a Ministerial certificate;
- ◆ a determination of an application for access to a Ministers document or for the amendment of a Ministers records;
- ◆ a determination of an application for access to an agency's document, if the complainant has previously been a complainant under the Ombudsman Act and the Ombudsman has had possession of the document pursuant to the exercise of his powers under ss. 18, 19 or 20 in connection with the investigation of the previous complaint.

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- ◆ a determination made by the Ombudsman.¹¹

The Act was amended by the Freedom of Information (Amendment) Act 1992 and included the following additional responsibility for the Ombudsman:

- ◆ the discretion to recommend that the release of a document would, on balance, be in the public interest even though access has been refused because it is an exempt document.¹²

Under the Local Government (Consequential Provisions) Act 1993 the FOI Act was amended further to include all information held by councils as opposed to be previous limitation to personal information concerning the applicant thus making the 217 local government authorities in New South Wales fully subject to the Ombudsman's external review function.¹³

TELECOMMUNICATIONS (INTERCEPTION)(NEW SOUTH WALES) ACT 1987

This Act empowers the Ombudsman to audit by inspection the records of interception of telephone calls by NSW eligible authorities and to report upon the degree of compliance by those authorities under the Act. The Ombudsman is prohibited from reporting on the exercise of his functions under this Act in his Annual Report or in any report to Parliament under the Ombudsman Act. The Ombudsman's functions under the Telecommunications (Interception)(New South Wales) Act are also excluded from the jurisdiction of the Joint Committee by Part 4A of the Ombudsman Act.¹⁴

¹¹ ibid, p. 20-21.

¹² ibid, p. 21.

¹³ ibid, p. 22.

¹⁴ ibid.

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PROPOSED LEGISLATION

The Ombudsman's first submission to the Committee, dated 28 August, 1992 outlined several legislative proposals which would extend his jurisdiction and could impact upon his Office. The Ombudsman expressed concern that in some instances he had not been advised of the Legislative Program as it affects his Office.

- (a) **Government Publicity Control Bill 1992** - provides for the establishment of a Government Publicity Committee (Clause 5) to consist of the Ombudsman, Auditor-General and Electoral Commissioner. (*An Opposition Bill*)
- (b) **Whistleblowers Protection Bill 1992** - proposes that a disclosure of information by a public official regarding conduct or proposed conduct which amounts to maladministration will be protected if made to the Ombudsman. (*Although this bill was introduced as a Government Bill by the Premier it in fact originated as an Opposition Bill introduced as a result of the Charter of Reform between the Government and certain Independent Members of Parliament.*)
- (c) **Aboriginal Land Rights Act 1983** - section 65A of this Act provides that the Ombudsman's jurisdiction be extended to include all 127 Aboriginal Land Councils in New South Wales.
- (d) **Parliamentary Committee recommendations** - the Joint Select Committee Upon the Process and Funding of the Electoral System received a submission which suggested that the Election Funding Authority be restructured to include the Ombudsman. The Ombudsman advised against such an initiative and had heard nothing further at the time he prepared his submission for this inquiry.

The Legislative Council Standing Committee on Social Issues recommended in its May 1992 report on Juvenile Justice in New South Wales that a position should be created in the Office with the status of Deputy Ombudsman for the co-ordination of complaints made by children including those in the Juvenile Justice System. Other responsibilities were to include establishing an education and information system about the Ombudsman for Children.

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- (e) **Local Government Pecuniary Interest Tribunal** - This Tribunal was established under Chapter 14 Part 4 of the Local Government Act 1993 to conduct hearings into complaints concerning the failure of Councillor, Council delegates and staff to disclose a pecuniary interest. It provides that matters may be referred to the Ombudsman for investigation and that the Ombudsman may present (prosecute) matters before the Tribunal.¹⁵

In view of the status of these bills and Parliamentary Committee recommendations the Joint Committee feels that with the exception of the Whistleblowers Protection Bill these proposals do not have the potential to impact immediately upon the Office's operations. In the case of the proposed Whistleblowers legislation it was not possible for the Committee to measure the extent of the effect this legislation may have upon the Office's resources and operations given that the new scheme for disclosures is not operative at this stage.

¹⁵ *ibid*, pp. 8-11, 20-23.

TERMS OF REFERENCE

In the context of its comments in its recent Report to Parliament upon the Role of the Office of the Ombudsman in investigating complaints against Police, the Committee recognised the increase in the Ombudsman's workload and indicated that it would be examining how this related to resources of his Office.

The Committee, therefore, resolved to conduct an inquiry to:

- (a) assess the adequacy of the funds and resources available to the Ombudsman to effectively perform his functions;
- (b) examine the Ombudsman's case for an increase in funding for his Office;
- (c) recommend any changes to funding levels necessary for the Ombudsman to perform his functions.

TERMS OF REFERENCE CON'T

"If ever there was a time for streamlining and simplification, it is now. It is a time for internal initiatives and managerial creativity to handle larger work loads with fewer resources, and without any diminution in quality of performance. . . .

. . . At the heart of the argument is value, more particularly value for money, value in terms of ideological and political goals of the society. Every ombudsman office needs to be sure that it can be convincing on these counts.

. . . Open government demands that the ombudsman should not be shielded by unnecessary secrecy and that critics must be self-critical. Periodic scrutiny should be used as an opportunity for the ombudsman to air concerns and difficulties, to invite independent evaluation, to seek solutions to identifiable problems and to explore tasks for the future, such as possible extension of jurisdiction into court administration, greater assistance to underrepresented groups of complainants, filling gaps in administrative law and securing fair compensation for victims of defective administration. In the absence of such periodic reviews, the ombudsman office itself should employ an expert consultant to assess its performance and conduct surveys to find out what the public knows about the office and how it is popularly perceived."

Source: Professor Gerald Caiden and Daisy Valdes, "Maturation Issues for Ombudsman", The Ombudsman Journal, no. 8, 1989, pp. 55, 56, 61.

(Professor Caiden was Director of the International Public Administration Centre at the School of Public Administration, University of Southern California when he presented the leading paper "The Challenge of Change", at the Fourth International Ombudsman Conference, 1988.)

"I am convinced that attention should be given to the aggregation of experience so that, unlike the courts, the Ombudsman is not simply dealing with individual cases of individual rights. His mandate and charter is, ultimately, good public administration. He looks at the administration from a position of independence. His scrutiny provides a special opportunity to identify problem areas, to provide external stimulus to improvement, to encourage and promote self-criticism and to aggregate all this experience into the improvement of the administration. It is appropriate that the office should be under constant scrutiny and re-evaluation. Those who are critics must themselves be critical. They must look upon the efficiency of their office that it is performing in an effective way the duties entrusted by Parliament".

Source: Justice Michael Kirby, "Ombudsman- The Future?", RAIPA, Vol. XII No. 4, 1985, p. 297.

EXECUTIVE SUMMARY

The issue of lack of resources for the Ombudsman's Office has been raised previously by the Ombudsman in several special reports to Parliament during 1991-2 and in evidence to the Committee. It has been the subject of ongoing debate and correspondence between the Ombudsman and the Treasury, and has remained a point of contention between the two bodies throughout this inquiry.

The Committee conducted public hearings over several months gathering evidence from the Ombudsman, Treasury, the Auditor-General, a former Deputy Ombudsman, the Banking Ombudsman, academics and several individuals who had made submissions to the Committee.

On the basis of information obtained through evidence, discussions with the Ombudsman, and a management review of the Office, the Committee has attempted to clarify in this report the extent of the funds and resources available to the Ombudsman and to assess whether the level of those funds and resources is adequate for him to perform his functions.

The terms of reference necessitated examining the current funding arrangements for the Office and assessing their impact upon its operations plus their appropriateness for an independent statutory appointment such as the Ombudsman. In making its assessment the Committee examined funding arrangements for Ombudsman Offices in other jurisdictions, both within Australia and overseas, in order to develop a full appreciation and understanding of the variety of funding mechanisms to which Ombudsmen are subject.

Following evidence from the Ombudsman in December, 1992 the Committee resolved that it could not arrive at any conclusions about the adequacy of the Ombudsman's funds and resources without a review of the management of the Office. This entailed an assessment of the efficiency and effectiveness of the Office's operations which the Committee felt was necessary in order to confirm that the resources currently provided to the Ombudsman were being fully utilised in the most productive way possible.

Underpinning such a study was the need to determine the exact nature of the Ombudsman's functions as defined by statute and the best way in which those functions could be performed.

It should be noted that the Ombudsman's Office had not conducted in its nineteen years of existence an overall review of its operations.

As a result of evidence taken by the Committee and its discussions with the Ombudsman the Committee saw merit in formulating a system of performance measures for the Office, and a funding model, as part of the management review. These two initiatives would enable the Office to systematically measure its performance over time plus the impact upon its operations of several variables, for example, increases in complaints.

EXECUTIVE SUMMARY CON'T

A funding model for the Office would improve its financial planning capacity and would allow a mechanism whereby the Ombudsman could prepare a more thorough, formula-based assessment of the needs of his Office. The model was based upon a formula for the Office's investigative, administrative, salary and related expenses, rent, working and maintenance costs, and necessary protected items.

The Ombudsman believes such a model may assist in his negotiations with Treasury on funding and resource issues. The Committee believes that the recommendations it has formulated in light of the evidence, management review and subsequent discussions will enable the Ombudsman's Office to benefit from improved efficiencies, productivity and management procedures which will result in real additional resources being available to the Ombudsman from such improvements. However, the Ombudsman's Office must be, and indeed has recognised, that any funding for any Government instrumentality may be affected by financial constraints facing inner budget sector agencies.

The Committee has endeavoured to construct a strategy which will assess whether the Ombudsman has sufficient funds and resources to perform his functions as well as providing him with a comprehensive plan for the future financial management of his Office. This plan involves recommendations for structural and management reform within the Office, the particulars of which are discussed elsewhere in this report.

Ultimately, the Committee wanted to ensure that the Office of the Ombudsman in New South Wales operated at peak standards commendable to all Ombudsman institutions and commensurate with an independent body charged with investigating maladministration within government departments and agencies. As envisaged by the Committee Chairman, the Management Review was to serve as a benchmarking exercise against which the Ombudsman's resource and funding requirements could be measured. At the same time the Committee considered that the rules affecting operation, funding and budgeting of the Office should be consistent with those applicable to all inner-budget sector agencies, including Parliament itself.

An independent external management review under the direction of the Committee was not considered to impinge in any way upon the Ombudsman's independence. Indeed, as the Ombudsman acknowledged during the public hearing:

EXECUTIVE SUMMARY CON'T

*"This Committee, as we say, is the mechanism and it exercises authority on behalf of the Parliament, not the government, in terms of management reviews."*¹⁶

The Ombudsman's Office adopted a constructive approach to the management review process and the Committee's investigations. To his credit, the Ombudsman already has moved towards introducing several management reforms either in response to the Committee's enquiries or as part of the ongoing management of his Office. The recommendations contained in this report provide for increased accountability for the Office in the use of its resources and a role by Parliament in the review of the Office's budget allocation.

¹⁶ Transcript of Evidence, 7 December 1992, p 19.

SUMMARY OF RECOMMENDATIONS

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

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

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

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

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

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

SUMMARY OF RECOMMENDATIONS CON'T

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

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

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

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

SUMMARY OF RECOMMENDATIONS CON'T

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

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

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

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

Recommendation 12 - The Committee recommends that the Ombudsman renegotiate his lease prior to the option renewal date at a better leasing arrangement than presently prevails.

It is recommended that if the Ombudsman is unable to negotiate a more favourable leasing arrangement he should seek, on the expiration of the current lease in 1995, a more favourable leasing arrangement in consideration of exercising his option.

SUMMARY OF RECOMMENDATIONS CON'T

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

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

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

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

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

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

SUMMARY OF RECOMMENDATIONS CON'T

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

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

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

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

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

SUMMARY OF RECOMMENDATIONS CON'T

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

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

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

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

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

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

SUMMARY OF RECOMMENDATIONS CON'T

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

The issue of lack of resources for the Ombudsman's Office has been raised previously by the Ombudsman in several special reports to Parliament during 1991-2 and in evidence to the Committee. This chapter outlines the Ombudsman's arguments for an increase in funds and the history of his disputes with Treasury as presented in his special reports to Parliament.

1.1 OMBUDSMAN'S PREVIOUS REPORTS TO PARLIAMENT

The Ombudsman made two special reports to Parliament concerning funding of his Office during the period 1990-1991:

- (1) The Independence and Accountability of the Ombudsman, dated 19 July, 1990 (see item A, Companion Volume); and
- (2) The Effective Functioning of the Office of the Ombudsman, dated 21 June, 1991 (see item B, Companion Volume).

1.1.1 Independence and Accountability Report (dated July 1990)

Financial Independence This report, tabled on 5 September 1990, contains several proposals for reforms to the procedures for allocating funds to the Office of the Ombudsman. It specifically argued that the Ombudsman's appropriation of funds should be recommended to Parliament by the Joint Committee:

"Accordingly, in the interests of ensuring the financial independence of this Office, the Ombudsman recommends that the appropriation of funds for the budget of his Office be a matter for recommendation by a Joint Parliamentary Committee to the Parliament and that Parliament by resolution establish the appropriation to be introduced by the Treasurer without alteration."¹⁷

The report makes reference to the process for the appropriation of funds by the New Zealand Ombudsman and the explicit statutory recognition given to the New Zealand Ombudsman as an Officer of Parliament whose funds are determined by Parliament upon the recommendation of a Parliamentary Committee (Officers of Parliament Committee).

These proposals formed part of an overall "package" of reforms, including the reporting by the Ombudsman directly to the Presiding Officers of Parliament, which the Ombudsman felt would ensure that his Office would be fully accountable to the Legislature and fully

¹⁷ Independence and Accountability Report, p. 12.

financially independent from the Executive.¹⁸

Staffing The Ombudsman explained in the report that staffing numbers for his Office were currently determined by Treasury despite an attempt by the Government in 1988 to introduce legislation which would have exempted the Office of the Ombudsman from requirements of the Public Service Act.

In the Ombudsman's view the Ombudsman (Amendment) Bill 1988 would have brought his Office onto the same independent footing as the ICAC with regard to staffing and conditions of employment. As amended in Committee stage in the Legislative Council the Ombudsman reported that the Bill:

- (a) constituted the Office of the Ombudsman as a corporation;
- (b) provided that the corporation could employ such staff as necessary to enable the Ombudsman to carry out his functions;
- (c) enabled the corporation with the concurrence of the Public Employment Industrial Relations Authority to fix the salaries, wages, allowances and conditions of employment of staff in so far as they were not fixed by or under another Act or law;
- (d) provided that no appeal would lie to the Government and Related Employees Appeal Tribunal (GREAT) in relation to promotional or disciplinary matters.

Apparently the Bill was withdrawn over a proposed amendment to restore the right of appeal for staff to GREAT: an amendment which the Ombudsman supported.¹⁹

Proposed OPM Management Review Incorporated in the Effective Functioning Report was previous correspondence from May 1990 in which the Ombudsman requested Treasury to make permanent four temporary staff positions created to deal with freedom of information complaints. Treasury responded by approving retention of the additional staff pending a managerial review of the Ombudsman's Office by the Office of Public Management under the direction of the Premier and Treasurer.²⁰

¹⁸ *ibid*, p. 1.

¹⁹ *ibid*, pp. 14-16.

²⁰ *ibid*, p. 17.

Such a review was opposed by the Ombudsman who asserted:

*"The issue is not whether the Ombudsman should be accountable for the proper and efficient management of staff and financial resources allocated to his Office. The issue is whether he should be accountable directly to the Premier or any agency of the executive, such as the Office of Public Management, (itself a public authority subject to the jurisdiction of the Ombudsman), rather than being accountable for his administration directly to Parliament."*²¹

To the Ombudsman the proposal for a management review seemed to contradict previous exemptions his Office had been granted by OPM from Program Performance Review and the requirement of presenting five year plans for review. The Office had originally been exempted from the program by the then Premier in March 1987. The material presented in the report indicates that in 1989 these exemptions were not necessarily supported by the present Government. According to the Ombudsman, the Office received no further direction on this issue until the decision to conduct a management review was announced by Treasury on 27 June, 1990.²²

1.1.2 **Effective Functioning Report (dated June 1991)**

This Effective Functioning Report covers the central elements of the Ombudsman's arguments with Treasury over funds and resources prior to the commencement of the Committee's inquiry. It provides a history of the disagreement according to the Ombudsman and highlights the major issues subject to dispute, including supplementation, productivity savings and the question of whether the Office is "demand driven". These subjects were examined by the Committee during its initial investigations and continued as themes throughout the inquiry.

The Ombudsman's stated purpose in presenting this report was to advise Parliament that because of the budgetary constraints imposed upon his Office he was unable to carry out his statutory functions and the Office's charter. He acknowledged the Government's difficulties in framing a budget and determining spending during an economic recession. However, he argued that despite continuing to exercise financial restraint the financial position of his Office had deteriorated since July 1990. As a result of this situation he predicted that he would have to reduce his existing services.²³

²¹ *ibid*, p. 18.

²² *ibid*, p. 18.

²³ Effective Functioning Report, p. 3.

The major causes given for this situation were:

- (i) an increase in complaint numbers;
- (ii) the static number of his investigation staff;
- (iii) delays by Treasury in meeting supplementation requests;
- (iv) the impact of increased productivity savings; and
- (v) office location costs.

The Ombudsman's views in relation to each of these factors and several ongoing issues are summarised below.

1.1.3 Effective Functioning Report - Items Examined:

(I) Increase in complaint numbers The report describes a total overall increase in complaints between 1989-1991 of 26 per cent.²⁴ In relation to police complaints it stated that the number of complaints had steadily increased since 1987-88 culminating in a dramatic increase of 34.4 per cent during the 1990-91 financial year. Similarly, complaints concerning prison administration were reported to have increased rapidly by 69.35 per cent during the same period. However, complaints concerning departments and local government authorities had remained fairly static during the preceding four years. The Ombudsman also advised that the increase in the volume of complaints had been accompanied by an increase in their complexity.

Regardless of the cause of the increase, the Ombudsman noted that the existing procedures for dealing with police complaints were "cumbersome and time consuming" and resulted in extra resources being allocated to handling this area of his jurisdiction leading to a lack of resources for dealing with complaints under the Ombudsman Act. Dealing with police complaints accounted for 55 per cent of his workload.²⁵

Apparently, the Office had taken some measures to offset the effects of the increase in complaints, for example, screening and prioritising complaints, streamlining administrative procedures, restructuring the Office and implementing a computerised police complaints database. However, the rate at which complaints were being declined was described in the

²⁴ Complaints increased by 6.18% between 1988-89 and 1989-90 and by 19.6% between 1989-90 and 1990-9, *ibid*, p. 5.

²⁵ *ibid*, p. 8.

report as having reached the highest level tolerable. Any increase in that decline rate as a result of inadequate resources was seen by the Ombudsman to pose a "grave risk that the credibility of the Office would be damaged in the eyes of the public as an avenue of last resort".²⁶

(II) Investigation Staff In order to deal with the increase in the number and complexity of complaints the Ombudsman called for an increase to the staffing levels of his Office. He maintained that the number of investigative staff available to handle complaints under the Ombudsman Act and Police Regulation (Allegations of Misconduct) Act had remained almost static since 1987-88. The average staff level in 1989-90 was 70.2, rising to 73.5 in 1990-91.

In view of changes to complaint numbers and the mix of complaints the Ombudsman claimed that he would at least have to maintain existing staff levels in order to continue to provide the same level of services as in 1990-91. Because of Forward Estimates determined by Treasury he argued that it was impossible to maintain staff levels and estimated that, having regard to the increase in complaints during 1990-91 and the absorption of past costs, a minimum of two investigative staff and one administrative officer was required.²⁷

The Ombudsman also made reference to unpaid work performed by Office staff, citing a figure of 1,400 excess hours (not including overtime) for a six month period in 1990.²⁸

(III A) Delays in supplementation The report contends that supplementation for specific items was delayed past the time it was required thus preventing the Office from planning and using investigative resources in the most efficient manner.²⁹ According to the Ombudsman, the delay in obtaining supplementation meant he could not renew contracts of temporary staff who had assisted the investigators on the inquiry with the remainder of their workload. This in turn, he believed, affected the overall productivity of the Office.

(III B) Maintenance Dispute The Office also sought an adjustment of its Forward Estimates for 1991-92 and 1993-4 as part of a maintenance dispute with Treasury. The Ombudsman notified Treasury that:

"Increased rental costs, an increase in the number of complaints, the increased costs of conducting investigations, in the context of a decreased budget allocation with no guarantee for indexing of costs for items, places my

²⁶ *ibid*, pp. 10-11.

²⁷ *ibid*, p. 15.

²⁸ *ibid*, p. 16.

²⁹ *ibid*, p. 19.

Office in an extremely precarious position in terms of fulfilling all its statutory obligations and functions."³⁰

A shortfall of \$137,000 in employee-related payments and a consequent reduction in staff levels also was predicted.³¹

Without an increase in the maintenance budget allocation the Ombudsman argued that he would only be able to maintain services at the current level. If his Office was to deal with the carry over of complaints from that financial year he requested funding to increase his investigative and support staff. He also called for Treasury to recognise the need to increase recurrent funding to provide sufficient funds for him to perform major and special investigations instead of constantly seeking supplementation.³²

(IIC) Capital Works The Office's Capital Works Program was another item subject to a request for further funds in 1991. An additional amount of \$89,000 over the allocation for the years 1991-1994 was sought for upgrading and improving the police complaints database, expanding the general complaints database, improving the general complaints file tracking system and extra terminals for staff.³³ This request was considered by the Office to be a "modest" one, and the minimum necessary to maintain efficiencies in complaint processing and the level of services to the public.³⁴

(IV) Productivity Savings Like all inner-budget sector departments the Ombudsman was required to meet productivity savings of 1.5 per cent during 1991-1994. The Ombudsman acknowledged the need for productivity savings per annum in order to achieve greater efficiencies in public sector expenditure, however, he claimed that in view of the internal procedural reforms and savings already accomplished by the Office it was unrealistic to expect it to make such savings. He maintained that the Office had reached its limits of efficiency and held that any further efficiencies would involve a reduction of services which contradicted previous Treasury advice that:

"Productivity savings are to be achieved by improved procedures and administrative arrangements to reduce the unit cost of activities and should not

³⁰ *ibid*, p. 22.

³¹ *ibid*.

³² *ibid*, p. 24.

³³ *ibid*, p. 25.

³⁴ *ibid*, p. 26.

involve service reduction."³⁵

(V) Office Location Costs Another issue affecting the resources of the Office was that of rent reviews. In March 1991 the Office faced a rent review for which the Ombudsman sought additional funds. However, the Premier advised that in the case of single occupancy tenancies additional funding would be considered only in relation to any excess amount over a \$100,000 threshold. The Office was expected to meet any rental costs under that threshold amount.³⁶ The Ombudsman insisted that he required a single occupancy for the Office as it was a necessary factor in ensuring that he was seen to be independent. He maintained that the Premier had endorsed a single occupancy for the Office and that the associated costs should be recognised. This entailed supplementation for 1991-92, and further adjustment of the maintenance budget in 1992-93, 1993-94 and future years.³⁷

1.1.4 **Other Issues Considered in the Effective Functioning Report**

Financial Independence In the Effective Functioning Report the Ombudsman again raised the issue of his financial independence referred to in his earlier Independence and Accountability Report. He stated that the comprehensive scheme proposed in the latter report, which was a means of ensuring his full independence from the executive government as well as his accountability to Parliament, had not been fully introduced. In particular, the Ombudsman (Amendment) Act 1990 despite establishing the Parliamentary Committee on the Ombudsman and removing certain requirements regarding the Premier's approval of certain Ombudsman officers, had failed to incorporate any financial reforms.

The Ombudsman again outlined his views of the existing budgetary controls placed upon his Office:

*"The ultimate control which any executive has over a public official is the power to control his budget. Whilst the Parliament is responsible for passing the annual appropriation Bills, it is the Executive which has control over the whole process leading up to the presentation of this legislation to the Parliament."*³⁸

³⁵ *ibid*, p. 23.

³⁶ *ibid*, pp. 20-21.

³⁷ *ibid*, p. 21.

³⁸ *ibid*, p. 16.

Proposed OPM Management Review Prior to the commencement of legislation providing the Ombudsman with an external review function in relation to Freedom of Information decisions the Ombudsman requested additional staff and funds to perform this function. Treasury subsequently, approved two investigation officer positions plus one assistant investigation officer and a typist for the 1989-90 financial year. Additional funding of \$123,000 also was supplied but Treasury indicated that both the funds and staff positions were to be reviewed after twelve months.³⁹

Following a request by the Ombudsman in June 1990 for the continuation of this additional staff and funds Treasury advised that approval had been given for an extension on a temporary basis pending a management review of the Office by the Office of Public Management.⁴⁰

The Ombudsman objected to the proposed review and expressed his concern to the General Manager of the Office of Public Management. He subsequently made a report to Parliament on the issue in July 1990⁴¹ (see section.1.1). As the position remained unresolved he wrote to the Treasury on 19 April, 1991 conveying his concern about the delay in arranging for permanent staff and additional funds to perform his FOI functions. At the time the Effective Functioning Report was finished on 21 June, 1991 he had not received a reply from Treasury. The Ombudsman viewed the establishment of these positions to be part of the Office's maintenance, or recurrent, budget.⁴²

At the time the Committee commenced its inquiry no external management review of the Ombudsman's Office had been conducted since its creation in 1974.

"Demand Driven" This term first surfaced in the 1991 Effective Functioning Report by the Ombudsman and has been the topic of debate to determine a definition of the term generally and as applicable specifically to the Ombudsman's Office. Put briefly, the Ombudsman argues that his Office is demand driven, the Treasury disagrees.

According to Treasury's definition, the phrase "demand driven" means that an agency has no control over the increase in its activity and the cost per unit.⁴³

³⁹ *ibid*, pp. 27-28.

⁴⁰ *ibid*, p. 29.

⁴¹ The Independence and Accountability of the Office of the Ombudsman, dated 19 July, 1990.

⁴² Effective Functioning Report, pp. 29-30.

⁴³ "Response to Special Report to Parliament by the Ombudsman", Treasury Minute, tabled 2 July, 1992, p. 3.

According to the Ombudsman Treasury's proposed maintenance budget for 1991-92 failed to recognise the "demand driven nature" of the work of his Office and the significant increase in this demand over the three years from 1989-1991. Without an increased allocation in recognition of this the Ombudsman foreshadowed that the Office would have to further reduce services and that it would be unable to fulfil its charter.⁴⁴

It should be noted, however, that the Ombudsman has both a de jure (s.13 of the Ombudsman Act 1974) and de facto declines policy and thus whether he is "demand driven" is open to conjecture. Two analogies of demand driven were given by Treasury:

- (i) that a Government school is demand driven because it must without exception take all children that are eligible to be enrolled in a particular school, necessitating increased funding; and
- (ii) an increase in eligible pensioners necessitating an immediate increase in pensioner water rebates.⁴⁵

According to Treasury, a similar direct correlation between increases in complaints received by the Ombudsman's Office and an increased need for resources had not been demonstrated.

The Committee notes that whether or not an agency is considered "demand-driven" is a matter of government policy and that current government policy is that the Office is not "demand-driven". However, KPMG Peat Marwick's final report, by providing that funds should increase with an increase in complaints and, conversely, decrease with a decrease in complaints, implies that the Office is "demand-driven".

The Committee notes that it may be desirable to inquire at a future time into the appropriateness of a "demand-driven" policy and how this would impact on a decline policy.

Decline in Services The Effective Functioning Report also related that visits to prisons and juvenile institutions had been drastically reduced as a direct result of the large increase in the number and complexity of complaints, changes to the mix of complaints and the corresponding demand upon investigative resources.⁴⁶ The Ombudsman described this as a source of "grave concern" given the "enormous" rise in prisoner complaints, ignorance of the Ombudsman among juveniles, and deficiencies of the Official Visitor schemes. His officers had made 22 visits to adult prisons in 1989-90 and 17 visits in 1990-91 whereas an optimum of 93-97 visits per annum was recommended. Apparently some prisons had not

⁴⁴ Effective Functioning Report, pp. 23-24.

⁴⁵ Treasury Minute, 2 July, 1991, *op. cit.*, p. 3.

⁴⁶ *ibid.*, pp. 32-33.

been visited within the last twelve month period and it was explained that inmates of country prisons were particularly disadvantaged by lack of visits.⁴⁷ A similar situation applied to visits to juvenile institutions.

The report highlighted country services generally, as an area in which the Ombudsman had had to reduce services due to an apparent lack of funds and, in fact, officers had not made any visits to country centres during 1990-91.⁴⁸

The additional resources which were called for were as follows:

- (i) prospective budget cuts notified by Ombudsman to Treasury
- (ii) maintenance dispute/reduction in forward estimates as notified by Ombudsman to Treasury
- (iii) additional investigative (2) and administrative staff
- (iv) special inquiries
- (v) public awareness
 - prison visits
 - detention centre visits
 - printing

He also made several other recommendations, including:

- (a) that the threshold requirement in respect of single occupancy tenancies be waived in respect of the Office;
- (b) a rent review adjustment of the recurrent budget for 1991-92 and forward years or supplementation depending on whether the rent review was completed by 30 June, 1991;
- (c) supplementation for an Assistant Investigation Officer position should the need arise as a result of the closure of the Premier's FOI unit;
- (d) a survey of inmates of detention centres;

⁴⁷ *ibid*, p. 32.

⁴⁸ *ibid*, p. 35.

- (e) additional capital works funding over 1991-2 and forward years; and
- (f) renewal of the contracts of current FOI staff.⁴⁹

1.2 TREASURY'S RESPONSE

Treasury concluded that the problems experienced by the Ombudsman were not unique and were indicative of the difficult conditions facing all inner budget sector agencies during a time of severe budget constraints. The Ombudsman's Report to Parliament was regarded as an attempt to bypass the budgetary process.

The only proposal approved by Treasury was that relating to Capital Works which being a small item, was transferred to the Office's recurrent budget.⁵⁰

1.3 PRELUDE TO INQUIRY

This was the situation which existed at the conclusion of the Committee's first inquiry into the role of the Office of the Ombudsman in investigating complaints against police. Negotiations between Treasury and the Ombudsman had not resolved several key issues and it was apparent that agreement would not be reached by both bodies. In the light of this impasse the Committee became concerned to establish the acceptable level or quality of services expected from the Ombudsman.

It felt that the Ombudsman's ongoing dispute with Treasury was unproductive and needed resolving as soon as possible. The Committee was not in a position to determine the merits of the arguments presented by both parties on the basis of the information available to it at that stage. For example, it was not possible to determine the split of resources within the Office on administrative versus investigative activities nor was the Committee able to discern the direct effect of the resource situation upon the credibility of the Office, its activities and services. For these reasons, in conjunction with conclusions reached at the end of its first inquiry, the Committee determined that the adequacy of the funds and resources available to the Office of the Ombudsman should be the subject of its next inquiry.

⁴⁹ *ibid*, pp. 39-40.

⁵⁰ Treasury Minute, *op. cit.*

COMMENCEMENT OF INQUIRY - 2 -

2.1 ANNOUNCEMENT OF INQUIRY

The Parliamentary Joint Committee resolved to conduct an inquiry into the funding and resources of the Ombudsman's Office at a meeting held on 8 April, 1992 during which it finalised its report upon the police complaints inquiry. The minutes of that meeting record:

"The Committee resolved upon the motion of Mr Hatton, seconded by Mr Mutch, that it should make a statement at the time the Report is tabled in Parliament that it recognises the increase in the Ombudsman's workload and will be examining the relationship between the Report and the resources of his Office as the Committee's next matter for inquiry."

The terms of reference for the funding inquiry were set by the Committee at a meeting held on 25 June 1992. The preamble at the beginning of the terms of reference reflects the earlier resolution made in April. However, it had become obvious to the Committee at this point that the Ombudsman's arguments about resource difficulties were not confined to the investigation of police complaints. The information contained in the Ombudsman's Reports to Parliament described resource difficulties in most areas of the Office's operations. It was viewed that as no external management review of the Ombudsman's Office had been conducted since its creation in 1974 a wider inquiry than that foreshadowed in the April resolution was needed..

Subsequently, the former Chairman to the Committee, Mr Andrew Tink, MP announced the following terms of reference for the Committee's inquiry:

"In the context of its comments in its recent Report to Parliament upon the Role of the Office of the Ombudsman in investigating complaints against Police, the Committee recognised the increase in the Ombudsman's workload and indicated that it would be examining how this relates to the resources of his Office.

The Committee, therefore, has resolved to conduct an inquiry to:

- (a) assess the adequacy of the funds and resources available to the Ombudsman to effectively perform his functions;*
- (b) examine the Ombudsman's case for an increase in funding for his Office;*

- (c) *recommend any changes to funding levels necessary for the Ombudsman to perform his functions."*

2.2 **TERMS OF REFERENCE**

As stated above, the terms of reference for the inquiry were set in recognition of the Ombudsman's increased workload in the investigation of police complaints and the need to examine the impact of this upon the resources of his Office.

They appear to be relatively narrow, however, as the inquiry progressed it became apparent to the Committee that the three areas of inquiry contained in the terms of reference necessitated conclusions about wide-ranging issues affecting the Office's funding and operations.

For example, in assessing whether the funds and resources available to the Ombudsman were adequate for him to effectively perform his functions the Committee not only needed to determine the exact nature of those functions as defined by statute, it also needed to evaluate the most effective manner in which these functions could be performed.

Similarly, in examining the Ombudsman's case for an increase in funding for his Office the Committee had to consider whether the Office was using its existing funds and resources efficiently, effectively and productively.

It also proved necessary to examine the current funding arrangements for the Office and assess their effect upon the Ombudsman's operations and their appropriateness for such an independent statutory office. In making its assessment the Committee examined funding arrangements for Ombudsman Offices in other jurisdictions, both within Australia and overseas, in order to develop a full appreciation and understanding of the variety of funding mechanisms used by Ombudsmen.

Thus the scope of the inquiry encompassed wide-ranging issues central to the functions of the Ombudsman and the management and operation of the Office.

2.3 **CALL FOR SUBMISSIONS**

Terms of reference for the inquiry were advertised in the major metropolitan newspapers on 8 and 11 July, 1992.

The closing date for submissions was 7 August, 1992, however, the Committee did consider several submissions received after this date. A total of 30 submissions were received, a list of which can be found at Appendix 1. They included submissions from the New South Wales Ombudsman, the Treasurer, the Auditor-General, a former Deputy Ombudsman, the Law Society, legal centres and legal advisory services, academics and several individuals.

It is understood from information given by the Ombudsman in response to a question during the Committee's General Meeting on 25 March, 1993 and subsequent correspondence to the Committee dated 19 April 1993, that the Ombudsman wrote to a number of people and organisations inviting them to make submissions to the inquiry. These included several of the witnesses to the Committee.

In view of the Ombudsman's long campaign and sincerely held belief that he was not providing an adequate service both generally and specifically in the minority areas because of perceived lack of funds it was surprising more submissions were not received.

In accordance with the practice adopted for previous inquiries the Committee sought the permission of those persons from whom it intended to take evidence, to distribute their submissions on a confidential basis to other witnesses. This was done to facilitate a more informed and comprehensive discussion of the issues encompassed by the terms of reference.

2.4 PUBLIC HEARINGS

Upon considering the submissions received the Committee resolved to hear evidence from the following department officials and authors of key submissions:

WITNESSES - FRIDAY 16/10/92

Dr Brian Jinks - former Deputy-Ombudsman, NSW

Professor Tony Vinson - Dean, Faculty of Professional Studies, University of NSW,
Former Chairman of the NSW Corrective Services Commission

Ms Eileen Baldry - Co-Convener, NSW Prisons' Coalition

Mr Anthony Harris - Auditor-General for NSW

Mr Terry Murphy - Acting Director, Legal Aid Commission

WITNESSES - TUESDAY 27/10/92

Mr Percy Allan - Secretary, NSW Treasury

Ms Suzanne Kelemen - Budget Officer, NSW Treasury

WITNESSES - MONDAY 16/11/92

Dr Blair Hunt - Director, Property Management Division, Property Services Group

Ms Jennifer Lewis - Manager/Property, Property Management Division, Property Services Group

Ms Melinda Jones - Lecturer, Law Faculty, University of NSW

Mr Graham McDonald - Ombudsman, Australia Banking Industry Ombudsman Ltd

Mr John Marsden - President, Law Society of NSW

Professor Dennis Pearce - Former Commonwealth Ombudsman, Faculty of Law, Australian National University.

WITNESSES - MONDAY 23/11/92

Ms Jenny Mason - Principal Investigation Officer, Ombudsman's Office

Mr Kim Swan - Senior Investigation Officer, Ombudsman's Office

Mr Richard Humphry - Director-General, NSW Premier's Department

Mr Ken Baxter - Secretary Department of Premier and Cabinet, Victoria - formerly Deputy Director-General, NSW Premier's Department, and General Manager Office of Public Management.

The Ombudsman, Mr Landa, the Deputy Ombudsman, Mr Pinnock, and Assistant Ombudsmen, Mr Gregory Andrews and Mr Keiran Pehm, gave evidence to the Committee on 7 December, 1993. Throughout the inquiry the Ombudsman was provided with copies of the transcripts of the public hearings to enable him to prepare his evidence to the Committee. The Ombudsman made an opening address in his evidence and tabled a second final submission plus several other relevant documents.

Following the Ombudsman's evidence, the Committee received a late submission from a former Principal Investigation Officer at the Office, Mr Peter Wilmshurst. The Committee resolved to take evidence from Mr Wilmshurst at a public hearing on 23 February, 1993.

At the commencement of the public hearing the Ombudsman made an opening statement to the Committee prefacing Mr Wilmshurst's evidence with several comments regarding the latter's period of service with the Office. The Committee paid full regard to Mr Landa's views and later gave Mr Wilmshurst the opportunity to respond, which he chose to do in camera.

The Committee feels that regardless of the circumstances relating to Mr Wilmshurst's employment with the Office, the general management and operational issues contained in his submission were highly pertinent to its inquiry and warranted further discussion.

In addition to the public hearings, the Committee Project Officer visited the Office of the Victorian Ombudsman and discussed relevant issues with the Deputy Ombudsman (Police

Complaints) and an Assistant Ombudsman. Several members of the Committee, headed by the Chairman, also travelled to New Zealand in April 1993 on a research trip which involved meetings with the New Zealand Ombudsmen and the Officers of Parliament Committee. Funding and management issues were discussed during these meetings and reference to the arrangements for funding of the Ombudsman in New Zealand is made at section 1.1.1 of this report. The Committee's research trip to New Zealand will be the subject of a report by the Committee in the next session of Parliament.

2.5 CONSULTANCY SERVICES

2.5.1 Financial Consultant

From the outset of the inquiry the Committee engaged the services of a financial consultant, Mr Bill Arkinstall, to provide advice on financial, budgetary and management matters beyond the expertise of the Committee. Mr Arkinstall attended all hearings and deliberative Committee meetings relating to the inquiry and provided ongoing advice to the Committee on issues arising from evidence and material supplied by the Ombudsman's Office. He also participated in the meetings of the Steering Committee which directed the Management Review of the Office of the Ombudsman by KPMG Peat Marwick and assisted the Joint Committee in the preparation of its final report.

2.5.2 Management Review of the Office of the Ombudsman

On the basis of the evidence and submissions it had received by December 1992 the Committee resolved at a meeting on 7 December, 1992 to conduct a management review of the Ombudsman's Office in order to gauge whether the Office was operating efficiently and effectively. It felt that such information was a necessary prerequisite for any determination about the adequacy of the funds and resources available to the Ombudsman.

The issue of a management review was raised during the inquiry by Secretary to the Treasury, Mr Percy Allan, who commented in evidence on 27 October, 1992 that:

"...I would have thought that...a management review is absolutely critical to establish the efficiency and effectiveness of the office and how the resources are being used." (p. 6.)

"The Ombudsman's Office [prior to Mr Landa's term as Ombudsman] in those days asked for exemption (from conducting five-year program evaluations) and was given it, and to my knowledge has not introduced such a program of internal evaluation of its programs." (p. 7.)

"...the managerial revolution that swept through the public service in the 1980s...seems to have missed the Office of the Ombudsman until very recently...It should undertake a professional management review and a

program evaluation before it applies for extra funding." (p. 7.)

"The Office of the Ombudsman has to start questioning its modus of operation." (p. 11.)

"If there was a management review and we looked at these things more carefully, I suspect the Office could find, as we have all had to find in the public service, that you can stretch the resources further." (p. 25.)

Similarly, Mr Ken Baxter, former Deputy-Director General of the Premier's Department, asserted:

"BAXTER:

In terms of the management side...there is no clear performance assessment...He has resisted program evaluation...There is no five-year program evaluation of the Ombudsman. There was no corporate plan and there was strong resistance from the Ombudsman's Office to the development of a corporate plan...the thing has been going on for 18 months and there is still no corporate plan in existence.

WINDSOR:

...What do you think were the reasons behind the Ombudsman's Office resisting that review process?

BAXTER:

...there is a fear, more than anything else, that if an external body reviewed the organisation, there would be criticism of it that may well diminish its perceived effectiveness before the Parliament and the people."⁵¹

Mr Landa was adamant that any Management Review would have to be conducted independently of the Executive and with no connection whatsoever with the Office of Public Management:

"SCULLY:

Mr Landa, your objection to OPM, is it more because of perceived bias on the personnel in OPM or it being part of the executive arm of government?

⁵¹ Transcript of Evidence, pp. 57-59.

LANDA:

Both. The independence of the Office of Ombudsman is part of the crucial element that makes it credible. That's just one means of breaking down the independence when you are getting the executive driven organisation and that's why we reported to Parliament on that issue.

SCULLY:

If it was staff, but still from OPM, who were not involved in earlier disputations you would be less concerned?

LANDA:

I would still be concerned. I believe there are better alternatives and the alternatives are available. The evidence that has been given is that OPM does use external agencies to work on their behalf and that's why I think that is the only sensible approach that they could in all honesty take.

SCULLY:

If we asked for one would you cooperate with it? . . . An OPM review?

LANDA:

No, I would be very critical if you asked for a review by OPM where there are other alternatives such as the Auditor-General or Coopers & Lybrand or many other recognised agencies who are used.

SCULLY:

The answer is "no"?

LANDA:

The answer is "no." I would be very wary.⁵²

The Committee recognised that the Office had previously engaged a consultant, Ms Judith Johnson, to conduct a review of the Office, however, it believed scope existed for a further review. Such a proposal was not objected to by the Ombudsman who claimed to have no objection to strengthening the Office's existing review mechanisms and indicated this to the

⁵² Transcript of Evidence, pp. 30-31.

Chairman during the public hearing on 7 December, 1992:

"CHAIRMAN:

We had two of your officers appear, one was a woman and one was a man. The woman gave evidence that she reviewed files from time to time and took snap shot pictures. She also gave evidence that she didn't have any official training in that review technique and that is one of the reasons that concerns me. I have nothing against your officers or what you have got down there, I don't know what's down there, but are the reviews to a level which can assess whether matters are performing up to the optimum level? That's one thing that does concern me.

LANDA:

It is a point well made. It is one of the issues that confronts us. . . There is no problem. I don't see it [a review] as a threat. I see it as an enhancement. What I see as a threat is if I didn't have the money to pay for it, we may well have gone into a heavier regime ourselves had we the luxury of being able to afford it."⁵³

Elaborating on the internal review mechanisms currently in use, the Deputy Ombudsman confirmed advice from the Office's Principal Investigation Officer regarding monthly "workload snapshots" and full file audits every six months. He described each system as follows:

Monthly reviews

"PINNOCK:

There are two matters that were raised by Dr Burgmann, in particular, which Jenny Mason gave evidence of, in terms of file reviews. One is the type of review which we call a significant item meeting, and which basically is attended by myself, Greg Andrews, Jenny and our senior investigation officers. That is held once a month and that reviews the progress of all non-police investigation files with particular emphasis that raise issues of public interest.

In the Office I am basically responsible for what's called the General Area which is departments and statutory authorities. Greg Andrews is responsible for Local Government and Prisons. Jenny Mason has coverage at her level of all complaints including the police complaints. However, with police

⁵³ Transcript of Evidence, pp. 25-26.

complaints the system is monitored and organised by Kieran Pehm who is the other Assistant Ombudsman.

Those reviews, however, go through every investigation file that is then current in the non-police area. Kieran Pehm and the SIOs - senior investigation officers - monitor the progress of police complaints on a similar basis, particularly where we have received the report of the police investigation under s.24. On a regular basis we monitor the length of time that those s.24 reports are in the Office and the turn around time for them. That is something we have done historically but very much on an ad hoc basis. Over the past two years, but particularly over the last 12 months, we have put not merely greater emphasis to doing that, but put in place structures to enable us to do it. The significant items meeting is one of those structures."

Six month reviews

"PINNOCK:

Similarly on an at least six months basis Greg Andrews and I will review all non-police complaints that have not yet progressed to investigation stage. That is to say they are at some intermediate stage. My view is that if a complaint is still in the office after a period of six months and it has not gone past the preliminary inquiry stage, and I am here talking about non-police complaints - we only have limited control over the length of time taken by police in their investigations - if its there for more than six months then it has got to be looked at to see whether, in fact, it is ever going to go anywhere and that's the purpose of having those reviews.

I take your point, of course, that what you are interested in is some sort of independent assessment of that or some sort of framework which might -

CHAIRMAN:

If I can cut across you, my view is much broader than that. What you have outlined is nothing more than what I used to do in my legal office: you do a file review monthly and a major file review every couple of months. I see the bigger picture not only the file review but the overall performance of that office as to whether you have got procedures in there, say, in your administrative and clerical areas, your complaints area and so on. It may well be that you have got the perfect system down there but I just don't know.

PINNOCK:

I don't think anyone suggests we have got the perfect system. . ."⁵⁴

The Ombudsman related that the Johnson Review had revealed a number of deficiencies and he expected that a further management review would reveal more. Despite this he did not see another review as a solution to the Office's problems as he believed that no management issue had been critical enough to result in the Office's current situation.

However, as the Chairman explained:

*"I don't think we have a benchmark yet to be able to accede to your request. That's why I think the management review is a benchmark. I take your points about OPM, I accept those. I, for one, would like to see a management review for no other reason so that we can reach that bench mark."*⁵⁵

As preconditions to any external management review the Ombudsman insisted that a customer survey should be conducted to determine the level of satisfaction among complainants. He argued that to proceed with a review without such information being available would be "*premature and possibly ineffective and totally out of order*". He also stated that the Office would not have the funds to conduct a review.⁵⁶

In relation to these points it should be noted that the Committee directed the review at no additional cost to the Ombudsman. It also included provision for a "client survey" in the guidelines for the review. This was clarified during initial Steering Committee meetings to mean a survey of public authorities as the Ombudsman's Office had at that stage, irrespective of its earlier protestations about lack of funds to conduct such a survey, engaged AGB McNair consultants to perform a complainant satisfaction survey. The results of the survey of public authorities is discussed in KPMG Peat Marwick's final report (see Item C, Companion Volume).

The objectives of the management review as specified in the guidelines drafted by the Joint Committee were:

"(1) to review the complaint handling and other procedures currently utilised by the Ombudsman's Office and provide advice and

⁵⁴ Transcript of Evidence, pp. 27-29.

⁵⁵ Transcript of Evidence, p. 24.

⁵⁶ Transcript of Evidence, p. 23.

recommendations on whether these or alternative procedures will best enable the Office to efficiently and effectively meet its statutory and other responsibilities.

- (2) to review the current staffing arrangements within the Ombudsman's Office, including duty statements, and provide advice and recommendations on whether these or alternative staffing arrangements will best enable the Office to efficiently and effectively meet its statutory and other responsibilities.*
- (3) to review the levels of funds and other resources currently available to the Ombudsman's Office and provide advice and recommendations on whether these or alternative levels of funds and other resources are appropriate to support the procedures and staffing recommended in objectives (1) and (2) above.*
- (4) to provide advice and recommendations on the performance measures that should be applied in determining the efficiency and effectiveness of the Ombudsman's Office;*
- (5) to provide advice and recommendations on such other management issues as the Committee deems necessary during the course of the review, including but not limited to:*
 - ◆ the use of the recommended performance measures or some alternative method in determining the level of funds and other resources to be made available annually for the operation of the Ombudsman's Office.*
 - ◆ the areas of NSW from which the Ombudsman's clients are drawn and the associated question of whether the Office's location in the Sydney CBD is the most appropriate for the servicing of those clients."*

The Management Review commenced on 30 April, 1993 and the consultancy team, like the financial consultant, was engaged in accordance with OPM guidelines for the selection and use of consultants. The Joint Committee selected KPMG Peat Marwick to perform the review which was directed by a Steering Committee, comprising the Committee Chairman, two other members of the Joint Committee and the Deputy Ombudsman, in conjunction with the financial consultant, Mr Bill Arkinstall, and Project Officer, Helen Minnican. Steering Committee Meetings were held on 27 April (pre-commencement meeting), 13 May, 3 and 25 June, and 13 July, 1993.

The consultancy team submitted a final report to the Steering Committee on 16 July, 1993. This was then circulated to the full membership of the Joint Parliamentary Committee and the Ombudsman prior to a deliberative meeting on 20 July, 1993 to discuss the findings and recommendations of the review. This Joint Committee meeting was attended by the Ombudsman, the Deputy Ombudsman, the financial consultant and the members of the KPMG Peat Marwick Management Review consultancy team.

2.6 **PREPARATION OF THE REPORT**

Following the completion of the Management Review and the subsequent joint meeting on 20 July, 1993 a confidential draft report was prepared by the Committee Chairman and circulated to Committee members prior to a deliberative meeting held on 24 August, 1993. A further Committee meeting was held on 30 August, 1993 during which the Committee finalised its report.

INQUIRY

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3.1 CURRENT ALLOCATION

The funding allocations for the operations of the Ombudsman's Office are determined as part of the annual budgetary process that applies to all other inner-budget sector agencies in NSW. This is an extensive process that commences in October of each year when the Treasury updates and extends the forward estimates and is not completed until the following September when the State Budget for the next financial year is presented to Parliament. Briefly, the calendar of events in the process is:-

- October Treasury updates forward estimates and extends them by one year.
- November Ministerial Expenditure Review Committee (ERC) sets broad budget strategy and major budget targets, determines productivity dividend requirements and approves the issue to Ministers of the updated forward estimates.
- (Core membership of the ERC consists of the Premier, Deputy Premier, Treasurer and two other senior ministers. The committee is serviced by the Treasury Budget Division and meetings are attended by the Directors-General of the Cabinet Office and the Office of Public Management.)
- Dec-Jan Ministers examine forward estimates and:
- ◆ bring to attention significant matters not covered.
 - ◆ submit options for portfolio savings.
 - ◆ submit proposals for enhancements.
- Feb-Mar Treasury reviews Ministers budget submissions covering:
- ◆ significant disagreements on the maintenance level of the forward estimates.
 - ◆ proposals for additional funding for enhancements.
 - ◆ proposed portfolio savings options.

- March Management Review Advisory Committee (MRAC) meets to review results of program and portfolio review undertaken over the past year that may have implications for the budget in terms of possible portfolio savings.
- (MRAC consists of senior officers of the Treasury, the Cabinet Office and the Office of Public Management. Its role is to oversee the integration of major program reviews with the budget process.)
- Apr-May ERC meets to finalise the budget, including productivity dividend, and forward estimates of expenditure, enhancements and portfolio savings. Account is taken of the impact of Loan Council approvals.
- June Ministers and departments/agencies receive detailed advice of allocations for the new financial year.
- Jul-Aug Budget papers prepared and estimates further reviewed to account for any implications from Commonwealth Budget.
- September Budget presented to Parliament for approval.

The forward estimates are an integral part of the budget process and are prepared on a rolling three year basis. They provide a medium term budget perspective that allows departments and agencies to plan ahead and also provides a benchmark for the Government to assess the impact of specific proposals as well as the general direction of expenditure.

3.2 CURRENT FINANCIAL SYSTEMS

3.2.1 Accrual Accounting

In line with the Government's requirements for all inner-budget sector agencies, the Ombudsman's Office converted from a cash based accounting and budgeting system to full accrual accounting on and from 1 July 1991. Under the system as implemented, the Chart of Accounts consists of a single set of detailed line items which are used for recording and reporting costs as inputs only, and for the Office as a whole only.

Accrual accounting is part of new financial reporting standards being introduced for inner-budget sector agencies, with the primary aim of improving financial performance and accountability. It is an important element of the financial and resource management reform program of the Government.

Financial reports prepared on an accrual accounting basis (rather than on a cash basis) allow for the proper recognition of the timing of expenditures and receipts together with more

accurate valuation of assets and liabilities. These reports are of benefit to a wide range of parties who require information about inner-budget sector agencies for making and evaluating decisions regarding the allocation of scarce resources. Properly prepared, the contents of the reports will assist these parties, including the management of the agency itself, to make informed judgements about, among other things:

- ◆ whether an agency is achieving its objectives, operating efficiently and effectively, and delivering the services expected of it;
- ◆ whether continued support for an agency's programs and activities is warranted in the future and, if so, the quantity, quality and price of resources necessary to support those programs and activities;
- ◆ whether the resources provided to an agency in the past have been used for the purposes intended.

In short, accrual accounting and its associated resource management and financial reporting requirements are intended to significantly enhance the financial accountability of inner-budget sector agencies.

3.2.2 **Program Budgeting**

Regrettably, in implementing accrual accounting the Ombudsman's Office chose not to set up a proper financial management information system that incorporates program and activity based costing and has to date failed to see the advantages of costing its programs and/or activities. Indeed, senior management specifically chose not to implement such costings as part of the Office's recent conversion to accrual accounting notwithstanding that they are seen by all other inner-budget sector agencies as an integral part of their Financial Management Information Systems. As a result the Office continues to record detailed line item expenditure inputs only and is therefore unable to draw program/activity costs or other meaningful information direct from its accounting system (and was unable to present any such costs or information to the Committee in support of its claimed resource difficulties).

It is worth noting that the thrust of program budgeting is to switch the emphasis away from line item inputs (such as payments to employees, etc) to what is and what should be achieved from expenditure, that is, to output and performance.

Program budgeting is generally viewed as a three step process: setting objectives, planning their achievement, and measuring the success or otherwise of programs and activities. As a concept it is quite simple but its implementation requires commitment from the highest levels of an agency's management. Among its more important benefits are:

- ◆ concentration on the results of expenditure (outputs and outcomes) thus providing an insight into the purposes for which public funds are expended;

- ◆ providing a means to ensure that ongoing programs and activities compete for resources with new programs and activities;
- ◆ procedures that force managers to analyse the worthiness of programs and activities and provide better justification for changes in the level of expenditure;

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

3.2.3 Changes to Jurisdiction - Financial Implications

As explained in the earlier section on the Ombudsman's functions and jurisdiction there have been several recent amendments and proposed amendments which the Ombudsman believes have affected or will affect his jurisdiction. The Committee determined that speculation as to the extent of any increase in complaints arising from any extension of the Ombudsman's jurisdiction to include local government authorities in relation to FOI complaints, and Aboriginal Land Councils, would not provide an accurate, useful measure of the effect of these changes upon the Office's resources.

Conversely, the Committee noted that some of these changes involved reductions as well as extensions to the Ombudsman's jurisdiction and functions. For instance, the Ombudsman recently reported to Parliament upon the reduction of his jurisdiction to investigate complaints about the Department of Community Services and its officers as a result of the Community Services (Complaints, Appeals and Monitoring) Act. As a result of these extensions and reductions in the Ombudsman's jurisdiction and functions it is not possible for the Committee to calculate the impact of these changes upon the Office's operations.

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

3.3 **EXPENSES**

3.3.1 **Major Expenses**

As explained in section 3.2.2, the Ombudsman's Office has to date failed to see the advantages of costing its programs and/or activities. Such costings have not been implemented as part of the Office's recent conversion to accrual accounting and the Office continues to record detailed line item expenditure inputs only. As a result it is unable to draw program/activity costs direct from its accounting system. A detailed record of the Office's expenditure since 1986-87 is provided in the table on the following page.

The Office's major expenses by line item have averaged as follows for the 7 years from 1986/87 to 1992/93:-

	\$	%
Salaries and Wages	2,676,575	72.3
Rent, Rates, Outgoings	545,298	14.7
Fees	118,251	3.2
Stores	111,870	3.0
Post & Telephone	66,314	1.7
Travelling	41,265	1.1
Motor Vehicle Running	45,147	1.2
Other (less than 1% of total)	98,803	2.8
TOTAL	3,700,523	100.0

3.3.2 **Investigative and Administrative Expenses**

As mentioned above the Ombudsman's Office was unable to provide any costing details on other than a line item basis. In these circumstances it was not possible for the Committee to assess, other than on the broadest and most imprecise basis, what the cost of particular programs and activities might be or how much might be spent by the Office for investigative as distinct from administrative purposes.

	1986/87 Actual	+ Inc - Dec	1987/88 Actual	+ Inc - Dec	1988/89 Actual	+ Inc - Dec	1989/90 Actual	+ Inc - Dec	1990/91 Actual	+ Inc - Dec	1991/92 Actual	+ Inc - Dec	1992/93 Estimate	5 Year Inc/Dec
FINANCE:														
Salaries & Other Employee Payments	1973003	84551	2057554	161342	2218896	517069	2735965	342709	3078674	245188	3323862	24212	3348074	1350859
% of Total	72.00%	4.29%	71.09%	7.84%	66.50%	23.30%	70.41%	12.53%	71.98%	7.96%	76.83%	0.73%	75.35%	68.47%
Rent, Rates & Charges	366197	71910	438107	-30827	407280	240544	647824	-14622	633202	1272	634474	55526	690000	268277
% of Total	13.36%	19.64%	15.14%	-7.04%	12.21%	59.06%	16.67%	-2.26%	14.80%	0.20%	14.67%	8.75%	15.53%	73.26%
Fees (Legal, etc)	125582	-26430	99152	38166	137318	8569	145887	54057	199944	-127070	72874	-25874	47000	-52708
% of Total	4.58%	-21.05%	3.43%	38.49%	4.12%	6.24%	3.75%	37.05%	4.67%	-63.55%	1.68%	-35.51%	1.06%	-41.97%
Stores	58732	22379	81111	252557	333668	-253687	79981	8552	88533	-22469	66064	8936	75000	7332
% of Total	2.14%	38.10%	2.80%	311.37%	10.00%	-76.03%	2.06%	10.69%	2.07%	-25.38%	1.53%	13.53%	1.69%	12.48%
Postage & Telephone	48436	7856	56292	-9445	46847	-3541	43306	56107	99413	-30509	68904	11096	80000	20468
% of Total	1.77%	16.22%	1.94%	-16.78%	1.40%	-7.56%	1.11%	129.56%	2.32%	-30.69%	1.59%	16.10%	1.80%	42.26%
Printing	33554	8909	42463	-9385	33078	-2409	30669	-9503	21166	-6009	15157	12843	28000	-18397
% of Total	1.22%	26.55%	1.47%	-22.10%	0.99%	-7.28%	0.79%	-30.99%	0.49%	-28.39%	0.35%	84.73%	0.63%	-54.83%
Travel	53692	-12875	40817	4035	44852	14331	59183	-26385	32798	-14287	18511	20489	39000	-35181
% of Total	1.96%	-23.98%	1.41%	9.89%	1.34%	31.95%	1.52%	-44.58%	0.77%	-43.56%	0.43%	110.69%	0.88%	-65.52%
Motor Vehicles	23004	4056	27060	43223	70283	17474	87757	-37130	50627	-23328	27299	2701	30000	4295
% of Total	0.84%	17.63%	0.93%	159.73%	2.11%	24.86%	2.26%	-42.31%	1.18%	-46.08%	0.63%	9.89%	0.68%	18.67%
Books & Publications	11988	1139	13127	429	13556	3693	17249	2043	19292	5771	25063	937	26000	13075
% of Total	0.44%	9.50%	0.45%	3.27%	0.41%	27.24%	0.44%	11.84%	0.45%	29.91%	0.58%	3.74%	0.59%	109.07%
Advertising	11023	10584	21607	-8653	12954	3950	16904	10274	27178	-17408	9770	9230	19000	-1253
% of Total	0.40%	96.02%	0.75%	-40.05%	0.39%	30.49%	0.44%	60.78%	0.64%	-64.05%	0.23%	94.47%	0.43%	-11.37%
Electricity	14246	96	14342	3373	17715	2887	20602	-2550	18052	333	18385	615	19000	4139
% of Total	0.52%	0.67%	0.50%	23.52%	0.53%	16.30%	0.53%	-12.38%	0.42%	1.84%	0.42%	3.35%	0.43%	29.05%
Other	20857	-18028	2829	-2829	0	602	602	7881	8483	37229	45712	-3712	42000	24855
% of Total	0.76%	-86.44%	0.10%	-100.00%	0.00%	N/A	0.02%	1309.14%	0.20%	438.87%	1.06%	-8.12%	0.95%	119.17%
TOTAL	2740314	154147	2894461	441986	3336447	549482	3885929	391433	4277362	48713	4326075	116999	4443074	1585761
% of Total	100.00%	5.63%	100.00%	15.27%	100.00%	16.47%	100.00%	10.07%	100.00%	1.14%	100.00%	2.70%	100.00%	57.87%
Capital Works/Equipmt New Furniture	0	0	0	0	0	231962	231962	-180828	51134	14055	65189	-33189	32000	65189
Total Capital Expend	0	0	0	0	0	381962	381962	-330828	51134	14055	65189	-33189	32000	65189
TOTAL EXPEND	2740314	154147	2894461	441986	3336447	931444	4267891	60605	4328496	62768	4391264	83810	4475074	1650950
	100.00%	5.63%	100.00%	15.27%	100.00%	27.92%	100.00%	1.42%	100.00%	1.45%	100.00%	1.91%	100.00%	60.25%

3.4 SUPPLEMENTATION APPLICATIONS

3.4.1 Prisons Inquiry and Supreme Court Litigation

Sequence of Events In mid-July 1990 the Ombudsman notified Treasury of the need for supplementation to cover a Prisons Inquiry (estimated cost \$65,000) and Supreme Court litigation.

On 15 November 1990 the Ombudsman wrote to the Premier and Treasurer advising of prison inquiry costs of \$54,399.13 as at 31 October 1990 and stating:

"As previously indicated, this inquiry has had a major impact on the resources of this Office and I am not in a position to absorb the cost."

The Premier and Treasurer responded on 18 December, 1990:

"As previously advised, I consider it too early in the budget year to provide supplementary funding for this inquiry. However, by the end of March 1991, when firmer estimates of total expenditure will be available, the matter should again be raised with Treasury officers and further consideration will be given to supplementary funding."⁵⁷

On 20 March 1991 the Ombudsman wrote to the Premier and Treasurer advising him that the final cost of the investigation was \$65,095.01.

On 7 May 1991, following discussion with Treasury Inspector, the Ombudsman wrote again advising of a revised cost of \$62,667.49.

The Ombudsman also wrote to the Premier and Treasurer on 10 July 1990 and 27 February 1991 notifying the commencement of legal proceedings and the need for supplementation for this purpose, and later, details of the costs involved.

On 31 May 1991, the Premier and Treasurer advised that supplementation totalling \$143,000 had been approved for the financial year.

In his earlier reports as well as his submissions and evidence to this Inquiry the Ombudsman has complained at some length about the delays in receiving formal supplementation approval and as a consequence, about his inability to commit funds for normal operating purposes. These delays appear to have caused difficulties in relation to the financial management of the Office and while acknowledging Treasury's explanations for the delays the Committee believes that in future Treasury should ensure that applications for supplementation made by

⁵⁷ Effective Functioning Report, p. 18.

the Ombudsman should be dealt with in a prompt and efficient manner. In this regard the Committee also notes that the Ombudsman's requests for supplementation and the maintenance dispute, which have largely been the catalyst for this Inquiry, arose at a time when the Office did not have a financial accountant or other senior finance person employed. The involvement of such a person at the time may have engendered a better understanding of the budget processes and perhaps less spirited correspondence.

3.4.2 Rent Reviews

The March 1991 rent review was first raised by the Ombudsman in a letter to the Premier and Treasurer on 26 November, 1990 which referred to discussions on this topic with Treasury officers when the Ombudsman's 1990/91 budget estimates were first submitted.

On 16 February 1991 the Premier and Treasurer advised the Ombudsman that:

"In terms of my memorandum No.90-54, I pointed out that in conjunction with a devolution of the responsibility for accommodation arrangements to Departments, consideration will only be given to the provision of additional funding in respect of single-occupancy rent increases, to the excess of the rent increase over the enhancement threshold. You will need to reconsider the matter in this context once the actual rent increase is known."

On 31 May 1991 the Premier and Treasurer further advised:

"I refer to my advice of 16 Feb 91 in which I pointed out that consideration will be given to additional funding in respect of single-occupancy rent increases to the excess of the rent increase over the enhancement threshold (which is in the case of the Office of the Ombudsman \$100,000). You will need to consider the matter in this context once the actual increase is known."⁵⁸

Effectively, the request for supplementation for the March 1991 rent increase was not approved. The cost of the increase amounted to \$24,998 for 1990-91 and \$72,115 for the full year 1991-92.

As part of a maintenance dispute lodged with Treasury in January 1992, the Ombudsman sought funding for further rent reviews due in March 1993 and March 1995 amounting to \$29,000 in 1992/93, \$88,000 in 1993/94 and \$122,000 in 1994/95. Funding for this purpose was approved by the Premier and Treasurer on the basis that it was funding for the maintenance of existing activities, not enhancement (supplementation).

⁵⁸ Effective Functioning Report, pp. 20-21.

The Ombudsman has taken the view that his Office's funding has effectively been eroded by the full year value of the March 1991 rent review for which supplementary funding was not approved, \$72,115.

At the request of the Committee, the Ombudsman has provided copies of correspondence leading up to his occupation of office space in the Coopers and Lybrand Building, the Carringbush Tower. The following extracts are felt to be most relevant to consideration of the rental issue by this Inquiry:

- (i) Letter of 10 February 1989 from Director-General, Premier's Dept, to Secretary, Dept of Administrative Services.

"...You should clearly inform Mr. Landa that although the assumption made in your analysis shows that the proposal for 580 George Street which you recommend is currently the cheaper option, there is no guarantee that the market escalation figures used are accurate, and due to the growth in the southern sector of the CBD this may become the more expensive option due to faster market escalation. This may later impact upon the Ombudsman's budget..."

- (ii) Response of 22 February from Secretary, Department of Administrative Services, to Director-General, Premier's Department.

"...the Ombudsman was advised on a number of occasions of my Department's concerns over the adverse financial implications of taking precipitant action to lease premises of the high quality/high rental levels of the Coopers and Lybrand building, instead of waiting till more suitable and economic premises became available, closer to the lease expiry in the existing premises..."

"...in acceding to the Ombudsman's express and uncompromising insistence on his relocation to the Coopers and Lybrand building, it is regrettable that all concerned were given a very tight deadline by the lessor for an offer of the last remaining space in the building..."

"...it was patently clear that the Ombudsman would not accept what my Department may have considered to be suitable alternative options..."

In section 4.9 of the report of this Inquiry the Committee makes certain comments and recommendations relevant to the current and future accommodation of the Ombudsman's Office.

3.5 MAINTENANCE DISPUTE

On 1 February, 1991 the Ombudsman wrote to the Secretary of the Treasury notifying a maintenance dispute and seeking an adjustment to the Office's Forward Estimates for the years 1991/92 - 93/94. The Ombudsman advised, among other things:

"It is absolutely clear that the reduction of my budget in the next financial year alone will leave me with no option but to reduce services.....On current estimates, my Office will face a total shortfall of \$190,000 if the Office is only provided with the allocation as advised on 7 December 1990."⁵⁹

The Ombudsman's Effective Functioning Report states that on the basis of detailed costings the Office faced a prospective shortfall of \$137,000 in employee-related payments in 1991/92, and that this could lead to only one result - a reduction in staff levels.

As part of the Ombudsman's notification to Treasury and his other comments he sought to address the requirement to achieve, in common with all other inner-budget sector agencies, productivity savings of 1.5% in each of the years 1991-92 to 1992-93. His comments in the Effective Functioning Report on service reductions were contrary to Treasury advice that:

"Productivity savings are to be achieved by improved procedures and administrative arrangements to reduce the unit cost of activities and should not involve service reduction."

The import of the Ombudsman's comments in his Effective Functioning Report is that he specifically chose to ignore the rest of the Treasury advice:

"It will be necessary for agencies to develop strategies to improve, on a continuing basis, the efficiency with which they undertake their activities."⁶⁰

On 21 February 1991 the Ombudsman again wrote to Treasury emphasising that his total projected shortfall of \$190,000 had been achieved only after prospectively slashing recurrent expenditure by \$86,000 in the essential areas of motor vehicles, travel, advertising/publicity, legal opinions and training. The Effective Functioning Report instances that the travel budget would be slashed by 75% severely impacting upon the ability to conduct investigations, site inspections, Section 19 Inquiries and public awareness campaigns outside the metropolitan area. Again these comments gave no consideration to strategies to improve efficiency and maintain services.

⁵⁹ Effective Functioning Report, par 4.6.1, p. 22.

⁶⁰ *ibid*, par 4.6.2, p. 23.

Para 4.6.4 of the Ombudsman's Effective Functioning Report includes the comment that:

"In order to deal with the carry over of complaints from the current financial year and to meet complaints expected to run at the same level as in 1990/91, the Ombudsman must have further funding to increase his investigative and support staff by two investigative officers and one administrative officer. The total funding for these positions is estimated to be \$134,000.

Further, adjustment must also be made to recurrent funding to enable the Ombudsman to properly undertake major investigations, rather than having to seek supplementation each year.... Annual funding of approximately \$100,000 will be needed to meet the costs of such Inquiries."

In addition this report also included a total funding requirement of \$78,000 for what the Ombudsman termed public awareness activities (\$46,000 prison visits, \$22,000 detention centre visits, \$10,000 printing) bringing the total additional annual funding sought to \$588,000, comprising:

	\$
Prospective budget cuts	86,000
Maintenance dispute/ forward estimates	190,000
Additional staff	134,000
Special Inquiries	100,000
Public awareness	<u>78,000</u>
	<u>588,000</u>

The Ombudsman's report further recommended:

9.1.1 the threshold requirement in respect of single occupancy tenancies be waived in respect of the Ombudsman's Office.

9.1.2 further adjustment of the recurrent budget for 1991/92 and forward years to cover the cost of any increase in rent.

9.2.1 should the need arise, supplementation of \$37,000 for 1990/91 for the creation of a further position of Investigation Officer (FOI).

9.2.2 supplementation of \$10,000 for 1990/91 to commission a survey of inmates of detention centres.

9.3 *retention in the recurrent budget of a capital works allocation of \$21,000, plus further capital works funding of \$89,000 over 1991/92 and forward years.*⁶¹

As stated in his first submission for the Inquiry, the Ombudsman lodged a further maintenance dispute with Treasury on 31 January 1992 notifying the following projected deficits based on the Forward Estimates:

	\$
1992/93	468,000
1993/94	671,000
1994/95	776,000

In addition to projected deficits for employee related payments and further rent reviews, the Ombudsman has indicated that these amounts include additional funds for:

	\$
an appropriate level of visits to gaols and juvenile institutions	46,000
in preparing submissions to the Joint Committee	25,000
public awareness visits to country areas	21,000
temporary assistance to replace staff involved in preparing submissions to the Joint Committee	25,000

In his second submission to the Inquiry dated 7 December, 1992 the Ombudsman increased his claim considerably by recommending, inter alia:

9.4 *his Office be relieved of future productivity savings for 1993/94 and forward years.*

9.5 *immediate supplementation of \$258,000⁶² for 1992/93 plus appropriation increases of \$837,000 for 1993/94 and*

9.6 *future years, as follows:*

⁶¹ *ibid.*, pp. 39-40.

⁶² The amount of \$238,000 quoted in the submission at p.49 is an incorrect calculation - on the figures provided the total of items for supplementation is \$258,000.

Committee on the Office of the Ombudsman

	1992/93	1993/94 +
	\$	\$
Rent Reviews	72,000	72,000
Salaries	166,000	166,000
Client Surveys	20,000	20,000
Overtime	--	80,000
Visits	--	46,000
Public Awareness	--	31,000
Special Inquiries (PI)	--	100,000
Printing	--	34,000
S.19 Infrastructure	--	30,000
Expert Assistance (PI)	--	50,000
CHIPS	--	92,000
Research Staff	--	91,000
Temporary Assistance	--	25,000
TOTAL	258,000	837,000

This clearly amounted to an ambit claim and was recognised as such by the Committee members, although the Ombudsman and his Deputy only reluctantly conceded that this was the case. Replying to questions from Mr Windsor and Mr Scully in this regard, Mr Landa stated:

"WINDSOR:

Is there a total figure you have in mind?

LANDA:

Yes, we put a total there. It is quite clearly more than just our deficit we are concerned about, in fact the figure that we have put there, in terms of ambit suppose, is \$837,000.

SCULLY:

I thought it was \$500,000.

LANDA:

That was our deficiencies, that was our shortfall. That is why we are putting people off. It would have been \$700,00 next year..."⁶³

The Ombudsman clarified this point at the end of the hearing in the following exchange with Mr Scully:

"SCULLY:

You mentioned this is an ambit claim, Mr Landa. I am pretty familiar with trade union ambit claims. It still invites the question - what is the real claim if that is an ambit claim?

LANDA:

It seems no virtue coming to this Committee and not telling you what it is we need and this is what we need. To that extent it is ambit. It is not ambit in the sense that it is luxurious, that it gives us more than we need. It is what we see as pretty basic. Part of it is make-up as well as what we need as an enhancement to do the job in an adequate way."⁶⁴

⁶³ Transcript of Evidence, pp. 44-45.

⁶⁴ Transcript of Evidence, p. 96.

4.1 STRUCTURE

In the light of comments in submissions received and evidence taken very early in the Inquiry the Committee began to conclude that there ought to be, in addition to direct financial considerations, a management review of the Ombudsman's Office.

From a perusal of details published in the Ombudsman's Annual Reports it seemed that the Office structure had remained essentially unchanged over the nineteen years of its existence. Those changes that had occurred over the years seemed to have arisen mainly from the creation of additional positions as a response to the perceived demands of complaint activity. A partial re-organisation was undertaken in 1989/90 with the assistance of Public Employment Industrial Relations Authority, but apart from higher grading of existing positions, the introduction of investigation "teams", and widening of the duties of word processor operators to incorporate some preliminary investigatory work, this simply resulted in an extension of the existing structure of the Office.

The Ombudsman did not present the Inquiry with any submissions or evidence that would allow the Committee to determine whether, in the apparent absence of any formal management review practices, the Office was effectively structured and staffed.

The management review undertaken at this Committee's request by KPMG has revealed an organisation structure as at July 1992 as shown in the organisation chart on the facing page. The key issues identified by KPMG in their review of this structure are summarised as follows:-

"Complaint Handling (Core Business Activity) There are 4 generalist investigative "teams" or "groups" each of which is headed by a Senior Investigation Officer and includes a number of Investigation Officers (which formerly included seconded police officers), an Assistant Investigation Officer, a Senior Investigative Assistant and a number of Investigative Assistants. Each "team" consists of 8-9 persons in an unstructured mixture of specialist and generalist staff.

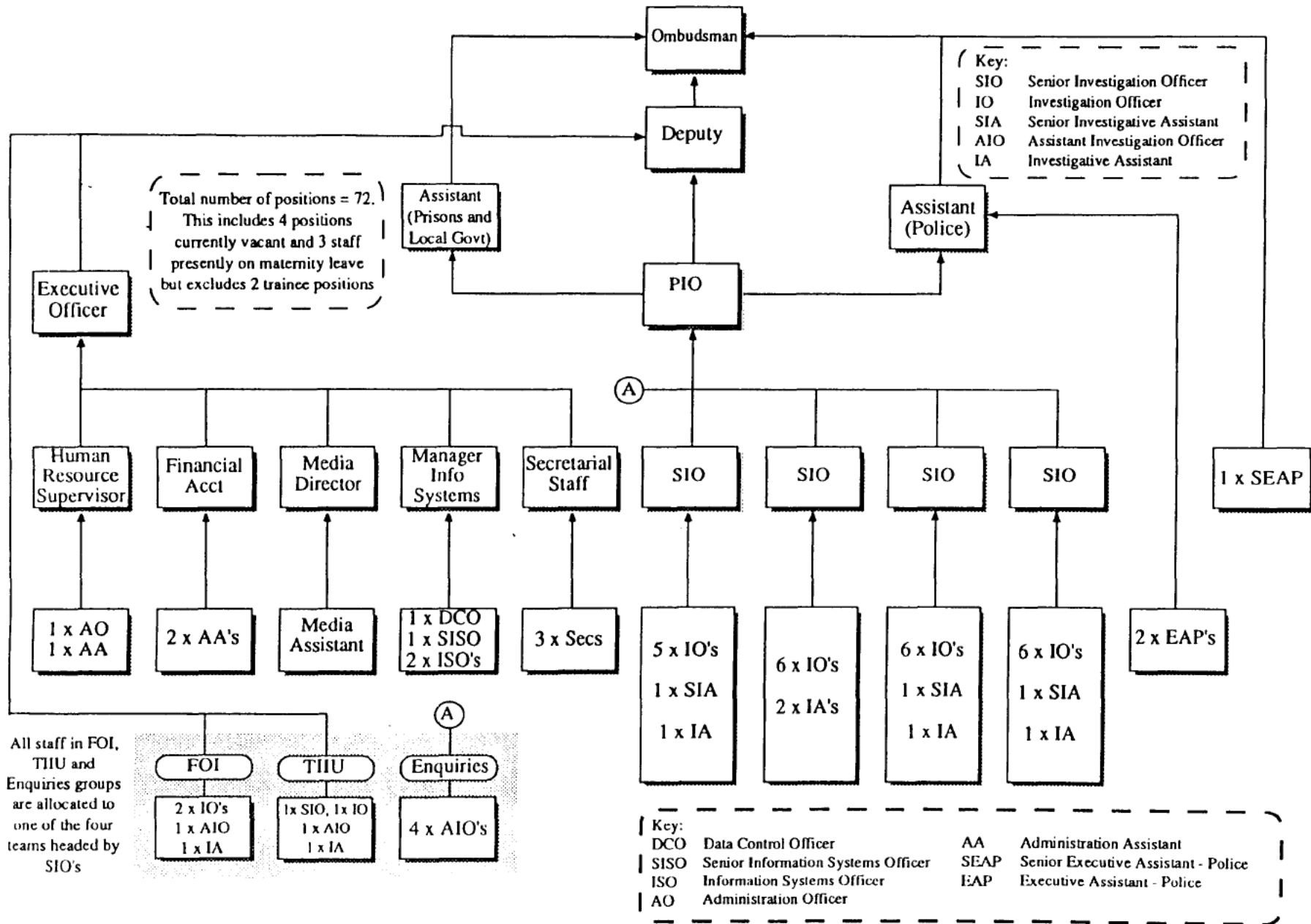
The "teams" are, in theory, under the overall supervision of a Principal Investigation Officer who is responsible to both the Assistant Ombudsman (Police) and the Assistant Ombudsman (Prisons and Local Government), and to the Deputy Ombudsman.

The 2 Assistant Ombudsmen are in turn directly responsible to the Ombudsman.

The Ombudsman is assisted by a Senior Executive Assistant - Police, while the Assistant Ombudsman (Police) is assisted by 2 positions of Executive Assistant - Police.

Separate smaller units for Freedom of Information and for Telecommunications Interception Inspection report direct to the Deputy Ombudsman while the Inquiries group reports direct to the Principal Investigation Officer. However, all staff from these three areas are actually allocated to one of the 4 "teams".

Current Organisation Structure



Administration (Support Activity) Small groups covering Human Resources, Financial Accounting, Information Systems and Secretarial Services, together with a Media Director are supervised by an Executive Officer who is responsible to the Deputy Ombudsman."

The KPMG report highlighted deficiencies in this structure that seem to bear out some of the more critical comments made in submissions and evidence to the Committee. The more obvious deficiencies are:-

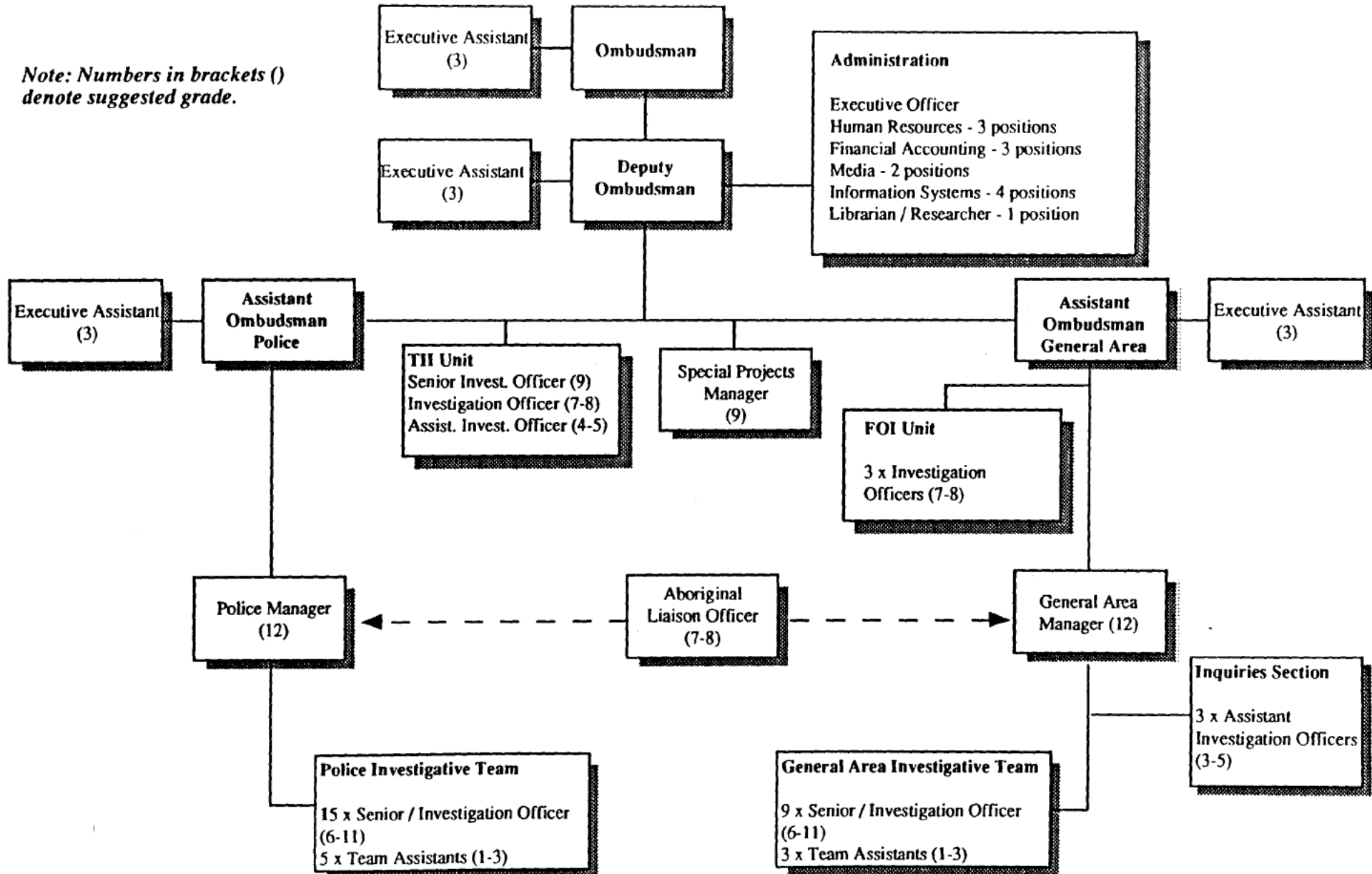
- ◆ The "team" structure does not properly address the impact of police complaints which represent approximately two-thirds of the total complaints received by the Ombudsman's Office.
- ◆ The reporting relationships with the Principal Investigation Officer create ambiguities in accountabilities and delegation of responsibility for dealing with police and non-police complaints.
- ◆ Informal lines of reporting and communication have developed between the investigative teams and the 4 Statutory Officers, which can at times compromise the position of the Senior investigation Officers and the Principal investigation Officer.
- ◆ There are inadequacies in the level of supervision of some teams because:
 - Senior Investigation Officers undertake an inappropriately high complaint case load; and
 - members of teams are not physically located together, making effective supervision difficult.
- ◆ Various positions are either not being utilised for the purposes for which they were created or are inappropriately graded. Others are undertaking duties that distract from what should be their primary functions.

KPMG have proposed an alternative structure for the Ombudsman's Office, which takes into account procedural issues and the results of their assessment of resource requirements, including estimates of average times required to process complaints (see chart on facing page). Their key recommendations are summarised as follows:

- ◆ The Ombudsman should demonstrate his role as leader by taking direct responsibility for co-ordinating and driving the corporate planning process. This role should not be delegated to his subordinates.
- ◆ The Ombudsman and Deputy Ombudsman should place increased emphasis on undertaking speaking engagements and public awareness visits in order to raise the level of awareness and understanding of the Office.
- ◆ The Deputy Ombudsman's primary responsibility should be to provide support and assistance to the Ombudsman as required, with particular emphasis on policy/strategy development.
- ◆ The Ombudsman and Deputy Ombudsman should only take a direct interest in complaints if they are of a serious or complex nature, or are associated with a high level of public interest or political sensitivity.

Recommended Organisation Structure

Note: Numbers in brackets () denote suggested grade.



- ◆ The efficiency and effectiveness of the Office would benefit from a more specialist approach by the formation of two investigative teams, one responsible for handling complaints against police and the other responsible for general area complaints (ie. all complaints other than those against police).
- ◆ The restructure of various other areas of the Office to correct the inefficiencies associated with those positions that are inappropriately graded or are currently utilised for other than their intended or primary purposes.

The consultancy teams preference for increased specialisation and two distinct teams was supported by evidence from other witnesses, including Mr Peter Wilmshurst:

Par 2.7

"...The Office has no performance management plan... No meaningful information collection plan exists...the Office has neither proposed nor contemplated any change in the structure of the Office to more effectively focus on Police matters...Whatever clear functions the Office does have is not reflected in the way the Office is structured...Officers are expected to be experts in everything and do a little bit of every type of activity which gives rise to the inefficient allocation of resources...."

Par 6.1

"The Office is simply not structured to carry out its diverse range of activities. In essence its four Investigation Teams are expected to do everything.....It is quite inefficient and ineffective."

He cited the CHIPS project as an example of this because it was not carried out by a full-time research/policy person but by a Senior Executive Assistant (Police) as there was no capacity in the Office for anyone else to do this project.⁶⁵ He later recommended that the Office create a small research unit for employment within the whole Office according to a plan of projects.

KPMG highlighted the following benefits from increased specialisation.

Specialisation:

- Promotes efficiency through development of a greater level of knowledge and understanding in the handling of complaints against particular public authorities by specialist staff or teams.

(The importance of staff having a good understanding of the organisations they are investigating is highlighted in the results of the survey of public authorities discussed

⁶⁵ Wilmshurst, Submission 1, par 6.2.

later.)

- Facilitates improved management and supervision of specialised areas of complaint handling.
- Facilitates the development of policies/strategies for the handling of common types of complaints arising within a particular authority, and for the development of potential solutions for the cause of common complaints.

The Committee notes that the Office developed a proposal early in 1993 for a restructure on more functional lines which seems supportive of KPMG's recommendations⁶⁶ and that in his final response to KPMG's report the Ombudsman states general support for the two specialist investigation teams structure.⁶⁷

4.2 **STAFFING**

As indicated in the foregoing section, the Office has until very recently simply attempted to continue the practice of throwing additional staff at its problems rather than applying contemporary management thinking to the way it is organised and operates. A detailed chart of staffing in the Office for the period 1986-87 and a second chart recording activity, funding and staff levels for the Office from 1986-87 until 1992-93 are provided in this section.

There has, as a result, been steady and continuous growth in the staffing of the Ombudsman's Office and this is particularly evident over the past 5-6 years in which period the number of staff has increased from 62 in 1986/87 to 74 in 1992/93 (ie. a 19% increase). To a marked extent the number of administrative positions has remained static (although additional costs have been incurred by increasing the grades of some of those positions, perhaps inappropriately) and the increases have been directed towards the investigation area. The current staffing establishment is shown in the following table together with KPMG's final revised staffing proposal:

	Current	Proposed	Change
Statutory Officers	4	4	0
Investigative Teams	35	34	-1
Special Positions	4	2	-2
F.O.I. Unit	4	3	-1
T.I.I. Unit	4	3	-1
Inquiries Section	4	3	-1
Administration	17	18	+1
Total Establishment	72	67	-5

⁶⁶ Briefing by J Pinnock and G Andrews, Committee Meeting 9 March, 1993.

⁶⁷ Office of the Ombudsman, Final Response dated 2 August 1993, p. 8.

	1986/87 Actual	+ Inc - Dec	1987/88 Actual	+ Inc - Dec	1988/89 Actual	+ Inc - Dec	1989/90 Actual	+ Inc - Dec	1990/91 Actual	+ Inc - Dec	1991/92 Actual	+ Inc - Dec	1992/93 Estimate	5 Year Inc/Dec
STAFFING:														
INVESTIGATIVE STAFF:														
Ombudsman	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Deputy Ombudsman	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Assistant Ombudsman	2	0	2	0	2	0	2	0	2	0	2	0	2	0
Principal Investig Officer	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Snr Investig Officer	3	1	4	0	4	1	5	0	5	0	5	0	5	2
Investigation Officer	14	1	15	2	17	1	18	3	21	2	23	0	23	9
Special Officer	9	0	9	0	9	-3	6	-2	4	-1	3	0	3	-6
Interviewing Officer	3	2	5	1	6	-6	0	0	0	0	0	0	0	-3
Assist. Investig Officer	0	0	0	0	0	6	6	-1	5	1	6	0	6	6
Investigative Assistant	0	0	0	0	0	6	6	0	6	1	7	0	7	7
Senior Investig Assist	0	0	0	0	0	7	7	0	7	-2	5	0	5	5
TOTAL INVESTIG	34	4	38	3	41	12	53	0	53	1	54	0	54	20
% Inc/(Dec)		11.76%		7.89%		29.27%		0.00%		1.89%		0.00%		58.82%
ADMINISTRATIVE STAFF:														
Executive Officer	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Senior Admin Officer	0	0	0	0	0	1	1	-1	0	0	0	0	0	0
Executive Assistant	3	0	3	0	3	0	3	0	3	0	3	0	3	0
Manager Info Systems	0	0	0	0	0	0	0	1	1	0	1	0	1	1
Public Relations Officer	0	0	0	1	1	0	1	0	1	0	1	0	1	1
Data Control Officer	0	0	0	1	1	0	1	0	1	0	1	0	1	1
Human Resource Mgr	0	0	0	0	0	0	0	1	1	0	1	0	1	1
Financial Accountant	0	0	0	0	0	0	0	1	1	0	1	0	1	1
Accounts Officer	1	0	1	0	1	0	1	-1	0	0	0	0	0	-1
Personnel Officer	1	0	1	0	1	0	1	-1	0	0	0	0	0	-1
Admin Assistant	0	0	0	1	1	0	1	0	1	0	1	0	1	1
Admin Clerk	1	0	1	1	2	-1	1	0	1	0	1	0	1	0
OIC Records	1	0	1	0	1	-1	0	0	0	0	0	0	0	-1
Information Officer	1	0	1	0	1	-1	0	0	0	0	0	0	0	-1
Keyboard Staff & Stenos	15	1	16	0	16	-7	9	0	9	0	9	0	9	-6
Executive Assistant	0	0	0	0	0	1	1	0	1	0	1	0	1	1
TOTAL ADMIN	24	1	25	4	29	-8	21	0	21	0	21	0	21	-3
% Inc/(Dec)		4.17%		16.00%		-27.59%		0.00%		0.00%		0.00%		-12.50%
TOTAL STAFF:	58	5	63	7	70	4	74	0	74	1	75	0	75	17
% Inc/(Dec)		8.62%		11.11%		5.71%		0.00%		1.35%		0.00%		29.31%
RATIO INVEST:ADMIN	1.42		1.52		1.41		2.52		2.52		2.57		2.57	

	1986/87 Actual	+ Inc - Dec	1987/88 Actual	+ Inc - Dec	1988/89 Actual	+ Inc - Dec	1989/90 Actual	+ Inc - Dec	1990/91 Actual	+ Inc - Dec	1991/92 Actual	+ Inc - Dec	1992/93 Estimate	5 Year Inc/Dec
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FUNDING: (TOTALS)														
Salaries, etc	1973003	84551 4.29%	2057554	161342 7.84%	2218896	517069 23.30%	2735965	342709 12.53%	3078674	245188 7.96%	3323862	24211.77 0.73%	3348074	1350859 68.47%
Rent, Rates, Charges	366197	71910 19.64%	438107	-30827 -7.04%	407280	240544 59.06%	647824	-14622 -2.26%	633202	1272 0.20%	634474	55526 8.75%	690000	268277 73.26%
Other Expend	401114	-2314 -0.58%	398800	311471 78.10%	710271	-208131 -29.30%	502140	63346 12.62%	565486	-197747 -34.97%	367739	37261 10.13%	405000	-33375 -8.32%
TOTAL RECUR EXPEND	2740314	154147 5.63%	2894461	441986 15.27%	3336447	549482 16.47%	3885929	391433 10.07%	4277362	48713 1.14%	4326075	116998.7 2.70%	4443074	1585761 57.87%

STAFFING: (TOTALS)														
Investigative Staff	34	4 11.76%	38	3 7.89%	41	12 29.27%	53	0 0.00%	53	1 1.89%	54	0 0.00%	54	20 58.82%
Administrative Staff	24	1 4.17%	25	4 16.00%	29	-8 -27.59%	21	0 0.00%	21	0 0.00%	21	0 0.00%	21	-3 -12.50%
TOTAL STAFF	58	5 8.62%	63	7 11.11%	70	4 5.71%	74	0 0.00%	74	1 1.35%	75	0 0.00%	75	17 29.31%

ACTIVITY: (TOTALS)														
Enquiries/Interviews	9025	99 1.10%	9124	-1381 -15.14%	7743	-693 -8.95%	7050	2218 31.46%	9268	5540 59.78%	14808	1156.6 7.81%	15964.6	5783 64.08%
Complaints	4948	-309 -6.24%	4639	-84 -1.81%	4555	318 6.98%	4873	1104 22.66%	5977	19 0.32%	5996	209.6 3.50%	6205.6	1048 21.18%
Hearings	52	-21 -40.38%	31	-13 -41.94%	18	-8 -44.44%	10	-2 -20.00%	8	9 112.50%	17	-7 -41.18%	10	-35 -67.31%
Hearing Days	178	-91.5 -51.40%	86.5	-30.5 -35.26%	56	-14 -25.00%	42	28.5 67.86%	70.5	-18.5 -26.24%	52	-25.2 -48.46%	26.8	-126 -70.79%
Formal/Parl Reports	247	-12 -4.86%	235	-85 -36.17%	150	-78 -52.00%	72	88 122.22%	160	84 52.50%	244	1.2 0.49%	245.2	-3 -1.21%
Visits	77	15 19.48%	92	-11 -11.96%	81	-41 -50.62%	40	-4 -10.00%	36	-6 -16.67%	30	-9.4 -31.33%	20.6	-47 -61.04%
TOTAL ACTIVITY (RAW)	14527	-320 -2.20%	14208	-1605 -11.29%	12603	-516 -4.09%	12087	3433 28.40%	15520	5628 36.26%	21147	1326 6.27%	22473	6620 45.57%

The initial KPMG staffing establishment proposals were arrived at as follows:

Statutory Officer

Deletion of the position of Assistant Ombudsman (Prisons & Local Govt) to be replaced by the creation of the position of Assistant Ombudsman (General Area)

Investigative Teams

Deletion of one supervisory position of Principal Investigation Officer, Grade 11-12, to be replaced by the creation of two supervisory positions of Manager, Grade 12, covering the new teams for Police and General Area.

Deletion of 2 positions of Senior Investigative Officer, Grade 9-10/Investigative Officer, Grade 7-8, to account for increased efficiency and effectiveness resulting from specialisation via the two team structure.

Special Positions

Deletion of the position of Senior Executive Assistant (Police), Grade 9, and the two positions of Executive Assistant (Police), Grade 7-8, on the basis that none of these positions was found to be serving the purpose for which it was created. A position entitled Special Projects Manager (equivalent to the previous Senior Executive Assistant position) was to be retained for special projects such as CHIPS (Complaint Handling in the Public Sector).

FOI Unit

Upgrading of the position of Assistant Investigation Officer, Grade 4-5, to the position of Investigative Officer, Grade 7-8, to recognise the functions performed by this position.

Deletion of the position of Investigative Assistant, Grade 1-2, which is not currently utilised and is no longer required.

T.I.I. Unit

Merging of the position of Investigative Assistant, Grade 1-2, with the position of Assistant Investigation Officer, Grade 4-5, to recognise that the former position currently performs many of the key functions of the latter position.

Inquiries Section

Deletion of one position of Assistant Investigation Officer, Grade 3-4, to account for a greater concentration on telephone inquiries and less time on simple investigation work and other non-inquiries duties.

Administration Section

Deletion of one position of Information Systems Officer, Grade 1-2, to account for the current information systems duties.

Creation of one additional position of Secretary, Grade 3, to ensure that each of the Assistant Ombudsmen has a full-time executive assistant.

Creation of a new position of Librarian/Researcher to improve current library maintenance and provide a research capacity."

Subsequent to the presentation of KPMG's final report, the Deputy Ombudsman indicated that a change in the complaint profile, resulting from additional police complaints not previously notified to the consultants, meant that there should be an increase in the proposed number of investigative staff. KPMG have as a result notified the Committee that the number of investigative staff proposed has been increased by two positions.

In addition, the consultants have agreed with the Deputy Ombudsman's proposal to retain the position of Senior Executive Assistant, to be retitled as "Special Projects Manager" to continue the implementation of the CHIPS project and conciliation and mediation initiatives.

The Committee notes that appropriate methodology has been used by KPMG to estimate the number of staff required for Investigative Teams, which undertake the core business of the Office. The methodology is detailed in the KPMG report and, in summary, involved the following steps for analysis of the Office's complaint handling procedures and the time required to carry out those procedures:

- (1) Separate flowcharting of complaint handling procedures in the two core areas of complaints against police and general area complaints.
- (2) Workshops with investigative staff to determine average times required to undertake each procedural step in the complaint handling process.
- (3) Comparison, and where necessary reconciliation, of times with the results of an earlier exercise by the Office which had monitored the time input of staff in the processing of 500 complaint files.
- (4) Establishment of separate complaint profiles for police and non-police complaints, based on 1992/93 complaint outcomes.
- (5) Using the data obtained from steps 1 - 4 to estimate the number of investigative staff, by police and general area, required to process the total number of complaints received by the Ombudsman's Office.

It is believed that the KPMG analysis confirmed the views expressed in some earlier submissions and evidence to the Committee that the Office's investigative staff do not use their time efficiently. In addition the analysis indicated that 64% of investigative team staff numbers should be allocated to the handling of complaints against police and only 36% to the handling of non-police complaints. The Ombudsman's concerns about KPMG's calculations regarding staff numbers have been considered by the Committee in arriving at its recommendation. They may be found in the Companion Volume to the Committee's Report.

The Committee is in agreement with the proposed structure in this Report as a means to address the inadequacies of existing arrangements. However, the Committee is concerned that the proposed positions of Manager Grade 12 should not be compromised, in the same way as KPMG Peat Marwick observed in relation to the current position of Principal Investigation Officer, by continued informal communication between the investigative teams and the Statutory Officers. The Committee regards these two positions as having primarily management responsibilities but believes that they should be able to assist in overflow investigation situations.

A restructuring of the Office on the basis of the recommendations by KPMG Peat Marwick would involve no additional costs to the Office and would in effect provide the Office with specialist investigative units in the two areas of police complaints and general complaints.

The Ombudsman should report to the Committee on the outcome of structural reforms undertaken by the Office, including the roles of the two Managers Grade 12, in twelve months time.

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

4.2.1 Secondment

It was the Committee's view that seconded officers from departments subject to the Ombudsman's jurisdiction would benefit from secondment to the Ombudsman's Office and likewise the Ombudsman Office would benefit in that it would gain the expertise and knowledge of each department officer. The latter would obtain investigation and complaint handling skills from their experience at the Office which expertise the seconded officer could take back to his or her relevant department at the completion of the secondment and which may assist in complaint handling in those departments.

Projects like Complaints Handling in the Public Sector are placing an increasing onus upon internal complaint handling by departments and agencies and the skills acquired by an officer on secondment to the Ombudsman's Office would support the implementation of such initiatives.

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

The Ombudsman advised in his final response to the KMPG report that he would:

*"explore ways of attracting paid secondments on the basis of perceived future cost benefits to the authority concerned, especially in relation to the development of internal complaint handling mechanisms".*⁶⁸

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

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

The Senate Committee similarly recommended in its 1991 Review of the Commonwealth Ombudsman:

Rec. 27

*"The Committee recommends that the Ombudsman, in consultation with relevant executive agencies, seek to establish a system of secondment of a limited number of public servants to investigation duties in the Ombudsman's Office and that the Government consider the desirability of requiring the agencies subject to the largest number of complaints to fund those secondments."*⁶⁹

4.3 **COMPLAINT HANDLING PROCEDURES**

Although the current structure of the Ombudsman's Office allows for four generalist investigative "teams", KPMG Peat Marwick advised that there are in fact only two distinct procedural areas. These relate to:

- ◆ the handling of complaints against police; and

⁶⁸ Office of the Ombudsman, Final Response, dated 2 August 1993, p. 16.

⁶⁹ Review of the Office of the Commonwealth Ombudsman, Report from the Senate Standing Committee on Finance and Public Administration, December 1991, par. 6.56, p.93.

- ◆ the handling of general area complaints, being complaints against public authorities other than police.

The procedural differences relate primarily to governing legislation, with the investigation of general area complaints being governed by the Ombudsman Act, while the investigation of complaints against police was at the time also governed by the PRAM Act which has been subsequently repealed on 1 July, 1993 whereupon new procedures were introduced which still involve intervention by the Ombudsman.

Under established procedures for both areas, complaints received by the Ombudsman's Office are filtered through a process of:-

- ◆ assessment by Statutory Officers;
- ◆ preliminary enquiries; and
- ◆ formal enquiries where the result of preliminary enquiries indicates that this is warranted.

The Management Review consultants found that these procedures, summarised in the following paragraphs, are consistent with legislative requirements and are intended to ensure that issues are addressed in a logical fashion and that, as far as is practicable, each complaint attracts an appropriate level of resources.

Initial Assessment

All complaints received by the Ombudsman's Office are read and assessed by Statutory Officers (Ombudsman, Deputy Ombudsman, and 2 Assistant Ombudsmen) and the Principal Investigation Officer, who complete "birth certificates" for each complaint indicating the appropriate course of action to be taken by investigative staff.

Preliminary Enquiries and Conciliation

To avoid the unnecessary use of the Ombudsman's statutory powers, which can involve reasonably labour intensive and time consuming procedures, the Office has developed a system of preliminary enquiries or "informal investigations". These allow for initial enquiries to be made with the complainant and with the authority involved so that the merit of a complaint can be assessed, and where possible the complaint resolved, before a significant level of resources is committed to a formal investigation.

In the police area, preliminary enquiries are undertaken in accordance with Sections 51 and 52 of the PRAM Act. Such enquiries are relatively informal and require fewer resources than police investigations or re-investigations.

In addition the Ombudsman encourages and facilitates the conciliation of less serious complaints as an alternative to formal investigation.

The Committee acknowledges the view of KPMG that the complaint handling procedures by the Ombudsman are both efficient and effective in dealing with complaints received by the

Office.

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

4.3.1 Procedures Manual

The Ombudsman is to be congratulated on the implementation of his complaints handling procedure, however, the Committee believes that those procedures presently utilised by the Ombudsman, and other procedures which ought to be introduced as a result of this report should be incorporated into a procedures manual which should be maintained on an up to date basis.

The manual should be regularly reviewed by the Office through a process including consultation with staff and amendments should be made in the light of procedural changes resulting from new legislation or amendments affecting the Ombudsman's jurisdiction.

The procedures manual should be regularly reviewed by the Joint Committee in the exercise of its function under section 31B(1)(d) of the Act:

"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".

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

4.4 CORPORATE PLAN AND STRATEGIC PLAN

Dr Jinks suggested that the Committee should consider recommending to the Office that it adopt "strategic management" as its "operating methodology". He outlined the following method for establishing the Office's financial needs:

- " ♦ *determine the role or 'mission' of the organisation*
- ♦ *set down the organisation's objectives, consistent with that role*
- ♦ *put in place the methods, for achieving the agreed objectives*
- ♦ *provide finance appropriate for the methods to be employed*
- ♦ *establish measures for determining whether the objectives have been achieved*
- ♦ *adjust the organisation's finances according to its performance.*"⁷⁰

In his first submission to this Inquiry the Ombudsman indicated that his Office was at the final draft stage of producing its Corporate Strategy. Coverage of the proposed strategy was somewhat incomplete, being limited to one page only listing a Mission Statement and some seven Corporate Objectives, but held out the expectation that the full Corporate Strategy "will be finalised by the end of 1992"⁷¹.

A copy of the draft Corporate Strategy for 1992 was provided to the Committee on 28 October, 1992 after a formal written request by the Committee Chairman. As stated in the Ombudsman's second submission to this Inquiry:-

"In the past the Office has failed to address adequately, the need for corporate and management review."

and;

"The corporate plan represents the first attempt by the Office to deal with a changing environment in any systematic fashion."

and;

"....it has enabled the Ombudsman to more efficiently allocate the scarce resources available to service the identified priorities of the Office, eg, investigating complaints which suggest systemic deficiencies in administration."⁷²

⁷⁰ Jinks, Submission 1, pars. 2.6-2.10.

⁷¹ Office of the Ombudsman, Submission 1, p. 24.

⁷² *ibid.*, p. 10.

These comments by the Ombudsman acknowledge somewhat belatedly the benefits of corporate planning and appear to confirm the view expressed by the Secretary of the Treasury, Mr. P. Allan, that it is unfortunate that a former Premier agreed to a request from the then Ombudsman for exemption from the five year performance evaluation program.

The 1992 Corporate Strategy of the Ombudsman formed the basis for Committee's lines of inquiry during initial discussions about Office initiatives in this area. However, shortly after the Ombudsman gave evidence on 7 December, 1992 the Office began to revise its existing corporate plan. The Committee did not become aware of the new version resulting from the revision process until March 1993. At a meeting convened on 9 March, 1993 the Deputy Ombudsman, Mr John Pinnock, and the Assistant Ombudsman, Mr Greg Andrews, briefed the Committee on the Office's latest initiatives in developing a new Corporate Plan for 1993-95.

The revised 1993-95 plan was the product of the earlier drafts and subsequent consultation between staff and Office Management on 16 and 17 December 1992 at a workshop involving the Statutory Officers, Executive Officer, Principal Investigation Officer, three other Investigation Officers and a facilitator who had assisted the Office in developing the plan. A draft revision of the plan was produced in late February 1993 and distributed to all staff for consultation. Following consideration of the draft and staff comments an Executive Committee developed a new set of performance indicators and agreed to a final version of the plan.

A comparison of the 1992 and 1993-95 Corporate Plans provides an indication of developments within the Office in determining programs and performance measures and the Committee acknowledges the Ombudsman's efforts in formulating a Corporate and Strategic Plan.

The Mission Statement defined in the 1992 version read:

"The Office of the Ombudsman exists:

- ◆ *to promote fairness, integrity and justice in public administration by reviewing the conduct of public authorities, including police, through independent, efficient investigations and reports."*

In the final 1993-95 plan this had been refined:

"To safeguard the public interest by:

- ◆ *providing independent redress of complaints,*
- ◆ *promoting better complaint handling and responsiveness by public authorities."*

This refinement process had been applied to all areas of the 1992 Corporate Plan. Of particular relevance to the Committee's inquiry was the Corporate objective relating to "Financial Viability. This had been changed from a Corporate Objective:

"Financial Viability (1992 version) : To make the most effective use of financial and physical resources through financial planning, establishment of priorities, control and accountability."

to the following Corporate Goal:

"Financial Services (1993-95 version): To make the most effective use of financial and physical resources through improved financial planning and controls."

The 1993-95 Corporate Plan also offers the following Corporate Goals to support the Office's mission:

- (1) *Complaint Assessment: To give priority to those complaints which identify structural and procedural deficiencies in NSW's public administration, and individual cases of serious abuse of powers especially where there are no alternative and satisfactory means of redress.*
- (2) *Complaint Resolution: To resolve complaints about defective public administration.*
- (3) *Investigations: To promote practical reforms in public administration through recommendations arising from effective and resource-efficient investigations employing fair procedures.*
- (4) *Complaint Handling in the Public Sector (CHIPS): To promote the development of effective internal complaint handling in public authorities to ensure accountability and customer satisfaction.*

- (5) *Internal Management and Accountability: To improve management systems and practices to enhance service delivery and provide effective accountability mechanisms to meet the Ombudsman's statutory obligations and corporate objectives.*
- (6) *Organisational Environment: To ensure productivity, staff development and a creative, safe and satisfying work environment.*
- (7) *Access: To increase community awareness of the role of the Ombudsman and promote access to the Office for disadvantaged groups.*

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

4.5 CORPORATE GOALS SPECIFIC TO THE INQUIRY

While the Committee appreciates that these goals were developed as a comprehensive set of objectives to accomplish the Office's mission it felt that Goals 5 (Internal Management and Accountability), 6 (Financial Services) and 7 (Organisational Environment) were of particular relevance to the terms of reference for the Inquiry.

4.5.1 Internal Management and Accountability (Goal 5)

In relation to corporate services (Goal 5) the Corporate Plan specifies the following strategies and performance measures:

Strategies:

- ◆ *developing and implementing an integrated strategic management cycle for the Office linking corporate strategy, budget processes and an individual performance management system*
- ◆ *implementing the Guarantee of Service*
- ◆ *reviewing and adjusting the organisational structure to ensure it is positioned adequately to support the implementation of the corporate strategy*

- ◆ *regular consultations with the Joint Parliamentary Committee of the Office of the Ombudsman*

- ◆ *regular communication with staff to ensure understanding and commitment to the Ombudsman's corporate priorities.*

<i>Performance Measure</i>	<i>Target</i>
Completion of review of the organisational structure	By 31 March 1993
Implementation of performance appraisal system for all staff	By 31 June 1993
Publication of statement on Guarantee of Service	By 31 March 1993
Completion of review of work practices in light of results of complainant satisfaction survey	By 31 August 1993
Documentation and implementation of Integrated strategic management cycle	By 31 April 1993

Major initiatives planned by the Office for 1993 included:

- (i) finalising and publishing the Guarantee of Service statement;
- (ii) implementing a performance appraisal system for staff;
- (iii) reviewing and updating the Information Technology Strategic Plan; and
- (iv) conducting a complainant satisfaction survey and reviewing work practices and organisational procedures in light of the results.

To date the Ombudsman's Office has accomplished the first and fourth initiative. The Management Review of the Office found that it lacked an effective performance appraisal system and made several recommendations on this point. These can be found in the Companion Volume. The review of the Office's Information Technology needs was deferred pending the finding of the Management Review team. Recommendations regarding improvement of the Offices Information Technology systems may be found at section 4.10.

4.5.2 Financial Services - Goal 6

The Corporate Plan specified the following strategies and performance measures to achieve "the most effective use of financial and physical resources through improved financial planning and control" (Goal 6):

Strategies

- ◆ *develop and maintain financial management systems and controls to ensure adherence to statutory obligations and implementation of public sector standards while maximising the Offices resources;*
- ◆ *integrate planning budgetary and management reporting systems to ensure the allocation of resources to priority areas; and*
- ◆ *manage the Office within each year's budget.*

<i>Performance Measure</i>	<i>Target</i>
Accounting policies documented and procedure manuals revised	By 30 June 1993
Completion of trial of job cost system	By 30 June 1993
Issue of an unqualified certificate by the Auditor General (external audit)	
Establishment and implementation of internal audit plan	By 30 June 1993
% of accounts processed in less than 20 days	90%
% of financial returns and reports to Treasury made on time	100%

Major initiatives planned for 1993 in this area included:

- (i) documenting new accounting policies and reviewing existing procedure manuals;
- (ii) introducing job cost system;

- (iii) implementing electronic funds transfer for salary deductions and evaluating feasibility of application to trade creditor payments; and
- (iv) establishing an audit planning committee.

The Committee remained concerned that the Office had adopted accrual accounting in July 1991 yet there seemed to be no evidence that it had incorporated program budgeting and the associated costing of activities into its financial management system. The programs outlined in the Corporate Plan, for instance, had no corollary in any budget. This was considered to be a major deficit in the financial management of the Office which the Committee felt the Ombudsman should remedy without delay.

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

4.5.3 Human Resources - Goal 7

In the area of Human Resources (Goal 7) the Plan specified:

Strategies:

- ◆ *work with staff and employee association to reform industrial arrangements and work practices*
- ◆ *incorporate the Structural Efficiency Principal into workforce planning to improve career paths and efficiency wherever possible*
- ◆ *develop and implement personnel policies and practices to provide staff with a safe and rewarding working environment*
- ◆ *involve staff in continual reviews of work practices and procedures to improve service and efficiency*
- ◆ *ensure sound EEO principles are integrated into all staffing operations*
- ◆ *implement and review a staff grievance mechanism*

- ◆ *integrate quality assurance principles with job evaluation and performance management processes so that all staff view the provision of high quality service as common responsibility*

The related performance measures were as follows:

<i>Performance Measure</i>	<i>Target</i>
% of staff who have attended at least three internal or external training sessions by 31 December 1993	100%
Expenditure on staff development as percentage of total salaries expenditure	1.5% or more
Number of workplace inspections by OH& S committee carried out by 31 December 1993	Two
% staff turnover	Less than 15%
% of respondents to staff organisational culture survey who report having clear idea of their job goals	90%

Major initiatives for 1993 included:

- (i) beginning negotiations to develop an enterprise agreement for the Office;
- (ii) establishing performance monitoring and reporting systems at all levels in the organisation;
- (iii) reviewing staff development program and strategies based on outcomes of skills audit; and
- (iv) introduce quality service groups to review work practices to improve efficiency.
- (v) reviewing and updating EEO program to meet current and future needs

4.6 PERFORMANCE MEASURES - EFFICIENCY AND EFFECTIVENESS

As part of his Annual Reports the Ombudsman has, for many years, published a range of statistics covering various complaint activities under the name of "Performance Measures". During the course of this Inquiry, specifically as part of his second submission, the Ombudsman has acknowledged that:

". . . most of the performance indicators listed in previous annual reports are not in fact performance indicators in terms of measures of efficiency".⁷³

Dr Jinks contended:

"Its [the Office's] annual reports have contained statistics that are labelled 'performance indicators', but they give no comparison with other years, and are not matched to expenditure. As measures of performance they are of little use."⁷⁴

The Deputy Ombudsman later acknowledged that the activity statistics provided in the Annual Report were not appropriate as performance measures:

PINNOCK:

Dr Jinks is quite right in his evidence when he said that the performance indicators referred to in our annual report aren't performance indicators at all. We recognised that and that was the subject of new directions instituted by Dr Jinks himself.

SCULLY:

I don't think he said that, did he?

PINNOCK:

No, he didn't but they were - ...

PINNOCK:

... What we have done so far as the performance indicators that have been set out in the past annual reports is to throw them out. I, and certainly the Ombudsman and the Assistant Ombudsman, have never regarded them as

⁷³ Office of the Ombudsman, Submission 2, p. 17.

⁷⁴ Jinks, Submission, para. 2.6.

being meaningful in terms of performance. They may show something but whether they show performance, no.

We have done a number of things in recent times, and these are mentioned in the second submission. The first is the costing exercise that we undertook and the Committee's consultant has had access to all the costing papers and the working papers and took a random sample of those. That, of course, doesn't give you anything other than the basis of the parity measured over time. The exercise in itself really is meaningless unless it is completed at some future time to see whether there are variations in costs that is referred to. But it is the first step that's been taken to try and assess what it actually costs to process various types of complaints in the Office"⁷⁵

The Ombudsman's submission further states that steps have been taken over the past year to develop better measures that will be reported upon for the first time in the 1992-93 Annual Report, and suggests, by way of example that the Office's determination categories better represent the work of the Office.⁷⁶ That may well be, but a representation of the work of the Office is not what is needed, rather it is measures of how efficiently and effectively that work is performed.

It was apparent to the Committee following the management review that major improvements were required in this area. KPMG's recommendations regarding staffing are contained in the Companion Volume and include a performance appraisal system aimed at providing staff with direction and feedback plus a management tool for effective workload and staff supervision. It also would assist in future enterprise bargaining arrangements. In its final report KPMG outlined the following possible efficiency measures for the Office.

- ◆ average number of complaints finalised per Investigation Officer;
- ◆ level of non-employee and rent related expenditure;
- ◆ complaints declined as a percentage of complaints finalised;
- ◆ average office area per employee; and
- ◆ complaint turnaround.

Effectiveness measures the quality of the outcome of procedures or functions. These measures are generally associated with assessing whether a function or task needs to be performed at all and, if so, how useful are the outcomes in assisting the organisation to meet its business objectives.

⁷⁵ Transcript of Evidence, p. 32-33.

⁷⁶ Office of the Ombudsman, Submission 2, p. 17.

KPMG Peat Marwick recognised difficulties with setting effectiveness measures, observing:

Establishing effectiveness measures for the Ombudsman's Office is a difficult task. Not only is it difficult to quantify the effectiveness of the Ombudsman's work, but it is also difficult to define what effectiveness actually is. Possible definitions of effectiveness for the Ombudsman's Office could include:

- the degree of implementation of the Ombudsman's recommendations by public authorities. This reflects the fact that if none of the Ombudsman's recommendations are implemented he will be regarded as a 'toothless tiger' and will not bring about improvements in areas of maladministration-administration or misconduct;
- the proportion of complaints declined at the outset or not investigated. For example, if all complaints are declined at the outset the Ombudsman's Office could not be said to be effective;
- the level of awareness of the Ombudsman across the community, and especially amongst disadvantaged and minority groups. This reflects the fact that if people do not know of the Ombudsman he can not perform his role effectively; and
- the degree of satisfaction of complainants and public authorities. If no one is satisfied with the Ombudsman, then it could be said that he is not effectively carrying out his role. Naturally, the level of satisfaction would need to be interpreted with care as many complainants and public authorities will indicate dissatisfaction where findings have not been in their favour.

Notwithstanding the difficulties associated with measuring effectiveness, we believe that some measures can be used as 'management tools' to monitor areas of effectiveness of the Ombudsman's Office. We stress, however, that no measure will be black and white, and should be interpreted with care. The numbers and reasons behind effectiveness measures should be carefully analysed over time (e.g. why have our recommendations not been implemented yet or why are public authorities less satisfied this year than last) by management and used as indicators of issues that may need to be addressed. Effectiveness measures should be reviewed at least annually."

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

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

4.6.1 **BENCHMARKS**

As part of its review KPMG Peat Marwick formulated a series of benchmarks for several performance measures. These benchmarks were subject to some dispute between the Ombudsman and the consultancy teams as is evident in the exchanges contained in the Companion Volume.

Regardless of this the Committee believes benchmarking is a worthwhile activity for the Office to undertake.

The Chairman developed his concept of the purpose of the management review and performance measures during the Ombudsman's evidence:

"CHAIRMAN:

I guess, one of the things I would like to see put into place, to go down that track is to get some performance indicators in, as I said, so we can set a bench mark for future Parliaments and you can come to us and talk to us about extra loads and increases and we can quantify those."

The Ombudsman was not adverse to benchmarking as indicated in the subsequent exchange:

"CHAIRMAN:

I believe that the Senate Committee's review of the Commonwealth Ombudsman last year recommended that the Ombudsman, in consultation with the Department of Finance, establish every quarter the benefits of performance of valuation. The Ombudsman considered incorporating this with the performance of other Ombudsmen Offices and evaluating them accordingly. Can you give us your view on that? Have you been talking to the Commonwealth people on it? Is there anything around at the moment to re-assess your performance indicators?

LANDA:

No, there is not really. That is not to say we wouldn't welcome something. You have got the benefit of almost all of the information we have here that would indicate what we are currently doing."⁷⁷

⁷⁷ Transcript of Evidence, pp. 31-32.

Referring to measures already undertaken by the Office, Mr Pinnock further explained:

"The other thing we have done in recent times . . . is really to use what we call in the submission a pilot study. It is getting together with the Bureau of Crime Statistics and Research to produce some stats on our complaint turn around time.

Again it is a question of whether that's a performance indicator or not. It is the traditional indicator that the Commonwealth Ombudsman has used for many years now....

The tables we have had prepared based on the research done by the Bureau of Crime Statistics and Research certainly suggests an improved turn around time in recent years. There has been a lot of effort put into that...

Benchmarks are certainly important and we have done something, at least, as an initial start to establish some types of benchmarks, whether they are going to be meaningful is a matter for other, particularly this Committee, to judge.

CHAIRMAN:

Your corporate strategy sets out various headings such as the Financial Viability which seeks "to make the most effective use of financial and physical resources through financial planning, establishment of priorities, control and accountability". Then you have Organisational Environment, "to ensure productivity, staff development and a creative, dynamic and satisfying work environment". I have some private views about corporate strategies as motherhood statements, nevertheless it is there and it is adopted by you. Would you see the role of the review, if we had one, to try and quantify what those type of headings were meaning? It is very difficult for me to understand it without having some benchmark or something from you, and that may be in this document which I have not read yet, your Second Submission, as to whether you do have "productivity, staff development and a creative, dynamic and satisfying work environment". . . What would be your view if a review was done, if they went through your corporate strategy and tried to set benchmarks?

PINNOCK:

I think I can answer that - I would welcome it, personally. . . I agree, I have no hesitation in saying if there is to be a management review that is where it

ought to start, it ought to start with the corporate strategy."⁷⁸

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

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

4.7 **DECLINE POLICY**

The Office has operated its current decline policy since December 1991.

Both the Committee and KPMG were unable to obtain any definite statistics from the Office of the Ombudsman as to the portion of declines which can be attributed to purely a lack of resources as opposed to those which were declined as a matter of course for reasons such as they were not in the Ombudsman's jurisdiction or there was insufficient evidence to support them.

The mechanics of the decline policy were explained by the Ombudsman and Deputy Ombudsman to Dr Burgmann.

"BURGMANN:

Both Mr Marsden from the Law Society and the Banking Ombudsman said they would demand basically demand driven funding, but also they had no declines policy. If we were to say, "Yes, you should be demand driving in funding", but we know you have a declines policy now and believe that there needs to be a declines policy of some sort in order to keep a check on costs, especially if we exceed the demand funding, I know you have your own criteria for what you now decline - things like if they are older than six months, would it be possible to draw up criteria for a declines policy?

LANDA: *We have criteria now.*

⁷⁸ Transcript of Evidence, pp. 33-40.

BURGMANN:

Yes, it became quite clear from the evidence that those criteria are adhered to in a more rigid fashion when money is short or when staff are off. It is quite clear that those criteria are quite flexible.

LANDA:

You have to distinguish between the statutory criteria that are laid down in both of the Acts, that is the Ombudsman Act Section 13(4) and in the PRAM Act Section 18(2) or 18(1), and the guidelines which the Ombudsman publishes internally to his staff as to how those criteria are to be exercised as a matter of discretion. There is no way of altering the criteria. What you can adjust from time to time, depending on your funding and on the level of complaints and the work you otherwise have, are the guidelines. They have varied historically over time.

I noticed some of the questions you asked of the witnesses, Dr Burgmann, you were obviously concerned about the six month rule that we have as a guide line. That is a response, as you correctly said, to what we believe our current problems are, (or part of the response). If in fact you have greater resources to deal with the complaint levels that you are receiving, you may make it more liberal. If things got worse, you may make it less liberal.

BURGMANN:

You can see what I am getting at. Once you have demand driven funding there has to be some way of making certain that the criteria are not liberalised to such an extent.

PINNOCK:

Quite so. One thing that a complaint handling organisation or institution has to realise is, that there are never enough funds to do everything you want to. I have been in the office long enough to realise that ...

The fact that you are demand driven does not mean that every complaint will be dealt with. Some complaints might still warrant investigation and you still cannot do them. They are talking about making an adjustment to make things easier. But yes, the idea that you would liberalise the policy to such an extent it would be open slather, would just bury you in complaints.⁷⁹

⁷⁹ Transcript of Evidence, pp. 89-91.

Mr Pinnock noted that the Office was not unique in this regard and explained the Banking Ombudsman and Law Society, despite not having decline policy guidelines, do not deal with every complaint.

KPMG made the following observations on the decline policy:

2.5.3 Impact of Declines Policy on Staff Numbers

The current "Complaint Assessment/Management Policy", more commonly known as the Declines Policy, has had a direct impact upon the complaint profile, and therefore the level of resources required by the Ombudsman's Office to handle complaints. A copy of the Declines Policy is provided in Appendix 10.

The policy is a reaction to the growing number of complaints made to the Ombudsman and the finite resources available to him to deal with them. A major issue to arise from the Declines Policy is the decision to focus on complaints that identify systemic and procedural deficiencies in administration, or individual cases of serious abuse of power. The result is that the Ombudsman declines to investigate otherwise valid complaints on the grounds that they are isolated, one-off cases, or do not represent a "serious" abuse of powers. We recommend that the appropriateness of the current declines policy be reviewed.

Statistics indicating the number of complaints declined or not investigated due to insufficient resources were not available. In response to this, we discussed with the Assistant Ombudsmen the need to decline some complaints, and not to investigate other complaints following preliminary inquiry or a police investigation, due to insufficient resources. It was their view that 1988/89 was the last year in which complaints were either not declined or did not proceed to investigation as a result of a lack of resources. The comparative complaint profiles in the general and police areas in 1988/89 and 1992/93 are shown below:

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General Area	88/89 %	92/93 %	Police Area	88/89 %	92/93 %
Outside Jurisdiction	18	22	Declined at Outset	42	40
Declined at Outset	35	44	Declined after Preliminary Enquiry	25	24
Declined after Preliminary Enquiry	37	27	Conciliated/ Resolved	9	15
Resolved after Preliminary Enquiry	7	6	Police Investigation	23	21
Formally Investigated	3	1	Re- Investigated	0.5	0.1
	100	100		100	100
Complaint not satisfied and requests further action be taken	1	1	Complaint not satisfied and requests further action be taken	1	1

In the general complaints area, a much lower percentage of complaints were declined at the outset in 1988/89 than in 1992/93. More complaints also proceeded to preliminary enquiry and to formal investigation. A small increase in the number of investigations undertaken will have a significant impact on resource requirements due to the considerable time required to undertake an investigation.

In the police area, complaints declined at the outset were slightly lower in 1992/93 than in 1988/89. The key differences in the police area are:

- a higher number of police complaints were conciliated or resolved prior to police investigation in 1992/93 than in 1988/89; and
- a higher proportion of police complaints were re-investigated after a police investigation in 1988/89 than in 1992/93.

- investigations require significant resources; therefore fluctuations in the number of re-investigations have a significant impact on the resource requirements of the Ombudsman's Office.

The suggestion has been made recently in discussion with the Ombudsman that the Committee would be the most appropriate body to make a subjective determination about the most desirable level of declines which the Ombudsman should make in order to still effectively perform his functions.

The Committee sought the advice of the Crown Solicitor on two questions raised by this suggestion, specifically:

- (i) Recognising that under s.31B(2) of the Ombudsman Act the Committee cannot deal with individual cases can it, nevertheless, under s.31B(1) consider and report upon the appropriateness, or otherwise, of the criteria or policy interpretation given by the Ombudsman to the provisions of s.13(4) of the Act?
- (ii) Can the Committee consider and report upon the Ombudsman's statutory right to decline complaints under s.13(4)?

On the basis of a positive response dated 27 August, 1993 the Committee considered that the issues raised in relation to the declines policy warrant more detailed and closer examination following the implementation by the Office of the structural and management reforms recommended by the Committee.

In the interim it notes that the Act sets out grounds upon which the Ombudsman may decline a complaint and believes that the Ombudsman should continue to ensure that a decision to decline is made in accordance with the relevant sections of the Ombudsman Act 1974.

4.8 ADMINISTRATION

The Committee notes KPMG's conclusions on the administrative sections in the Office and has not made any recommendation on this subject as it was not reviewed by the Committee because the primary focus of the inquiry was complaint handling and the investigative operations of the Office.

In relation to the current administrative sections KPMG Peat Marwick found:

- The Assistant Ombudsmen share a secretary. We consider that this arrangement does not provide them with sufficient secretarial support.
- Staff numbers in the Information Systems Group are high relative to the activities performed by the Group. The Group would benefit from an increased knowledge in information technology issues.

- The maintenance of the library could be improved. This may reflect the current arrangements whereby the Executive Assistant to the Deputy Ombudsman is responsible for maintaining the library. It is unlikely that this person has sufficient time to ensure that the library is maintained to an appropriate standard."

It recommended:

- We recommend the number of Information Systems Officers with the Information Systems Group be reduced from three to two. These officers are primarily responsible for:
 - receiving incoming mail;
 - distributing mail;
 - file creation;
 - deliveries; and
 - maintaining office records.

We believe that these duties can be adequately dealt with by two Information Systems Officers.

- Based on the workload of the Assistant Ombudsmen, we believe that they both require a full-time Executive Assistant. Accordingly, a fourth Executive Assistant should be employed.
- A full-time research/librarian should be employed to maintain an upgraded library. The librarian will also be responsible for the development of information on NSW public authorities, including annual reports, business plans and relevant legislation for use by investigation staff, as well as relevant legislative and other information. We have not determined an appropriate grading for this position.
- The administrative section will continue to report to the Deputy Ombudsman through the Executive Officer."

4.9 OFFICE LOCATION

In the second reading speech for the original Ombudsman Bill in 1974 recognition was given by the then Minister for the "single occupancy" principle to apply to the Office. The only variation deemed to be acceptable to this was for the Ombudsman to share accommodation with other independent statutory officers, for example, the Auditor-General. The Committee agrees with this principle.

The Ombudsman appeared to ignore correspondence on the issue of office location between the Director-General of the Premier's Department to the Secretary of the Department of Administrative Services. The information therein contained was conveyed to the Ombudsman by the Secretary of the Department of Administrative Services on or before 22 February 1989 referred to in section 3.4.2 of this report as to the commercial traps associated with his

proposed leasing arrangements. The current downturn in Sydney CBD occupancy thus generating a better climate for lessees to renegotiate their leases may well see the Ombudsman able to renegotiate a more favourable leasing of his current Office either now or at the termination of the current lease in 1995 at a lesser financial burden to the Ombudsman.

KPMG undertook a detailed analysis of the location of the Ombudsman's Office and listed the principal locational requirements for the Office are as follows:

- separate to other government departments;
- within easy access to public transport for complainants visiting the Office;
- within a recognised district/centre in Sydney city/metropolitan area;
- a competitive rental and incentives package;
- all necessary physical attributes (e.g. security) are provided.

After consideration of all relevant issues, we believe that the present office location in the Coopers & Lybrand Building fulfils the Ombudsman's current requirements at a reasonable level of expenditure.

It should be noted that similar suitable office accommodation is presently available within the Sydney CBD/CBD fringe area at significantly lower rents, principally as a result of the decline in the property market and the current high vacancy levels in the Sydney area. The Ombudsman, however, is obliged to meet his current rental commitments until the present lease expires in 1995. Penalties would be involved if the Ombudsman was to terminate the current lease before the due date. This would not make any move at the current time financially feasible.

It was further noted that the use of 18m² per staff member as the basis for accommodation/rental needs is considerably more than the average of 10m² per staff member provided for in the accommodation guidelines promulgated by the former Public Service Board in 1987. At the \$407/m² current rental for the Ombudsman's Office this represents an excess rental cost of some \$200,000 which the Ombudsman could perhaps have applied more appropriately to other priorities such as institutional visits.

Recommendation 12 - The Committee recommends that the Ombudsman renegotiate his lease prior to the option renewal date at a better leasing arrangement than presently prevails.

It is recommended that if the Ombudsman is unable to negotiate a more favourable leasing arrangement he should seek, on the expiration of the current lease in 1995, a more favourable leasing arrangement in consideration of exercising his option.

4.10 INFORMATION TECHNOLOGY SYSTEM REFORM

Throughout the Inquiry the Committee was confronted with situations in which statistical material sought from the Office was not available because of the incapacity of the Office's existing information technology system to record such data, for example, demographic details of complainants and lapse turnaround times for dealing with complaints.

Similar difficulties were experienced by KPMG Peat Marwick during the Management Review. It made the following observations:

- The Office's computer systems are fragmented. There are currently three (and with the impending introduction of the Wang system for the Inquiries area soon to be four) separate computer systems within the office. To date, the level of integration between these systems has been low.
- The Ombudsman's Office uses different database applications to record Police and General Area complaints. This creates unnecessary complication and expense.
- There is insufficient information recorded about complaints and investigative staff to enable meaningful assessments to be made about the efficiency and effectiveness of the Office's complaint handling and investigative personnel.
- There is insufficient information recorded to enable management to make meaningful assessments of office workflows, and hence to provide a useful management tool.
- The database used to record General Area complaints does not produce complaint trend or demographic information.

The Information Technology (IT) Strategy developed in 1989 is confusing and inadequate. It is a mixture of high level comments on the computer industry at the time, non-specific strategic preferences, some new system implementation information and acquisition strategies.

The current manager responsible for IT was originally an investigative officer who inherited his current role of Information Systems Manager at the time the Information Systems Group was formed. The position requires specialised skills, and typically a specialist manager occupies this position.

Although there are plans to develop a new IT strategic plan, there has already been a considerable amount spent on the current information systems which could be in conflict with the outcome of the plan.

The Office needs to clearly distinguish its IT strategic plan (which provides high level information about the strategic direction for the Office's information systems for a specified period) from its IT tactical implementation plan (which provides specific information concerning the improvement of the Office's information systems) and develop its information systems accordingly.

The Ombudsman's Office is in the process of implementing a system for use in the inquiries area. This system is to provide a database for the recording of inquiries. We have not performed a detailed review of the appropriateness of this in the Office's IT strategy.

Several shortfalls have been recognised by the Office and in conjunction with other information technology system deficiencies have led to the Ombudsman engaging consultants to evaluate the Office's specific information technology needs.

KPMG Peat Marwick has recommended:

The Ombudsman's Office should provide the necessary training to improve the skills of its Information Systems Group Manager.

The Office should develop IT strategic and tactical plans. It is our understanding that a request for an expression of interest has been issued by the Office requesting assistance in this area.

A freeze should be placed on all IT expenditure until the IT strategic and tactical plans have been developed, and endorsed by senior management.

The Office should not enter into any contracts for the acquisition of IT equipment or services until the IT strategic and tactical plans have been developed and endorsed by senior management.

The Committee considers such a program crucial to the Office's ability to achieve the efficiencies highlighted by the Management Review.

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

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

5.1 EQUITY AND ACCESS

In his second submission to the Committee the Ombudsman stated:

*"Equity and access are fundamental notions in the delivery of a public service. These notions are being undermined by the resource constraints facing the Ombudsman's Office, particularly for citizens who are in custody, live in the country or are from non-english speaking backgrounds."*⁸⁰

Details of the Office's public awareness activities were also given including prison and country visits.

The Ombudsman's request for additional funding for this purpose was supported by a number of witnesses, including Professor Vinson, Eileen Baldry, John Basten, John Marsden, Melinda Jones and Brian Brunton.

The Ombudsman argued that the current program had a shortfall of the cost of the program as \$46,000 to achieve an optimum number of visits which were based on a frequency of visits to correctional centres.

Country residents only have immediate access to the Ombudsman's Office through a 008 telephone number. The Ombudsman sought a properly managed program of community visits costing at least \$31,000.

The point was elucidated further in evidence on 7 December, 1992:

"ANDREWS:

The position for us is simply at the moment we think only a limited sector of the New South Wales public is probably being served by our Office, and there are particular groups who do not have easy access to our Office, do not know about our Office, and they are being deprived because of that.

LANDA:

We have a section Equity of Access in the second submission, page 36, which focuses on that. It is significant and we are particularly concerned.

⁸⁰ Office of the Ombudsman, Submission 2, pp. 34-5.

We have done so little in the multicultural, multilingual section, and it is so daunting. We really haven't even started there.

ANDREWS:

It is a growing problem, seeing the significant population growth of New South Wales is mainly through migration.

LANDA:

I had used the expression "the urban Ombudsman" with no great pride. The country areas have equal, if not greater, need.

BURGMANN:

We have a lot of evidence from different groups that they felt that your visits to prisons were not enough. Particularly country prisons. Is that amount you have put there for the visits enough to cover it?

LANDA:

I won't cover what Dr Vinson suggested the optimal level of visits. It is based on figures we originally prepared in 1991 when we made the report of the Effective Functioning of the Office of the Ombudsman. Again, it is a matter of subjective judgment as to what is and what is not an optimal level. There is also a question of just how much you can do, physically.

These are all opportunity costs we are talking of as well. Taking direct costs, relating not just to travel, but taking people away from other work and having the ability to have a relief section to move in to do work which would otherwise be left undone while people are away visiting gaols. I think Greg would like to have a higher level of visits than that \$46,000 allows for. Certainly it does not come up entirely to what Dr Vinson was talking about.

BURGMANN:

Or John Basten, or John Marsden.

LANDA:

Yes. It is still a substantial amount and would allow for a much greatly increased level of visits over and above what we have done recently."⁸¹

KPMG also undertook an examination of this issue as part of its review. It observed:

"The Ombudsman's Office currently uses three key methods to promote public awareness of the role and function of the Ombudsman within the community.

- the annual report;
- fostering and maintaining good media relations in order to gain press coverage; and
- public awareness visits to regional centres. Whilst no public awareness visits were made in 1991/92, due to budgetary cutbacks, visits have resumed in 1993, albeit at a restricted level.

Other methods employed by the Ombudsman's Office to increase the level of public awareness include:

- speaking engagements to various community groups, Sydney based technical colleges, the Police and Corrective Services;
- the presentation of papers to various conferences and government bodies;
- the provision of brochures discussing the role and functions of the Ombudsman to community centres, public authorities and the law society for distribution. Brochures are also available at the Ombudsman's Office;
- liaison with public authorities in order to develop an awareness within these organisations. This is facilitated at present by the promotion of the CHIPS project to public authorities;
- the submission of reports to Parliament."

KPMG said that based on its assessment of the Ombudsman's public awareness strategy, the strategies adopted to promote public awareness of the Ombudsman make appropriate use of a restricted budget. However, problems would appear to exist in raising the level of awareness of the Ombudsman within particular segments of the community, such as:

- Aboriginal and Torres Straight Islanders;
- people from non-English speaking backgrounds;
- youths;
- people with lower levels of education; and
- non-professional members of the work force.

⁸¹ Transcript of Evidence, pp. 84-86.

As a result KPMG recommended:

- "(1) The promotional efforts should be focussed on achieving greater coverage of stories about the Ombudsman in leading ethnic newspapers and the Koori Mail to attempt to overcome the current awareness problems;
- (2) The Ombudsman's Office must therefore be sure that cases selected for inclusion in the annual report include a selection of cases involving Aboriginal complainants and complainants from people from non-English speaking backgrounds;
- (3) The Ombudsman and Deputy Ombudsman (and possibly the Assistant Ombudsmen) should undertake public speaking engagements as an economical and effective means of promoting the Ombudsman's Office; and
- (4) The creation of a specialist position of Aboriginal Liaison Officer, who will act as a supporting resource to both the general and police teams. (An existing position in the Ombudsman's Office, resulting from a title from "Investigation Officer to "Liaison Officer, to better reflect the role of the position)."

Although it was proposed that the position of Aboriginal Liaison Officer would not have an investigation case load as it was to focus on liaising with Aboriginal communities and complainants, and promoting awareness of the Ombudsman amongst the Aboriginal community, it was not intended that this officer be excluded from participating in investigations when the Ombudsman believes this is warranted.

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

It should be noted that the Committee is conducting a concurrent inquiry on access to, and awareness of, the Ombudsman and his functions focussing on particular difficulties for certain groups when making complaints about police conduct or maladministration by departments and agencies. This report will be subsequently tabled in Parliament.

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

5.2 USER FEES

This issue was canvassed extensively by the Committee with the Auditor-General, Banking Ombudsman, Treasury and Director-General of Premier's Department. Support from these individuals for a user pays system was evident but often qualified.

The Committee can see some merits in user pays funding for irregular initiatives such as CHIPS which was aimed at all government departments because of the need for them to establish their own complaint handling procedures. This project was the type of activity, extraneous to the Ombudsman's ordinary functions for which the Committee felt he should try to arrange some level of financial contribution from the parties involved.

However, on balance the Committee agreed with the Ombudsman that any general user pays system was not desirable. In this regard it feels the following discussion is crucial.

"CHAIRMAN:

Would it be fair to say you dismiss user pays totally?

LANDA:

Yes, I cannot see any virtue in it. I can only see negatives coming out of it. It is a reshuffle of money, in any event. It really could impose some very serious problems in the perceptions, I mean where is the money coming from? Is the public really going to feel it is a genuine product? Are the agencies going to see us as out to get them for revenue purposes?

You rely so much, contrary to popular opinion, on the cooperation which we get so frequently from most agencies, to carry out our inquiries. The attitude of most agencies, frankly, although the public may not realise it, is a welcome - "I am glad to see somebody has identified a problem I was not aware of. Tell me about it. Thanks for the help". We rely on the cooperation we get. I wonder if there is a user pay element in it, whether that cooperation may just take a turn. It would be of enormous concern if it did. It would up costs or introduce costs.

BURGMANN:

You mean they are being criticised and they have to pay for it?

LANDA:

Yes. The perception of a motive - we have an axe to grind.

WINDSOR:

I understand what you are saying in relation to unsubstantiated complaints. Do you see a possibility of having some charge put back on to Government departments when there is a complaint carried through the system, and it has been substantiated?

LANDA:

Well, about the only area I can see, and quite clearly I have practised it myself, was the Prisons Inquiry. Mr Chairman, you just raised about a specific inquiry of public importance which is identified as one which is going to take a lot of resources, then I do not see anything wrong, quite frankly, with asking for supplementation.

Where it comes from is something I have never perceived as having to ask the agency, because, frankly, I do not know how I would feel about that actually. It seems to impinge on your independence when you have to go to the party under investigation and say "You pay for this". I have no hesitation in asking for funds, if I think it is appropriate.

WINDSOR:

Would it not have the possibility of enhancing the CHIPS program, provided the particular agency was not doing its own job correctly and the complainant had to take recourse through your office. Would it tend to drive back towards themselves?

LANDA:

That is becoming the bottom line, I guess. The ultimate sanction, as we say in CHIPS, is that what we will be investigating, if we have to investigate a complaint, is why the agency failed. You have to live with the acrimony of it, we have never thought of it in terms that you have to live with the cost of it as well.

I am worried about it for other reasons that I have set out. I know the Committee (and I said this at the outset) is looking for the solution as we all are, but I think, frankly, part of the solution is the very existence of the Committee. It is the beginning of my solution as being a place to bring my grievances to and to be the catalyst between the agencies - to be the honest broker - much more than this being a saving. It is only shuffling money

around, as I say."⁸²

The Joint Committee noted that in dealing with the same issue the Senate Committee made the following recommendation:

Rec. 26

"The Committee recommends that, where the Ombudsman is assigned distinct specialist review functions such as the role of Telecommunications Ombudsman, the tasks be funded through charges on the organisations subject to review with the charges being set in proportion to the number of complaints against each organisation."

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

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

5.3 COMPARATIVE FUNDING - OMBUDSMEN IN OTHER JURISDICTIONS AND OTHER STATUTORY OFFICERS

Difficulties with making comparisons on funding for the Ombudsman in various jurisdictions were outlined by the Ombudsman in a letter dated 10 September 1992 the main points of which were:

- (a) Australia boasts eight Ombudsmen - who vary in jurisdiction, powers, procedures and priorities, and each exists in a different environment of administrative review - some almost alone, others surrounded by Administrative Appeals Tribunals and similar, more specialised, review bodies.
- (b) Jurisdictions differ substantially. In NSW 57% of complaints received last year concerned police. In Queensland and SA, Ombudsmen do not deal with police complaints. WA and Queensland have no FOI review function, SA has had it since

⁸² Transcript of Evidence, pp. 49-51.

1992 and Tasmania will start in 1993. Only NSW and Victoria have Telephone Interception Inspection Units.

- (c) One must also consider whether within an Ombudsman's jurisdiction there are additional review bodies which can be expected to deal with complaints which would, in the absence of such bodies, devolve to the Ombudsman. Victoria has an Administration Appeals Tribunal and the Commonwealth has an AAT, a Social Security Appeals Tribunal, Immigration Review Tribunal and the Veterans Review Board.
- (d) The fundamental characteristic of an Ombudsman is that he receives complaints from the public about the actions of government authorities. But what is a complaint and how are they measured? The situation is sadly akin to that of pre-Federation railway gauges. In NSW one complaint may contain several allegations in Victoria each allegation would be registered as a complaint.

In WA if a complainant's case involves two government agencies it is treated as being two "complaints". However WA would only count Mr X's case as one complaint.

The comparison of complaint statistics is further complicated by the fact that Queensland, SA and Victoria add "files re-opened" to their "complaints received" number, while NSW does not. Recent sampling shows counting re-opened files would boost complaints received figures for NSW by 11-18%.

- (e) In NSW, Queensland, Victoria and WA (although WA is seeking deletion of the proviso) legislation requires complaints to be in writing before they can be investigated. Some jurisdictions particularly the Commonwealth, NT and Tasmania do much of their work by phone and cases can be settled or declined without correspondence. On the other hand in NSW when complaints do not proceed to investigation and a report, written reasons must be given to complainants for decisions to decline complaints.
- (f) The incompatibility of complaint statistics and handling procedures is mirrored in the way costs of Ombudsmen's Offices are presented.

NSW is unique - the only "stand -alone" Office in Australia. 100% of the cost of running the NSW Ombudsman's Office is provided from direct budget appropriations. All other Ombudsmen's Offices receive some form of "off-budget" subsidy which varies from the provision by other government agencies of various administrative (especially payroll and related human resources services) and, still in the case of Tasmania, rent-free accommodation in government premises (WA started to pay rent on 1 July 1992).

These difficulties were confirmed during the Management Review and Treasury's attempt to provide a comparison typified why this is not very useful as it failed to accommodate such variations.

The Committee agrees with the arguments presented by the Ombudsman about the difficulties involved in attempting to compare funding and resource statistics in Ombudsman Offices within Australia and overseas. At best such comparisons can be used only for the purpose of making broad yardstick conclusions. They did not provide reliable information upon which the Committee could base conclusions.

The Ombudsman also raised a comparison between funding for his Office and that received by the Independent Commission Against Corruption. This comparison was examined as a specific issue in the Management Review and KPMG Peat Marwick concluded:

"A comparison of the cost structures of the Ombudsman Office and ICAC has also been performed. The Ombudsman has, in the past, made such comparisons, saying that ICAC benefited from significantly higher funding than his office, thus providing justification for additional funding for his own office.

It is not appropriate, in our opinion, for the Ombudsman to make a funding comparison with ICAC to justify an increase in funding for his own purposes because the cost structures of the two organisations are significantly different.(p.30)"

6.1 ACCOUNTABILITY

6.1.1 Consideration by Parliament of the Ombudsman's Budget

In response to the Premier's statement in the Legislative Assembly on 24 May, 1990 concerning the establishment of a Parliamentary Committee to oversight the operations of the Ombudsman's Office, Mr Landa proposed that the Committee should be responsible for recommending to Parliament:

- ◆ the appointment of the Ombudsman and the Deputy Ombudsman⁸³; and
- ◆ the level of appropriation of funds from Consolidated Revenue for the Office of the Ombudsman.⁸⁴

According to the Ombudsman, the best means of ensuring his financial independence from the Executive was for "the appropriation of funds for the budget of his Office [to] be a matter for recommendation by a Joint Parliamentary Committee to the Parliament and that Parliament by resolution establish the appropriation to be introduced by the Treasurer without alteration."⁸⁵

However, the Ombudsman (Amendment) Act 1990, which established the Parliamentary Joint Committee on the Office of the Ombudsman, did not provide for the Committee to have any role in recommending the level of funding for the Ombudsman's Office. In his second reading speech on the bill the Attorney General, on behalf of the Premier, stated:

"The Ombudsman has recommended also that the Joint Committee be empowered to recommend to Parliament the appropriation of funds from the Consolidated Fund for the Office of the Ombudsman. This recommendation has not been adopted. The Ombudsman's Office is fully funded from the Consolidated Fund, and the Premier considers that it should be subject to the same budgetary constraints that apply to all other agencies that are also fully funded from the Consolidated Fund. Funding for the Office of the Ombudsman is determined in the same way as it is for other independent

⁸³ See Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992 for latest developments on this proposal.

⁸⁴ Ombudsman's Report to Parliament pursuant to section 31 of the Ombudsman Act - The Independence and Accountability of the Ombudsman, dated 19 July, 1990, pp 2-3.

⁸⁵ *ibid*, p. 12.

bodies such as the Independent Commission Against Corruption, the Auditor-General's Office and the Electoral Commissioner.

The introduction of global budgeting has given the Ombudsman, like all other agencies the opportunity to determine how he wishes to spend his budget. It is a matter for the Ombudsman to determine how much of his total budget he wishes to devote to investigations and how much he wishes to devote to other matters. However, it remains a matter for the Government to be responsible for overall economic management and that is achieved through the budget process. Accordingly, the Ombudsman's recommendation has not been adopted. The establishment of the Parliamentary Joint Committee is a step towards greater accountability and I am sure it will be an effective means of reviewing the practices and procedures of the Office of the Ombudsman.⁸⁶"

Clearly, at this stage the Government intended that the Ombudsman's Office would be subject to the same budgetary processes as other departments and independent agencies and that the Committee would have no role in appropriating funds for the Office.

In this regard the Committee also gave considerable weight to the findings of the Joint Select Committee upon the Management of the Parliament which reported in November 1992 that the issue of whether Parliament should have its own Appropriation Bill was a choice for the Parliament itself to debate and determine. This decision has yet to be made and in this situation the Committee would find it incongruous to be the body charged with approving the Ombudsman's budget allocations. Parliament and other independent agencies such as the ICAC, and the Courts are all subject to the same budgetary processes administered by the Executive as the Ombudsman.

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

Notwithstanding this, the Committee is of the opinion that some further measure of review should be established for the Ombudsman's budget allocation and believes that this review mechanism should be available most appropriately through Parliament.

⁸⁶ Hansard, Legislative Assembly, 13/11/90 pp 9482-6.

The twenty-five Estimates Committees of Parliament were established for the purpose of examining and reporting upon proposed expenditures from the Consolidated Fund for each organisational unit for each minister listed in the tabled Estimates, and the corresponding clauses and schedules of the Appropriation Bill.

The Estimates Committees function as Joint Parliamentary Committees with the power to send for and examine persons, papers and records and to report from time to time. The proceedings of the Committees are open to the public unless otherwise ordered by the Committees and each program area for each minister is open to examination by the Committee.

The report of each Estimates Committee states whether the votes of each organisation unit in the Estimates and the corresponding clauses and schedules in the Appropriation Bill are recommended or otherwise. Upon conclusion of its deliberations and after the question on the second reading of the Appropriation Bill has been agreed to, the Chairman of each Estimates Committee, or a member deputed by the Chairman, presents the Committee's Report to the Speaker in the House. The Reports are set down for consideration in Committee of the Whole House on the Appropriation Bill.⁸⁷

The Committee considered that it may be beneficial to review the Ombudsman's budget estimates and immediate past budget performance prior to the sitting of the Parliamentary Estimates Committee and to present a report on such review to the Premier and Treasurer Estimates Committee at the time it is convened.

Unlike the Estimates Committee the Joint Committee would not be responsible for recommending the Ombudsman's appropriation to Parliament. However, it would provide the Ombudsman with a formal, public forum in which to discuss his Office's budget estimates and allocation. It should be noted that the Ombudsman Standing Committee of the Ontario Parliament recently made a similar recommendation to review its Ombudsman's Estimates.

The Committee would collate the information obtained through evidence which would then be submitted to the Estimates Committee for its consideration in the course of its proceedings. An Estimates Committees' report is presented to the House and is subject to debate providing a further forum for discussion of the Ombudsman's budget allocation.

This procedure reinforces the relationship between the Ombudsman and Parliament and preserves Parliament as a generally acceptable accountability mechanism for the Office. It also affords the Ombudsman a much greater opportunity to have public discussion of the financial situation of the Office.

⁸⁷ Votes and Proceeding of the Legislative Assembly, 13 October 92.

In addition it would reinforce the Joint Committee's development as an external review body with the most comprehensive knowledge and understanding of the operations of the Office and the Ombudsman's functions.

According to Mr Wilmshurst:

*"More substantial mechanisms of accountability and performance assessment for the activities of the Office need to be in place to enable the Committee (and the Parliament) to review its operation."*⁸⁸

The Committee agreed with Dr Brian Jinks's statement:

*"No matter how worthy a government organisation may appear to be, it should deliver 'value for money'. This is particularly the case in the present economic circumstances."*⁸⁹

Similarly, Mr Michael Hogan, Director of the Public Interest Advocacy Centre, also called for consideration to be given to strengthening the relationship of the Ombudsman and Parliament especially on such crucial issues as resources.⁹⁰

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

6.2 PROGRAM PERFORMANCE REVIEWS

The Committee agrees with evidence from the Secretary of the Treasury that the exemption of the Ombudsman's Office from meeting this requirement has been detrimental to the efficiency and effectiveness of the Office.

⁸⁸ Submission, 7 December, 1992, para. 2.6.

⁸⁹ Submission 1, para. 2.1.

⁹⁰ Submission, 14 August, 1992.

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

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

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

This proposal is consistent with the wide-ranging functions afforded the Committee under section 31B(1) of the Ombudsman Act, in particular:

- "(b) to report to both Houses of Parliament, with such comments as 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".

It also compliments the Ombudsman's argument that he should be accountable ultimately to Parliament in the exercise of his functions and powers.

6.3 **REGULAR EXTERNAL AUDIT**

In its report to the Committee the KPMG consultancy team recommended that the Office's efficiency and effectiveness performance measures should be subject to a regular audit by an external review body.

The Auditor-General's preparedness to provide external auditing services to the Office was canvassed by the Committee during his evidence. While supporting the concept and highlighting the benefits gained by his Office from peer review, he ruled out providing such services to the Ombudsman's Office in view of his existing workload and resources.

While the Auditor-General was a preferred external auditor for the Ombudsman's Office because of his independent status the Committee feels that the auditing services required could be provided by other independent auditors with relevant experience.

The Committee noted that earlier this year the Ontario Standing Committee on the Ombudsman in Canada recommended regular value-for-money audits on at least a five year basis examining select aspects of operations so that over time a constant review and re-examination of the efficiency of that office would be achieved. It recommended that the Provincial Auditor would be responsible for selecting the areas to be examined. These audits would then be referred to the Standing Committee of the Ombudsman.⁹¹

The concept of value for money was not rejected by the Ombudsman when put to him by the Chairman during evidence:

"CHAIRMAN:

Mr Landa, you mentioned the Ontario Standing Committee on the Ombudsman. One of their recent recommendations calls for regular value for money audits on the Ombudsman's Office. Have you any idea from your knowledge, how that occurs in the Ontario system?

LANDA:

No, I had hoped in my last trip to get there and my last trip terminated almost before I left Australia and I ended up coming back. So, I don't know, certainly it is something I propose to follow up. .."

and later to the Chairman:

LANDA:

...Hopefully the Committee would be seeking from the management review, or from anything else, to establish value for money. If we cannot establish value for money, then quite clearly, perhaps we are not doing our job."⁹²

⁹¹ Standing Committee on the Ombudsman, Review of the Office of the Ombudsman, Legislative Assembly, Toronto Ontario, April 1993. pp. 125-129.

⁹² Transcript of Evidence, pp. 40-44.

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

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

CASE FOR AN INCREASE IN FUNDS - 7 -

7.1 Case for an increase in funds

The Committee received a significant number of submissions to support an increase in funding for the Ombudsman. There was some evidence that many of those submissions were made at the urging of the Ombudsman.

Needless to say there would not be expected any submissions calling for a reduction in funding for the Ombudsman and indeed the terms of reference of the inquiry did not seek such submissions. The terms of reference were in fact couched in such terms as to ensure receipt of submissions highlighting perceived deficiencies in the Ombudsman's funding.

Much of the arguments in the submissions and indeed from the Ombudsman and his staff centred on the inability to carry out country visits and visits to corrective institutions on a timetable that the Ombudsman thought appropriate. Indeed this aspect more than anything else may have led to this inquiry.

The Ombudsman assessed in his Effective Functioning Report 1991 that he would need the additional sums of \$46,000 to adequately maintain visits to corrective institutions and \$22,000 to visits for detention centres. In addition the Ombudsman noted in the same report that an additional \$21,000 was required for public awareness visits to country areas. The Ombudsman does not quantify how these amounts were fully costed out.

The table below has been compiled from details in the Ombudsman's annual reports and unaudited figures for the last financial year. It shows a difference of \$1,246,615 between the allocated budget to the Ombudsman and the amount actually spent by the Ombudsman for the years 1986-87 to 1992-93, and also gives supplementations (including inter-year transfers) received in each year. An explanation for the amounts shown in the table can be found in the Annual Reports of the Ombudsman as cited in the table.

Committee on the Office of the Ombudsman

Year	Actual Budget	Supplementation\ Transfers	Actual Expenditure	Amount less than supplemented budget	Annual Report References for lower than budget amounts
1986-87	2,744,000	12,393	2,740,314	16,079	pp 159-168.
1987-88	3,054,000	0	2,894,461	159,539	pp 205-214.
1988-89	3,707,000	0	3,336,447	370,553	pp 355-370.
1989-90	4,186,000	221,000	4,267,791	139,209	pp 221-233.
1990-91	4,199,000*	173,000*	4,328,496*	43,504	pp 176-192
1990-91 *capital	21,000	30,000	51,134		

Year	Actual Budget	Supplementation\ Transfers	Net Cost of Services	Amount less than supplemented budget	Annual Report References for lower than budget amounts
1991-92	4,947,000	0	4,597,504	349,496	pp 241-254.
1992-93	4,766,300	0	4,598,065	168,235	Correspondence

The table is split into two sections to reflect the two distinct accounting systems used by the Office during the period 1986-93. The sections mark the effect of the introduction of accrual accounting upon the recording of expenditure by the Office from 1991-93 and the consequent inability to directly relate one figure to another after the 1990-91 cut-off.

This recognises comments made by the Ombudsman in correspondence in which he stated:

*"The figures for 1986-87 through to 1990-91 reflect audited financial statements prepared on a cash basis. The figures for 1991-2 and 1992-3 (unaudited) reflect financial statements prepared on an accrual basis"*⁹³

In the course of the inquiry and the Management Review carried out by KPMG Peat Marwick certain observations were made on the overall monetary requirements of the Ombudsman rather than concentrating on the issues of visits to country areas and corrective institutions. It was the view of KPMG Peat Marwick and indeed supported by the Ombudsman himself that further efficiencies and productivity improvements could be implemented in the Ombudsman's Office. These efficiencies and productivity improvements have been referred to in other areas of this report.

⁹³ Letter from Ombudsman to Chairman, dated 27 August, 1993.

Coupled with these identified areas was the observation that the Ombudsman's Information Technology System was both inadequate and unrelated leading to inefficient practice with the Ombudsman's Office. The Ombudsman has retained a firm of consultants independently of this Committee to advise him of the best information technology that would be appropriate for his Office. The Committee understands that the Ombudsman also has made a submission for a Forward Capital Program for the Office covering the years 1993-4 to 1995-6.

Also the Ombudsman has engaged consultants from his own funds, to renegotiate his lease on his present premises, which if these negotiations are successful should result in a net reduction in his rent and thus additional available funds for his Office.

The Ombudsman enjoys the freedom of global budget allocations and as such is able to determine his own internal spending priorities without influence from Executive Government.

In view of the Ombudsman's observations concerning lower than budget spending for the years 1986-7 to 1992-3 totalling \$1,246,615 and the fact that an actual figure cannot at this time be determined upon the various recommendations for further efficiency, productivity, improved information technology procedures and improved leasing conditions, plus the fact that the Ombudsman has acknowledged that the proposals for such efficiencies are seen in a positive light and are likely to assist the Ombudsman's Office, the Committee felt the funding status quo should remain for a reasonable time to enable the benefits of the recommendations of this report and other initiatives to come into effect.

The Committee was of the view that a review of the Ombudsman's internal activities after being subjected to the recommendations of this report and their effect on the Ombudsman's budget should be carried out prior to the 1994 State Budget.

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

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

FUTURE OPERATIONS - 8 -

8.1 PROPOSED FUNDING MODEL

As compiled by KPMG the funding model calculates total funding based on the following variables:

<p>Total Funding</p> <p style="text-align: center;">=</p> <p>Investigation Staff Salaries</p> <p style="text-align: center;">+</p> <p>Administration Staff Salaries</p> <p style="text-align: center;">+</p> <p>Funded Salary Related Expenses</p> <p style="text-align: center;">+</p> <p>Rent</p> <p style="text-align: center;">+</p> <p>Other Working & Maintenance Expenses</p> <p style="text-align: center;">+</p> <p>Protected Items</p>
--

The model is based on input dependent upon a variety of assumptions detailed in the Management Review Report and was completed using the performance measures and assumptions determined in that report to calculate the level of funding required based on a number of alternative scenarios.

The funding model scenarios compiled by KPMG Peat Marwick included:

Scenario	Funding (\$000's)
1992/93 Complaint Profile	
No increase/decrease in complaint numbers	4,216
10% increase	4,371
10% decrease	4,031
25% increase	4,592
25% decrease	3,852

(Note: This table does not reflect changes in the time taken to process individual types of complaints)

Scenario	Funding (\$000's)
1988/89 Complaint Process	
No increase/decrease in complaint numbers	5,116
10% increase	5,430
10% decrease	4,936
25% increase	5,871
25% decrease	4,556

(Note: This table does not reflect changes in the time taken to process individual types of complaints)

Towards the close of hearings with the Ombudsman and Deputy Ombudsman a proposition was canvassed that the Committee might decide the complaint profile to be addressed by the Ombudsman for a particular year and that this might form the basis on which funding would be sought from Treasury via the KPMG funding model.

It is considered that such a proposition is untenable as it would mean that the Committee was becoming directly involved in the administration of the Ombudsman's Office and that is certainly not the Committee's function. The complaint profile to be addressed by the Office is a matter for the Ombudsman to determine in the light of available resources and priorities.

The use of the KPMG funding model is not considered appropriate as an alternative to the current budgetary processes for the setting of annual funding levels. It is instead considered to be a most useful tool for internal management review by the Ombudsman in meeting the need to review his operations in the light of available resources as determined by the normal budgetary procedures to which the overwhelming majority of other inner-budget sector agencies are subjected.

8.2 FINANCIAL PLANNING

8.2.1 Formal Management Report

In its final Management Review Report KPMG Peat Marwick recommended:

"Two of the most critical success factors for an efficient and effective office is the timeliness and quality of the management reports. The current office structure and reporting lines, together with poor information provided by the office computer systems, have contributed to diminish the effectiveness of these reports as management tools. The improved office structure leading to clearer lines of reporting and management would benefit from an improved information system.

Current management reports of the Ombudsman's Office simply provide high level information about the number of complaints processed and the elapsed time to complete complaints. To effectively run the Ombudsman's Office, management require reports that will enable them to:

- make meaningful assessments about employee performance;
- assess the efficiency of employees;
- assess the required funding for the Ombudsman's Office;
- optimise the profile of complaints investigated by the Ombudsman's Office; and
- more accurately perform the corporate planning function.

The Office's monthly financial reporting is currently adequate for the requirements of the Office. Detailed line by line expenditure reports are prepared each month and compared to budget with explanations provided for significant variations.

The adoption of the suggested organisation structure and reporting lines will assist in defining the management reporting responsibilities and will place increased importance on the quality of information provided in management reports. However, the quality of this information will continue to remain poor until the information systems issues (outlined in Section 6.6) are addressed."

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

8.2.2 Costings

As Mr Wilmshurst pointed out in his original submission:

"The 1991-2 Annual Report gives no details of either the Office Corporate Plan or even preliminary results of the project for costing complaints and investigations begun in 1992".⁹⁴

Costings were considered by the Committee as a significant means of estimating the resources and funds involved in dealing with complaints with various outcomes. Attempts by both the Financial Consultant and the Management Review Consultancy Team failed to derive any conclusions from the costing exercises conducted by the Office. To date these comprise a random sampling by the Office of 500 of its files and a costing of the Angus Rigg investigation. The latter could be used as a guide for special investigations conducted by the Ombudsman in the public interest.

In relation to visits to prisons, juvenile detention centres and public awareness visits Mr Wilmshurst believed it would be "a simple matter to assess and establish the optimum number of visits per institution per year, the number of officers and cost this out".⁹⁵ He proposed that the Office should "compile and publish its program of visits to institutions showing the cost, staff involved and the timetable". As a complementary measure he suggested that the Office should decide on the objectives of public awareness visits and then identify specific staff for the purpose and publish a program of visits and the cost.

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

⁹⁴ Submission 1, par. 2.7.

⁹⁵ Submission 1 par. 11.1.

8.2.3 Special Inquiries

KPMG recommended that in relation to special inquiries:

"An amount should be set aside to cover special investigations and be included in the Ombudsman's expenditure budget as a protected item.

It is often hard to estimate how many special investigations will occur in a given year but the impact on resource and funding requirements is significant.

The Ombudsman's Office should annually prepare a submission for protected funds based on expected levels of special investigations and average historical cost per investigation.

Funds allocated as protected items must not be used for any purpose other than those for which they were intended. Expenditure requirements in excess of the amount set aside for protected items must be applied for separately.

If protected funds are not used specifically for the purpose for which they are set aside, any balance will either be returned to Treasury at year end or deducted from the following year's protected item allocation. At year end, the Ombudsman should submit to Treasury formal reports of expenditure incurred within his protected item budget as justification for amounts utilised during the year."

In determining future funding requirements, the following assumption was used by the consultancy team:

"- An estimate of \$150,000 for protected items has been included [in the model].

This is based on the performance of one or two investigations of a Prisons Inquiry/Angus Rigg nature and an allowance for other special items such as award increases. Due to the uncertainties involved in projecting the nature and size of forthcoming investigations, it is not practical to provide detailed costings to support this amount. It is up to the Ombudsman to provide detailed annual submissions supporting the amount for which he is applying for a particular year.

We have not included an estimate in the model for the cost of additional functions required as a result of the Police Service (Complaints, Discipline and Appeals) Amendment Bill 1993."

The Ombudsman proposed that funds for special inquiries should be an protected item additional to his current allocation:

"CHAIRMAN:

We talked about that a while ago. You were fairly emphatic you did not seek specific funding for special inquiries, you felt it should come out of your global budgeting.

PINNOCK:

*No, we would seek funding from Treasury on a supplemental basis or as we have recommended here on the basis of an adjustment to the maintenance budget by way of protected item.*⁹⁶

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

⁹⁶ Transcript of Evidence, p. 88.

APPENDIX 1

List of Submissions Received

COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

SUBMISSION TABLE

NO	DATE	NAME	ORGANISATION	ADDRESS
1	Aug 92	AZZOPARDI, Edgar		[REDACTED]
2	10.8.92	BALDRY, Eileen	NSW Prison's Coalition	[REDACTED]
3	28.10.92	BASTEN, John	Chair Prisoners' Legal Service Advisory Committee	[REDACTED]
4	5.8.92	BELLAVIA, Salvatore		[REDACTED]
5	27.7.92	BIRD, Geoffrey		[REDACTED]
6	12.8.92	BRUNTON, Brian	Human Rights Centre	University of NSW [REDACTED]
7	11.7.92	CROSBY, Roger	R.W & S.J Crosby Transport	[REDACTED]
7(a)	14.8.92	CROSBY, Roger	R.W & S.J Crosby Transport	[REDACTED]
8	14.8.92	CHRISTENSEN, Mark		University of New England [REDACTED]
9	11.8.92	DOBELL, David	Blue Mountains Community Legal Centre Inc.	[REDACTED]
10	27.7.92	GOLDBERG, John (Dr)		University of Sydney [REDACTED]
11	13.10.92	HARRIS, A.C	Auditor General	[REDACTED]
12	2.8.92	HAUSFELD, Glen		[REDACTED]
13	14.8.92	HOGAN, Michael	Director Public Interest Advocacy Centre	[REDACTED]
14	29.7.92	JINKS, Brian (Dr)	Formerly Deputy Ombudsman	[REDACTED]
14a	7.10.92	JINKS, Brian (Dr)	Formerly Deputy Ombudsman	[REDACTED]

NO	DATE	NAME	ORGANISATION	ADDRESS
15	20.8.92	JONES, Melinda	Lecturer Faculty of Law	University of NSW [REDACTED]
16	28.8.92	LANDA, David	NSW Ombudsman	[REDACTED]
16(a)	7.12.92	LANDA, David	NSW Ombudsman	[REDACTED]
17	24.7.92	LITCHFIELD, D.B.		[REDACTED]
18	19.8.92	MARSDEN, John	Law Society of NSW	[REDACTED]
19	1.9.92	MOORE, Clover	Member for Bligh	[REDACTED]
20	12.8.92	MUELLER, Max		[REDACTED]
20a	July 92	MUELLER, Max		[REDACTED]
21	11.8.92	MURPHY, Terry	Acting Director Legal Aid Commission	[REDACTED]
22	6.8.92	O'SULLIVAN, Teresa	Children's Solicitor, Marrickville Legal Centre	[REDACTED]
23	3.8.92	ONORATI, Irene	President, Building Action Review Group Inc.	[REDACTED]
23(a)	13.7.92	REVESZ, S.	Building Action Review Group Inc.	[REDACTED]
24	18.8.92	RICE, Simon	Director, Kingsford Legal Centre	[REDACTED]
25	11.8.92	SOURIS, George	Minister for Finance and Assistant Treasurer	[REDACTED]
26	10.8.92	VINSON, Tony (Prof.)	Dean, Faculty of Professional Studies	University of NSW [REDACTED]
27	7.12.92	WILMSHURST, Peter	Formerly Principal Investigation Officer, Office of the Ombudsman	[REDACTED]
28	22.2.93	WILMSHURST, Peter	Formerly Principal Investigation Officer, Office of the Ombudsman	[REDACTED]
29	9.7.93 <i>late submission</i>	DERWENT, P (Ald.)	Mayor, Ku-ring-gai Municipal Council	[REDACTED]
30	13.8.93 <i>late submission</i>	ANG, Luan Thiam (Dr.)		[REDACTED]

APPENDIX 2

*Ombudsman's First Submission,
dated 28 August, 1992*

Office of the Ombudsman

Submission
to the
Joint Committee
on
the Office of
the Ombudsman

Inquiry into the Adequacy
of the Funds and Resources
Available to the Ombudsman

28 August 1992

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EXECUTIVE SUMMARY

INTRODUCTION

- 1 The Office of the New South Wales Ombudsman was established in 1974. The 18 years since its inception has been marked by a progressive expansion of the Ombudsman's jurisdiction.

Despite this, the Joint Committee's present inquiry is the first comprehensive review of the funding and resources of the Office since its establishment.

Unlike the situation in the Commonwealth, where the Ombudsman's Office is one element of a comprehensive scheme to deal with the review of administrative decisions, the NSW Ombudsman remains the providing avenue of review in this state.

FUNCTIONS AND JURISDICTION

- 2 The Ombudsman's current jurisdiction is governed by the:
 - Ombudsman Act, 1974
 - Police Regulation (Allegations of Misconduct) Act 1978
 - Freedom of Information Act, 1989
 - Telecommunications (Interception)(New South Wales) Act, 1987

Under the Ombudsman Act, the Ombudsman may investigate the "conduct" of "public authorities", both having very broad definitions.

The progressive expansion of the Ombudsman's jurisdiction continues, with proposals to extend his functions under the:

- Government Publicity Control Bill 1992
- Whistleblowers Protection Bill 1992

The Ombudsman should be independent of the executive government and responsible to Parliament and numerous statutory provisions and practices support this concept.

The Ombudsman's statutory powers and functions are detailed in Section 2 of this submission.

PERFORMANCE OF THE OFFICE

- 3 The Office has substantially completed its Corporate Plan and Corporate Strategy. The Office's mission is to provide fairness, integrity and justice in public administration by reviewing the conduct of public authorities, including police, through independent, efficient investigations and reports.

The Office has clear and established complaint handling procedures whereby each complaint is assessed by a statutory officer who directs how the complaint is to be dealt with i.e. whether it is outside jurisdiction; to be declined in accordance with guidelines for the exercise of the Ombudsman's discretions under S.13(4) Ombudsman Act and S.18(1) Police Regulation (Allegations of Misconduct) Act; is to be the subject of preliminary inquiries; or, is to be investigated.

Investigation Officers handle complaints in the exercise of delegations from the Ombudsman, subject to written directions and supervision by senior officers.

The Ombudsman is obliged to give written reasons for declining to investigate or discontinuing an investigation of a complaint and this requirement itself is an exacting process which consumes substantial resources.

Formal investigations are extremely resource intensive, particularly those that are conducted by way of an Inquiry under S.19 Ombudsman Act. Reports under S.26(1) of the Act also consume considerable resources. Formal investigations are tending to involve even greater levels of complexity, yet there are insufficient resources to engage expert assistance for such investigations.

The Ombudsman has reformed and restructured many aspects of the Office to achieve efficiencies, including:

- restructuring investigation staff into 4 teams each headed by a senior Investigation Officer
- implementing an Information Processing Strategic Plan.

Nevertheless, because of rising complaint numbers and inadequate resources, the Ombudsman has been forced to implement rigorous guidelines for assessing complaints, leading to an increasing number of complaints being declined. In the absence of sufficient resources the Office has been forced to decline meritorious complaints.

The Ombudsman's most valuable functions are also the most difficult to evaluate, but there are numerous examples in this submission of systemic improvements achieved by the Office.

The Ombudsman has also developed an initiative for complaint-handling in the public sector (CHIPS) in an attempt to stem in the longer term the rising level of complaints. Under this project, the Ombudsman is making available to public authorities expertise in designing and managing complaint handling techniques.

FUNDING AND RESOURCES

- 4 The combination of rising complaint levels and the failure to guarantee sufficient funding and resources is leading to an erosion of the Ombudsman's independence. This trend will be exacerbated if current proposals to extend the Office's functions are not properly resourced.

Section 4 details complaint trends and examines the adequacy of recurrent funding.

Cumulative productivity savings required since 1988-89 represent the most serious and continuing erosion of the Office's funding base and there has been no relief from these requirements. Additionally, the Ombudsman has been subjected to a further decline of his recurrent budget by the failure to provide relief from past effects of the single occupancy tenancy threshold, despite government recognition that the Office should be accommodated separately. Under this threshold, the Office has had to fund a past increase in rent of \$72,000 from within its recurrent budget, further eroding the funding base.

A fundamental question in dispute is whether the Ombudsman's Office is "demand driven" under Treasury's definition of that term. Treasury has failed to accept cogent reasoning why the Office is in fact "demand driven".

The Office lodged a further "maintenance dispute" with Treasury in an effort to adjust upwards its recurrent funding but, with the exception of future relief from the single occupancy tenancy threshold, the request was largely unsuccessful and the Office faces large deficits in 1992-93 and forward years. These deficits will worsen if proposed new functions are not adequately funded.

In the circumstances, the Ombudsman has been forced to adopt a "survival strategy" as a short to medium term option.

Further administrative costs have been incurred in recent years following a marked increase in the requirements of central agencies. Meeting most of these requirements has demanded funds from within budget, met largely at the expense of investigations work.

The position has now been reached where many underprivileged groups in the community are effectively denied access to this Office, raising questions of equity and fairness.

INTRODUCTION

SECTION ONE

OFFICE OF THE NSW OMBUDSMAN

- 1.1 The Ombudsman was constituted under the Ombudsman Act, 1974 which was assented to on 18 October 1974; the first Ombudsman was appointed on 2 April 1975 and the first complaints were received in May 1975. The Office of Ombudsman is an Administrative Unit under Schedule 2 of the Public Sector Management Act 1988.
- 1.2 The 18 years since the Office's inception has been marked by a progressive expansion of the Ombudsman's jurisdiction, usually in a piecemeal fashion, resulting in a steady increase in the number, nature and complexity of functions exercised by the Ombudsman.
- 1.3 Despite these developments, the present inquiry by the Joint Committee on the Office of the Ombudsman is the first comprehensive review of the funding and resources of the Office since its establishment.
- 1.4 In his second reading speech introducing the Ombudsman Bill on 29 August 1974, the then Minister of Justice, Mr Maddison, referred to the NSW Law Reform Commission's report on Appeals in Administration¹ which recommended a three tier system for reviewing administrative decisions, the first tier being the appointment of an Ombudsman.
- 1.5 The second tier was a public administration tribunal to hold inquiries into official actions and set aside decisions that were beyond power and also those that were harsh, discriminatory or otherwise unjust - in the latter cases it could substitute its own decision for that set aside. The tribunal would exercise an appellate function in addition to its power to initiate inquiries. This jurisdiction - partly at the expense of that exercised by the ordinary courts - was considered to be advantageous in cases requiring the experience and wider knowledge which would be available to the tribunal.
- 1.6 The third tier comprised a commissioner for public administration and an advisory council on public administration. The commissioner would examine in detail the powers exercised by public authorities and recommend changes with a view to ensuring that rights of appeal were given where appropriate. The Ombudsman has de facto taken on at least part of this role.
- 1.7 The government was initially prepared to take only the first step. The Minister said establishment of the public administration tribunal:

Should be left in abeyance at this stage until the Ombudsman concept has been accepted both by the public authorities involved and by the public at large.

¹ LRC 16. December 1972

As to the third tier, Mr Maddison said that the government had not abandoned the proposal to appoint a commissioner for public administration, but:

The function of this officer could well be regarded as appropriate for the Minister who will be charged with the administration of the Ombudsman legislation, who could seek advice from an advisory council if such a need existed²

- 1.8 Eighteen years later, the Ombudsman remains the only tier of the NSW Law Reform Commission's appeals in administration "package" to have been implemented.
- 1.9 By contrast, the Office of Commonwealth Ombudsman, established in 1976, was part of a comprehensive set of administrative law reforms which included the Administrative Appeals Tribunal (AAT) and the Administrative Review Council, as well as the expansion of the jurisdiction of the Federal Court to review the lawfulness of administrative decisions made under Commonwealth legislation.
- 1.10 In addition, the Commonwealth has established numerous specialist review bodies:
- Merit Protection and Review Agency
 - Human Rights and Equal Opportunity Commission
 - Immigration Review Tribunal
 - Social Security Appeals Tribunal
 - Veterans' Review Board
 - Repatriation Commission
 - Student Assistance Review Tribunal

OTHER REVIEW AGENCIES

- 1.11 There are fewer alternative review bodies in this state and these too have a very specialised role insofar as the review of administrative decisions or other conduct is concerned.
- 1.12 The Privacy Committee commenced operation in May 1975 pursuant to the Privacy Committee Act 1975. S.15(1)(d) of the Act provides that the Committee may:

receive and investigate complaints about alleged violations of the privacy of persons and in respect thereof may make reports to complainants.

² Parliamentary Debates (Hansard) 29 August 1974, P.775

The Committee also has a research and educational role and an advisory function to the Attorney-General. The Ombudsman's ex officio membership of the Committee was repealed in 1986 following the request of the Ombudsman. By virtue of Clause 17 of Schedule 1 of the Ombudsman Act, the conduct of a public authority relating to alleged violations of the privacy of persons is excluded from the Ombudsman's jurisdiction.

- 1.13 The Anti-Discrimination Act 1977, as amended, established the Anti-Discrimination Board (ADB), which commenced operations in its present form in 1982. The ADB's principal function is the investigation and conciliation of complaints of discrimination, on the defined grounds of sex, race, marital status, sexual preference, intellectual or physical impairment and compulsory retirement, in the areas or circumstances of employment, state education, obtaining of goods and services, accommodation and registered clubs. The Act also established the Equal Opportunity Tribunal which has the jurisdiction to inquire into any complaint or matter referred to it. The ADB also has research and community education functions.
- 1.14 The Land and Environment Court, established in 1979, has the jurisdiction to hear objections, references and appeals relating to valuations of land and decisions or orders of councils concerning development and building applications, as well as applications for equitable relief and summary enforcement of environmental and planning legislation.
- 1.15 The Department of Health Complaints Unit was established by ministerial fiat in January 1984 to receive and investigate complaints about both the public and private health sector in NSW. The Unit may also take action (effectively prosecutions) before the Medical Tribunal against a practitioner, or against a nurse before the Nurses Tribunal. Under a proposed Health Care Complaints Commission Bill, the Unit would be constituted as an independent statutory commission with codified functions and powers.
- 1.16 The functions of the Independent Commission Against Corruption as set out in Ss.13 and 14 of the 1988 Act are limited to matters concerning "corrupt conduct" as defined by Ss.7, 8 and 9 of the Act.
- 1.17 Proposals for the establishment of a Local Government Pecuniary Interest Tribunal envisage a Tribunal with the particular focus of conducting hearings into alleged breaches of the pecuniary interest provisions of the Local Government Act, 1919.
- 1.18 In addition to these specialist agencies, there are, or used to be, a number of alternative informal mechanisms where citizens or disadvantaged groups have been able to seek advice or assistance concerning administrative decisions by public authorities. For many years, Chamber Magistrates attached to Local Courts, as they now are, provided free advice across a spectrum of legal problems including issues arising from the conduct of public authorities. Persons in custody both adult and juvenile have had access to Official Visitors set up as internal complaints mechanisms by the Department of Corrective Services and the now Office of Juvenile Justice. In most instances, however, these alternative sources of advice have suffered from a lack of adequate funding.

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- 1.19 In late 1991, in an initiative that is now complementary to the government's Guarantee of Service announced in March 1992, and because of the burden of the increasing number of complaints being received, the Ombudsman commenced development of a Complaints Handling in the Public Sector project (CHIPS) to encourage public authorities to develop internal complaints handling procedures. Details of the CHIPS project are referred to at para. 3.41ff of this submission.
- 1.20 Despite these developments since 1975, for the vast majority of citizens, the Office of the Ombudsman remains the primary means for reviewing administrative decisions by NSW public authorities, with the advantages of informality, timeliness and least expense.

FUNCTIONS AND JURISDICTION OF THE OFFICE OF THE NSW OMBUDSMAN

SECTION TWO

2.1 The Ombudsman's current jurisdiction is governed by the:

- Ombudsman Act, 1974
- Police Regulation (Allegations of Misconduct) Act, 1978
- Freedom of Information Act, 1989
- Telecommunications (Interception) (New South Wales) Act, 1987.

2.2 As noted earlier, there has been a progressive expansion in the nature and complexity of the Ombudsman's jurisdiction since the establishment of the Office in 1975.

Under the Ombudsman Act, the Ombudsman is given jurisdiction to investigate the conduct of NSW public authorities as defined in S.5(1) Ombudsman Act. "Conduct" is defined as:

- (a) *any action or inaction relating to a matter of administration, and*
- (b) *any alleged action or inaction relating to a matter of administration;*

The definition of public authority in S.5(1) is an extended one encompassing virtually every NSW department, statutory authority and instrumentality. The Ombudsman's jurisdiction, however, is limited by the exclusion of the conduct of public authorities as specified in Schedule 1, Ombudsman Act.

Initially, the Ombudsman had no jurisdiction over local government authorities, their members or employees. The Ombudsman (Amendment) Act 1976¹ represented the first of many extensions of the Ombudsman's jurisdiction to follow, by including in the definition of public authority:

any local government authority

which was defined to mean:

a council within the meaning of the Local Government Act, 1919, a county council within the meaning of that Act or an urban committee under Part XXV11 of that Act;

¹ No 39, 1976

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- 2.6 Because there was debate and doubt about the extent of the Ombudsman's jurisdiction over local government authorities, following several reports to Parliament by the former Ombudsman, the definition of the local government authority was extended in 1986 to include members and employees of such authorities.²
- 2.7 Until the enactment of the Police Regulation (Allegations of Misconduct) Act, 1978, the Ombudsman's jurisdiction over police was limited to the review of behaviour which could be defined as "conduct" within S.5(1) Ombudsman Act i.e. administrative actions. Conduct of a police officer in the exercise of his powers as the holder of the common law office of constable was excluded from the Ombudsman's jurisdiction by virtue of Clause 13, Schedule 1. Although there remained substantial limits on the Ombudsman, the introduction of the Police Regulation (Allegations of Misconduct) Act represented a marked increase in his jurisdiction, establishing for the first time in NSW external monitoring of complaints of misconduct by police officers. The subsequent further expansion of this legislation and the Ombudsman's jurisdiction over members of the Police Service has been outlined in detail previously and would be well known to the members of the Committee.³
- 2.8 The Freedom of Information Act, 1989 (FOI) provided yet another extension to the Ombudsman's jurisdiction. S.52(1) of the Act provides that:

The conduct of any person or body in relation to a determination made by an agency under this Act may be the subject of a complaint and may (subject to this section) be investigated by the Ombudsman, under the Ombudsman Act 1974.

- 2.9 Provisions in the Freedom of Information (Amendment) Act, 1992 as well as proposals to bring local government authorities as agencies fully under the Act will further increase the scope and complexity of the Ombudsman's FOI work.
- 2.10 The Telecommunications (Interception) (New South Wales) Act, 1987 was enacted as complementary legislation to amendments to the Telecommunications (Interception) Act, 1979 (Commonwealth). The Ombudsman's audit functions of inspecting records relating to the interception of telephone calls under warrant by NSW eligible authorities, and reporting upon the degree of compliance by those authorities under the Act, are unlike any other functions traditionally exercised by an Ombudsman.
- 2.11 S.19(2) of the Act effectively prohibits the Ombudsman reporting on the exercise of his functions under the Act, in his Annual Report or in a special report to Parliament under the Ombudsman Act.
- 2.12 S.31B(2)(e) Ombudsman Act provides that nothing in Part 4A of the Act authorises the Joint Committee on the Office of the Ombudsman

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.

² Statute Law (Miscellaneous Provisions) Act (No.2) 1986

³ Inquiry into the Role of the Office of the Ombudsman in Investigating Complaints Against Police: Submission by the Ombudsman 6, September 1991. Report of the Joint Committee on the Office of the Ombudsman, April 1992.

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- 2.13 The Ombudsman has a further function, by virtue of S.11 Independent Commission Against Corruption Act, 1988 of reporting to the Commission any matter that he suspects on reasonable grounds concerns or may concern "corrupt conduct". S.16(1) of the Act provides that in exercising its principal functions relating to the investigation of conduct, the Commission may work in co-operation with, amongst other agencies, the Ombudsman; this suggests, as a corollary, an obligation on, or at least a discretion in, the Ombudsman to act co-operatively with the Commission. Part 5 of the Act contemplates the referral of matters by the Commission to the Office of the Ombudsman as a "relevant authority" under that Part and Ss.53-57 impose very significant obligations on a "relevant authority".
- 2.14 In addition to the above legislation there are currently or have been numerous legislative and other proposals to further increase the Ombudsman's functions.
- 2.15 The Government Publicity Control Bill 1992 provides for the establishment of a Government Publicity Committee (Clause 5) to consist of the Ombudsman, Auditor-General and Electoral Commissioner.
- 2.16 The Whistleblowers Protection Bill 1992 proposes yet a further extension of the Ombudsman's functions. In particular Clause 9(1) provides that:
- a disclosure of information that a public official suspects on reasonable grounds tends to show that in the exercise of any function relating to a matter of administration imposed on the public authority or another public official the public authority or public official has engaged, is engaged or proposes to engage in conduct of a kind that amounts to maladministration is protected by this Act if it is made to the Ombudsman.*
- 2.17 By amendment to the Aboriginal Land Rights Act, 1983, S.65A provides that each Aboriginal Land Council (ALC) is to be taken to be a public authority for the purposes of the Ombudsman Act. This is despite the fact that S.65 specifically provides that an ALC is not, for the purposes of any law, a statutory body representing the Crown. There are 127 ALCs in New South Wales.
- 2.18 In late 1991, one of the submissions received by the Joint Select Committee Upon the Process and Funding of the Electoral System, suggested that the Election Funding Authority be restructured to include the Ombudsman. The Ombudsman advised the Chairman of the Committee that the suggested function was incompatible with the traditional role and functions of the Ombudsman. The Ombudsman has heard nothing further of this proposal.
- 2.19 Recently, the Legislative Council Standing Committee on Social Issues recommended that a position be created in the Office, with the status of Deputy Ombudsman, that would be responsible for the co-ordination of complaints made by children, including those in the Juvenile Justice System and for the establishment of a system of education and information for children about the role of the Ombudsman. The Committee also recommended that adequate resources be provided to fund the new position.⁴
- 2.20 The latest proposal which would extend the Ombudsman's functions concerns the establishment of a Local Government Pecuniary Interest Tribunal. The proposal includes provision for the referral of matters to the Ombudsman for investigation and, again uniquely, for the Ombudsman to present (prosecute) matters before the Tribunal.

⁽⁴⁾ Juvenile Justice in New South Wales. Report No.4 May 1992.

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- 2.21 The steady expansion of the Ombudsman's functions over the years has tended to fall into one or other of two categories. Most (but not all) amendments to the Ombudsman and Police Regulation (Allegations of Misconduct) Acts (the "core" of the Ombudsman's jurisdiction) have been in response to requests or criticisms of deficiencies in the legislation by the Ombudsman. [A notable exception was the introduction of the Police Regulation (Allegations of Misconduct) (Amendment) Bill 1988]. On the other hand, almost without exception, recent extensions of his functions have either been proposed or introduced without any consultation with or reference to the Ombudsman. In the case of the Telecommunications (Interception) (New South Wales) Act 1988, the first the Ombudsman knew of his new role was a telephone call from an officer of the then Public Service Board asking for advice on the staffing implications of the new role. Similarly, the Ombudsman was never consulted about the extension of his jurisdiction to Aboriginal Land Councils.
- 2.22 The implications of this continuing trend, for strategic planning and the funding of and allocation of resources within the Office, are obvious.

THE OMBUDSMAN AND PARLIAMENT

- 2.23 Much has been written about the concept of the Ombudsman as an institution which is independent of executive government. In practice, the degree to which various Ombudsmen approach this ideal varies widely. The position of the NSW Ombudsman was comprehensively reviewed in the Ombudsman's Special Report to Parliament on The Independence and Accountability of the Ombudsman.⁵
- 2.24 The corollary of this independence from the executive is that the Ombudsman should be accountable to the legislature and this concept is reflected in such titles as "Parliamentary Commissioner", or the more general reference to the Ombudsman as an "officer of Parliament". In NSW the ideal of accountability to Parliament is given practical effect in a number of ways.

RIGHT TO COMPLAIN

- 2.25 S.12(2) Ombudsman Act and S.6(2) Police Regulation (Allegations of Misconduct) Act enable a Member of Parliament, with the consent of the person, to make a complaint on behalf of any person. These provisions underpin the notion of the Ombudsman as an extension of the Parliament's role of receiving and acting on constituents' complaints. In the year to 30 June 1992, 120 complaints were made by Members of Parliament to the Office, of which 114 were on behalf of constituents.

REPORTS TO PARLIAMENT

- 2.26 S.31 Ombudsman Act and S.32 Police Regulation (Allegations of Misconduct) Act enable the Ombudsman to make a Special Report to the Minister for presentation to Parliament on any matter in connection with the discharge of his functions under the respective Acts.
- 2.27 S.27 Ombudsman Act enables the Ombudsman to make a "non-compliance" report to the Minister for presentation to Parliament where a public authority has failed to act on recommendations in a report under S.26(1) following an investigation.

⁵ 19 July 1990

A measure of the Ombudsman's commitment to accountability to Parliament is shown by the fact that since the creation of the Office, the Ombudsman has made a total of 110 reports under Ss.27 and 31 Ombudsman Act and S.32 Police Regulation (Allegations of Misconduct) Act. Recent figures are:

1988/89	1989/90	1990/91	1991/92
8	6	4	4

- 2.28 As noted in the Ombudsman's special report on the Independence and Accountability of the Office, the major constraint in these provisions is the fact that the Minister (i.e. either the Premier or the Minister for Police) has complete discretion as to the manner and timing of the tabling of such reports. On 19 December 1991, the Premier advised⁶ that it was proposed to amend the Ombudsman Act to provide for reports under Ss.27 and 31 to be made to the Speaker of the Legislative Assembly and President of the Legislative Council and for those Presiding Officers to table the report on the first sitting day following its receipt or, if Parliament is not sitting, for the Presiding Officers to release the report as soon as practicable.
- 2.29 The Premier also advised that, in the interim, administrative arrangements would be introduced, in the spirit of the memorandum of understanding between the Government and three Independent Members of the Legislative Assembly to speed the tabling of and response to such reports.

Earlier, on 8 November 1991, the Premier had advised that⁷:

- the Ombudsman Act would be amended to provide that the Minister responsible for the public authority the subject of a non-compliance report would respond to the Ombudsman's report within twelve sitting days of tabling of the report.
- as a matter of practice, Ministers should follow the new procedure pending the amendment.

This was particularly important advice given that the Joint Committee on the Office of the Ombudsman is excluded by S.31B(2)(c) from considering the conduct of any public authority the subject of a non-compliance report.

- 2.31 The proposed amendments to Ss.27 and 31 have not yet been introduced.
- 2.32 There has been no announcement from the Minister for Police as to any proposed amendment to or change in procedures under the Police Regulation (Allegations of Misconduct) Act in respect of S.32 reports.

6 Premier's Memorandum 91 - 39

7 Premier's Memorandum 91 - 29

ANNUAL REPORTS

- 2.33 S.30 Ombudsman Act requires the Ombudsman to prepare and submit an Annual Report to the Minister (Premier) for presentation to Parliament. It has been the practice of successive Ombudsmen to prepare extremely detailed Annual Reports as the single most effective means of informing Parliament of the work of his Office, by highlighting significant issues and developments. As with Ss.27 and 31, there has been no amendment to this provision to enable the Ombudsman to present his report direct to the Presiding Officers of Parliament, as is the practice in all other Australian states.

JOINT COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

- 2.34 The most recent and most obvious example giving practical effect to the concept of the accountability of the Office of the Ombudsman to Parliament is the establishment of the Joint Committee under Part 4A of the Ombudsman Act. The functions of the Committee under S.31B(1) enable the Committee, to monitor and review in an effective manner, the performance of the Office without involving itself in the consideration of particular cases.
- 2.35 The Committee's first inquiry, into the Ombudsman's role in investigating complaints against police, was noteworthy for the measure of bipartisan support for much needed reforms to the police complaints system suggested by the Ombudsman and the Commissioner of Police.
- 2.36 The Ombudsman strongly supports the operation of the Committee, but as with all such developments, the advent of the Committee has had serious resource implications for the Ombudsman. The preparation of submissions, background material and commentary to ensure the Committee is fully briefed about the subjects of its inquiries - together with appearances by officers of the Office before the Committee - consumes a significant amount of staff time. Without additional resources, that staff time is secured very largely at the expense of investigations.

OMBUDSMAN ACT, 1974

Conduct

- 2.37 At the heart of the definition of conduct in S.5(1) is the concept of a matter of administration. There is no binding authority in this state as to what constitutes a matter of administration or, to put it another way, administrative or executive functions, as opposed to legislative or judicial ones, although there are a number of conflicting authorities on this question from other jurisdictions, of varying degrees of persuasiveness.⁸

⁸ Booth v. Dillon (No.1) (1976) VR 291; Booth v. Dillon (No.2) (1976) VR 434; Booth v. Dillon (No.3) (1977) VR 143; Glenister v. Dillon (1976) VR 550; Glenister v. Dillon (No.1) 1977 VR 151

Re Ombudsman of Ontario and Health Disciplines

Ombudsman of Ontario v. Ontario Labour Relations Board

Salisbury City Council v. Biganovsky (1990) 70 LGRA 71

Complaints

- 2.38 The width of the Ombudsman's jurisdiction by virtue of the definition of "public authority" in S.5(1) of the Act has already been noted. The definition of public authority is, for instance, so broad as to include state-owned corporations within the meaning of the State Owned Corporations Act 1989 and until a recent amendment to the legislation under which it is constituted, the Australian Gas Light Company.
- 2.39 Schedule 1 specifies the conduct of public authorities which is excluded from the Ombudsman's jurisdiction. There are currently 23 Clauses relating either to conduct of a particular public authority e.g. conduct of the Independent Commission Against Corruption (Clause 20) or to conduct of a general kind e.g. conduct of a public authority relating to the appointment or employment of a person as an officer or employee and relating to matters affecting a person as an officer or employee [Clause 12(a) and (b)].
- 2.40 As would be expected in a Westminster system, the conduct of Ministers, the legislature (in any aspect) and the judiciary generally, is outside the Ombudsman's jurisdiction.
- 2.41 S.14(1) provides that Schedule 1 may be amended, by addition or deletion, by proclamation published in the Government Gazette. The most recent amendment on 11 September 1991 concerned the addition of the State Bank in the exercise of its banking functions, consequent upon an agreement between the Ombudsman and the bank that it would come under the jurisdiction of the Banking Ombudsman.
- 2.42 S.12(1) confers a right to complain on any person (including a public authority) about the conduct of a public authority, subject to exceptions specified in paragraphs (a) - (d).
- 2.43 S.12(4) requires that complaints may be in writing, although there is no requirement for them to be signed.
- 2.44 As noted, S.12(2) enables a Member of Parliament to complain on behalf of a constituent and S.12(3) makes special provision enabling persons in the custody of a public authority to make complaints.

Decision to investigate

- 2.45 S.13(1) provides that where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under S.12 may be conduct referred to in S.26(1) he may, whether or not any person has complained to him, make the conduct the subject of an investigation.
- 2.46 The decision to investigate involves no prejudgment by the Ombudsman that conduct is necessarily of a kind specified in S.26(1), merely that it appears to him that it may be.
- 2.47 The reference to "conduct of a kind specified in S.26(1)" replaces the earlier definition of "wrong" conduct in S.5(2) which was repealed in 1989⁹ in a process that defies logical explanation.¹⁰ There is no doubt that the loss of the plain word "wrong", so descriptive for complainants and the public generally, has been welcomed by many public authorities.

⁹ Statute Law (Miscellaneous Provisions) Act (No.3) 1989.

¹⁰ Ombudsman Annual Report 1989 pp.S2-S7.

2.48 S.13(1) enables the Ombudsman to commence investigations of his own motion, a provision which is not uncommon and which attracted criticism at the time of the Law Reform Commission's Report on Appeals in Administration. However, the comments of the Minister of Justice in his second reading speech in support of this proposal were prophetic:

Some writers on this subject believe that an Ombudsman should not have this power on the basis that an over-zealous Ombudsman may, for example, on reading of an incident in a newspaper, embark on an investigation without reference to a complainant. On the practicalities of the matter it is submitted by several Ombudsmen who have been contacted on this point that they are too busy, in any event, to go looking for matters to investigate. One Ombudsman sees this as a residual power to meet the case where in the course of an investigation the Ombudsman comes across some glaring instance of wrong conduct on the part of a public authority where no complaint has been made which merits investigation also.¹¹

2.49 While the "own motion" power is routinely used to "cure" any deficiencies in the actual terms of a complaint, internal directions and the impact of severe resources and funding constraints mean investigations initiated by the Ombudsman are rare. At the time of writing there are only two such investigations in progress.

2.50 S.13(4) gives the Ombudsman a wide discretion either to decline or to discontinue the investigation of any complaint under the Act on the basis that:

- the complaint is frivolous, vexatious or not in good faith;
- the conduct complained of is trivial;
- the conduct relates to the discharge of a function which is substantially a trading or commercial one;
- the conduct complained of occurred at too remote a time to justify investigation;
- there is or was an alternative and satisfactory means of redress;
- the complainant has no or insufficient interest in the conduct complained of;
- such matters as the Ombudsman thinks fit;¹²

2.51 S.15(1) provides that where the Ombudsman refuses to investigate, or discontinues the investigation of a complaint, he must inform the complainant in writing of the decision and the reasons for the decision.

¹¹ Parliamentary Debates (Hansard) 1974 Pp.779-80.

¹² S.18(1) Police Regulation (Allegations of Misconduct) Act contains similar provisions

2.52 While the circumstances contemplated by the words “thinks fit” are, almost by definition, open-ended, it is not correct to suppose that the Ombudsman’s exercise of this or any of the more particular aspects of the discretion is unfettered. Such discretions must be exercised reasonably. Nevertheless, the availability of resources and the level of complaints are quite properly matters which the Ombudsman could, and should, have regard to in the exercise of his discretion. Indeed, the current inadequate level of resources and the rising level of complaints over several years have led to the Ombudsman establishing stringent guidelines governing which complaints should be acted upon. These guidelines are outlined in Section 3 of this submission. However, the point has been reached where:

- a complaint leads the Ombudsman to conclude that there may be “conduct of a kind specified” in S.26(1) involved;
- S.13(4)(b) does not apply;
- the complaint is then declined on no other basis than lack of resources.

2.53 S.13(5) introduced in 1976 when the Ombudsman was given jurisdiction in respect of local government authorities, provides that the Ombudsman shall not investigate the conduct of such an authority if that conduct is subject to a right of appeal or review under an Act, unless the Ombudsman is of the opinion that special circumstances make it unreasonable to expect that right to be exercised. This provision goes not to the exercise of a discretion but rather, directly to jurisdiction, unless the Ombudsman finds special circumstances. It is fair to say that the question of what might constitute “special circumstances” has bedevilled successive Ombudsman and even now internal guidelines on this question are problematic.

2.54 S.16 requires the Ombudsman, where a decision has been made to investigate the conduct of a public authority, to provide written notice of his decision to

- the complainant;
- the head of the public authority, and
- to the public authority where practicable

Coercive and Royal Commission Powers

2.55 S.18 authorises the Ombudsman to require a public authority to

- give him a statement of information;
- produce to him any document or other thing;
- give him a copy of any document.

A requirement under this provision must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.

2.56 S.19(2) imports various provisions of the Royal Commission Act into the Ombudsman Act for the purposes of any inquiry under S.19(1), which is simply one method of conducting an investigation. The "royal commissions" power is the most extensive of the Ombudsman's powers and enables him to summons any person to attend and give evidence during an inquiry. Witnesses summonsed are, subject to the protections set out in S.21, required to answer all questions.

2.57 The importance of the "royal commissions" power when exercised by the Ombudsman has significant implications for the efficient allocation of resources. Like any Royal Commission, a S.19 inquiry is essentially an inquisitorial fact finding mission leading ultimately to a report and recommendations; no question of the enforcement of such recommendations arises for a Royal Commissioner; that is a matter for others. However, whereas Royal Commissions are extremely expensive to fund, S.19 inquiries by the Ombudsman, even of the most detailed and time consuming kind, require quite modest resources. The inquiry into allegations of systematic assaults on prisoners, conducted by an Assistant Ombudsman with the assistance of two investigation officers following a complaint referred by the then Minister for Corrective Services, the Hon. Michael Yabsley, involved:

- 30 sitting days held at various metropolitan and country gaols and at the Office of the Ombudsman;
- 149 witnesses were being called to give evidence;
- a 300 plus page provisional report produced within 5 months of the S.16 advice of investigation;

yet cost (including salaries) only \$62,667.49.

Similar cost savings were apparent in the S.19 Inquiries concerning Baulkham Hills Shire Council and "Operation Sue" conducted by police at Redfern.

2.58 S.20 enables the Ombudsman to enter and inspect any premises and inspect any document in or on the premises occupied or used by a public authority, as a public authority, at any time during an investigation. No notice of the exercise of this power is required to be given.

2.59 The powers under Ss.18, 19 and 20 may be exercised in respect of any public authority, notwithstanding that the conduct of the public authority is outside the Ombudsman's jurisdiction by virtue of Schedule 1.

2.60 S.21A(1) gives a discretion to the Supreme Court, on application by the Ombudsman, to grant an injunction restraining any conduct in which a public authority is engaging or in which a public authority appears likely to engage, where that conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Ombudsman.

No application under S.21A(1) has ever been made.

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- 2.61 S.23 authorises the Ombudsman, in an investigation, to engage the services of any person for the purposes of obtaining expert assistance. There appears to be no logical reason to limit the power to engage expert assistance to formal investigations. In some cases the assistance of an expert may well be required before the Ombudsman could make a decision to investigate in terms of S.13(1).

Procedural Fairness

- 2.62 S.24(1) requires the Ombudsman to give an opportunity to make submissions on the conduct the subject of investigation, if practicable, to the public authority whose conduct is being investigated, as well as to any other person given a notice under S.16. In practice, the Ombudsman always gives this opportunity to individual public authorities.
- 2.63 S.24(2) provides that where, in an investigation, the Ombudsman considers that there are grounds for adverse comment in respect of any person, he shall, before making such comments in any report, so far as practicable, inform the person of the substance of the grounds of adverse comment and give him an opportunity to make submissions.
- 2.64 Until recently, the Ombudsman had adopted a procedure of preparing and distributing a document known as a Statement of Provisional Findings and Recommendations. However, following proceedings in the Supreme Court¹³ and after consideration of recent authorities relating to the concept of procedural fairness, the Ombudsman has adopted a new procedure of issuing a Summary of Evidence without any provisional comments, findings or recommendations. This document will be sent to public authorities and others with separate letters in terms of the matters set out in Ss.24(1) and (2).
- 2.65 The new procedure will involve a considerable change at a critical stage in the Ombudsman's investigation process, resulting in most cases in additional times and extra costs, all to be borne by the Office from current budget.

Consultation with Minister

- 2.66 S.25(1) requires the Ombudsman, on request by the responsible Minister, to consult with the Minister on the conduct the subject of investigation. This little known provision is rarely invoked by Ministers.
- 2.67 S.25(2) requires the Ombudsman, before publishing a report under S.26, to inform the responsible Minister that he proposes to publish such a report and shall, on request by that Minister, consult him.
- 2.68 It is the Ombudsman's opinion that these provisions, the purpose of which is often misunderstood, provide a valuable opportunity for Ministers to gain an insight into the operation of public authorities for which they are responsible and to consider any recommendations proposed by the Ombudsman. This is particularly important given the new procedures outlined at para. 2.30 of this submission, under which the Minister will be required to respond to an Ombudsman's non-compliance report under S.26(1).

¹³ Avery and Ors v. Deputy Ombudsman and Anor 1991

Reports

- 2.69 S.26(1) requires the Ombudsman to make a report where he finds that the conduct the subject of investigation is any one or more of the following kinds:
- contrary to law;
 - unreasonable, unjust, oppressive or improperly discriminatory;
 - in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
 - based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration;
 - based wholly or partly on a mistake of law or fact;
 - conduct for which reasons should be given but are not given;
 - otherwise wrong.

This provision is mandatory in that once the Ombudsman has concluded that conduct is one or more of the kinds specified he must report. The preparation of reports, which must also meet the requirements of Ss24(1) and (2) is resource intensive.

- 2.70 S.26(2) gives the Ombudsman a discretion to make wide ranging recommendations, including the amendment of any law and the payment of compensation. In the latter regard S.26A provides specific authorisation for the payment of such compensation.
- 2.71 S.26(1) reports are not public documents in that they are published to a limited number of persons in accordance with Ss.26(3) and (4) i.e. the responsible Minister, the head of the public authority, the Premier's Department, the complainant and the individual public authority.
- 2.72 S.28 makes special provision for reports of serious misconduct, an option resorted to by the Ombudsman only in the most flagrant of cases.
- 2.73 S.29 contains general provisions authorising the Ombudsman to report to the complainant in various circumstances.

Immunities

- 2.74 S.35(1) provides that the Ombudsman (and his civilian officers) shall be neither competent nor compellable to give evidence or produce any document in any legal proceedings, or in any proceedings before the Police Tribunal in respect of any information obtained by him in the course of his office. S.35(2) provides for a limited number of exceptions to this provision.
- 2.75 S.35A confers a general immunity from suit on the Ombudsman and his officers, the precise extent of which was considered by Enderby J in *Ainsworth v. The Ombudsman*.¹⁴

¹⁴ (1988) 17 NSWLR 276

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT 1978

- 2.76 The history, nature and specific provisions relating to the Ombudsman's jurisdiction under the police complaints system has already been the subject of extensive inquiry and report by the Committee.

FREEDOM OF INFORMATION ACT, 1989

- 2.77 As noted at para. 2.8 of this submission, S.52(1) of the FOI Act provides for the investigation of complaints about determinations by agencies under this Act, by the exercise of the Ombudsman's general and particular powers under the Ombudsman Act, subject to various limitations in Ss.52(2) - (5). In particular, the Ombudsman shall not investigate the conduct of any person or body in relation to a determination by an agency under the FOI Act while:

- the determination is subject to a right of internal review;
- any appeal concerning the determination is before the District Court.

- 2.78 The Ombudsman is prevented from exercising his powers under Ss.18, 19 and 20 in respect of any document the subject of a Ministerial certificate, and is also prohibited from disclosing any exempt matter during an investigation under the Ombudsman Act.

- 2.79 Finally, S.52(5) prohibits the Ombudsman from investigating the conduct of any person or body in relation to:

- the issue of a Ministerial certificate;
- a determination of an application for access to a Minister's document or for the amendment of a Minister's records;
- a determination of an application for access to an agency's document, if the complainant has previously been a complainant under the Ombudsman Act and the Ombudsman has had possession of the document pursuant to the exercise of his powers under Ss. 18, 19 or 20 in connection with the investigation of the previous complaint.
- a determination made by the Ombudsman.

- 2.80 The Ombudsman and the District Court are the sole means of external review of FOI determinations and in accordance with their general nature and jurisdictions each has different powers. Thus, the Ombudsman has no power to order the release of exempt material following an investigation and report under S.26(1), relying instead on the persuasive force of his recommendations under S.26(2).

- 2.81 Originally, the Ombudsman was an agency under the FOI Act, before first being gazetted as a prescribed agency under S.11(1)(e) in controversial circumstances and finally exempted under Schedule 2 in relation to the Office's complaint handling, investigative and reporting functions.

2.82 As previously mentioned, significant changes to the FOI Act were proclaimed on 1 July 1992 as a result of the memorandum of understanding agreed to between the Government and three Independent Members of the Legislative Assembly. The Act has changed in the following ways:

- a reduction in the time within which agencies must determine applications, from 45 days to 21 days (subject to the proviso that an agency may extend this time period by a further 14 days if special circumstances exist, such as the need to consult or to locate and retrieve archived documents);
- a provision stating that it is not relevant to take into account the possibility of embarrassment to the government, loss of confidence in the government or misunderstanding of information by the applicant when determining whether giving access to a document is in the public interest;
- the removal of the right of an agency to refuse access to a document on the ground that it came into existence more than 5 years before the commencement of the Act;
- making a refusal to deal with an application on the ground that to do so would involve a substantial and unreasonable diversion of the agency's resources subject to internal and external review;
- providing that the Supreme Court rather than the District Court will review determinations in relation to documents the subject of a Ministerial Certificate. The District Court will continue to conduct all other reviews
- limiting the power to confirm a Ministerial Certificate where the certificate is not upheld by the Court to Cabinet and Executive Council documents;
- reducing the number of bodies and offices that are exempt from the operation of the Act and limiting the functions in relation to which other bodies or offices are exempt;
- providing the Ombudsman with the discretion to recommend that the release of a document would, on balance, be in the public interest even though access has been refused because it is an exempt document;
- an amendment requiring the District Court and the Ombudsman, when reviewing determination, to have regard to any guidelines relating to fees and charges published by the Minister under Section 67 of the FOI Act.

2.83 The Ombudsman supports these changes, particularly the amendments concerning the test to be applied by agencies in determining the public interest and the Ombudsman's right to recommend the release of an exempt document where he believes that it is in the public interest for the document to be released.

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- 2.84 The Local Government (Consequential Provisions) Bill 1992 proposes, amongst other things, to extend the coverage of the FOI Act to include all information held by Councils. This amendment would involve repeal of section 16(2) of the Act, which extends a person's legally enforceable right of access to Council documents only to such of the Council documents as concern the person's personal affairs.
- 2.85 There are 217 local government authorities in NSW including County Councils and the extension of the ambit of the FOI Act to these bodies is expected to significantly increase the number of FOI complaints to the Ombudsman and hence require additional resources.

TELECOMMUNICATIONS (INTERCEPTION)(NEW SOUTH WALES) Act, 1987

- 2.86 In view of the provisions of S.31B(2)(e) Ombudsman Act, the Ombudsman does not propose to detail the operations of his functions under this legislation but will briefly refer later in this submission to the funding of the functions.

GOVERNMENT PUBLICITY CONTROL BILL 1992

- 2.87 The Ombudsman was first advised of this legislation on 17 March 1992, three days before debate on the second reading speech was due to resume, when the Director-General of the Cabinet Office sought his comments. Such lack of prior advice or consultation made it impossible for the Ombudsman to conduct other than brief consultations with the Electoral Commissioner and Auditor General's Office. On 19 March, the Ombudsman wrote briefly to the Director-General advising him:

I have no objection in principle to the role proposed for the Ombudsman as a member of the Government Publicity Committee constituted under Clause 5(2). In general, the function and powers of the Committee seem to be adequate to achieve the objects of the Bill.

- 2.88 Recently, the Ombudsman learnt that the Bill had been referred to a Legislation Committee of the Legislative Assembly and detailed submissions are to be forwarded to the Committee as soon as possible. At the present, the Ombudsman's position remains one of general support for the legislation, subject to some reservations about Clause 9(2) which enables the Government Publicity Committee to order a public authority to:

- stop the dissemination of any government publicity that does not comply with guidelines formulated by the Committee;
- modify the content, style or method of dissemination of any such government publicity to comply with the guidelines;
- limit expenditure on government publicity to comply with the guidelines.

- 2.89 This power does not sit easily with the traditional concept of an Ombudsman as an institution which works by persuasion and this remains so even if it could be agreed that the Ombudsman's membership of the Government Publicity Committee is in some fashion ex officio his office. The fact is that the Ombudsman would be lending the status of his Office to the Committee.

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- 2.90 If enacted in its present form, the Bill will obviously impose additional resource constraints on the Ombudsman and these are discussed at para. 4.44 of this submission.

WHISTLEBLOWERS PROTECTION BILL 1992

- 2.91 The Ombudsman supports a central aspect of the legislation which protects the voluntary disclosure by a public official to the Ombudsman of conduct amounting to maladministration.
- 2.92 Clause 9(2) provides that conduct is of a kind that amounts to maladministration if it involves action or inaction that is:
- (a) *contrary to law; or*
 - (b) *unreasonable, unjust, oppressive or improperly discriminatory; or*
 - (c) *based wholly or partly on improper motives.*
- 2.93 The Bill also provides for the investigation of disclosures of conduct amounting to maladministration (Clause 11); protection against reprisal action (Clause 13); orders as to non-publication of information provided by way of protected disclosure (Clause 15) and the referral of protected disclosures to other investigating authorities persons and bodies (Clause 17).
- 2.94 Clause 12 creates an offence where detrimental action is taken against a person making a protected disclosure in good faith, substantially in reprisal for that disclosure. Clause 12(2)(2) defines "detrimental action" to include:
- unjust damage or loss
 - intimidation or harassment
 - discrimination, disadvantage or adverse treatment in relation to employment
 - dismissal from, or prejudice in, employment
 - disciplinary proceeding.
- 2.95 Quite apart from policy issues raised by this legislation, it contains numerous technical and other deficiencies. Foremost of these deficiencies is the failure to provide, by way of repeal or amendment of Clause 12(a) and (b) Schedule 1 Ombudsman Act, for the Ombudsman to have jurisdiction to investigate a complaint of reprisal action.

LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

- 2.96 Proposals for referral of matters by the Tribunal to the Ombudsman for investigation and for the "presentation" of matters investigated by the Ombudsman to the Tribunal, have important cost implications for the Office, discussed in Section 4 of this submission.

PERFORMANCE OF THE OFFICE

SECTION THREE

CORPORATE PLANNING

- 3.1 The Office is at the final draft stage of producing its Corporate Strategy. The corporate planning process will be an ongoing feature of the Office's approach to flexible management which is capable of both anticipating and responding to needs in a timely and effective way. The process is already playing a vital role in better defining performance indicators for the Office and further refining efficiencies in its operations.
- 3.2 The key features of the Corporate Strategy are:

Mission Statement

The Office of the Ombudsman exists:

- to promote fairness, integrity and justice in public administration by reviewing the conduct of public authorities, including police, through independent, efficient investigations and reports.

Corporate Objectives

To ensure the Office's mission and philosophy are enacted, the following objectives were identified as central requirements.

- **Complaint Assessment:** To give priority to those complaints which identify structural and procedural deficiencies in NSW's public administration, especially where there are no alternative and satisfactory means of redress.
- **Complaint Resolution:** To resolve complaints about defective public administration.
- **Investigations:** To conduct effective and resource-efficient investigations employing fair procedures.
- **Accountability:** To develop and to maintain effective accountability mechanisms to meet the Ombudsman's statutory obligations and corporate objectives.
- **Financial Viability:** To make the most effective use of financial and physical resources through financial planning, establishment of priorities, control and accountability.
- **Organisational Environment:** To ensure productivity, staff development and a creative, dynamic and satisfying work environment.
- **Access:** To promote access to the Office for disadvantaged groups.

3.3 The full Corporate Strategy will be finalised by the end of 1992.

COMPLAINT HANDLING PROCEDURES

- 3.4 The following description applies to complaints about public authorities other than police, known as General Area complaints. A description of the handling of police area complaints was given in this Office's submission to the Committee during its Inquiry Upon the Role of the Ombudsman in Investigating Complaints Against Police.
- 3.5 After being date-stamped on receipt, each new complaint is scrutinised by one of the Deputy Ombudsman, an Assistant Ombudsman or the Principal Investigation Officer. The complaint is assessed and a direction about subsequent action written on a slip which is attached to the complaint. The direction will normally take one of the following forms:
- (a) If the complaint is outside the Ombudsman's jurisdiction a reply pointing this out and suggesting an alternative avenue of redress (if one exists) will be sent, disposing of the complaint immediately;
 - (b) Decline the complaint at the outset (see Appendix A for a full statement of the current decline policy);
 - (c) Make preliminary inquiries (specifying by phone or letter) of the public authority complained of;
 - (d) Make inquiries of the complainant to clarify issues in the complaint;
 - (e) Commence formal investigation.
- 3.6 This initial assessment of all complaints by three of the Ombudsman's most senior officers ensures non-jurisdiction matters are recognised immediately, there is a high degree of consistency in decisions to decline complaints and any emerging trend in complaints can be quickly recognised.
- 3.7 Each complaint within jurisdiction is then made up into a uniquely numbered file and registered into the Office's PARLAIRS computer system. New files are then distributed (pursuant to their direction slip) to one of the senior investigation officers (SIOs) who head up the Office's four Investigation Teams. The SIO will allocate the file to a team member who then has responsibility to carry out the instructions on the direction slip. All investigation staff exercise delegations by the Ombudsman under S.10 Ombudsman Act, subject to various written directions.
- 3.8 Freedom of Information (FOI) complaints are normally assessed initially by the Deputy Ombudsman and passed to the specialist FOI Group, rather than to one of the four investigation teams. Here, preliminary inquiries involve obtaining and examining all documents the subject of dispute.

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- 3.9 Because of the Office's review function under the FOI Act, and the fact that public authorities in a substantial minority of cases resist the Ombudsman's preliminary view where it recommends reversal of the initial denial of access, a higher proportion of FOI complaints are subject to investigation than is the case with complaints in the rest of the General Area. However, during formal investigation of FOI complaints a higher proportion are discontinued because the public authority either reverses its denial of access or reaches some acceptable compromise with the complainant.
 - 3.10 The non-jurisdiction (NJ) complaints are normally replied to by an investigative assistant and retained on an NJ file.
 - 3.11 Files sent for preliminary inquiries may be declined after responses to those inquiries have been assessed, or the responses may convince the Office the complaint warrants formal investigation pursuant to S.16 of the Ombudsman Act.
 - 3.12 Where the Ombudsman exercises his discretion to decline to investigate a complaint or to discontinue an investigation, S.15 of the Ombudsman Act requires him "...to inform the complainant in writing of his decision and the reasons for his decision". This requirement helps ensure decisions to decline or discontinue are made fairly and are capable of explanation and justification to the complainant (and potentially to the public at large, since there is no bar to general publication by the complainant of the Ombudsman's statement of his reasons).
 - 3.13 The requirement to give written reasons, however, means declining complaints is an exacting process which consumes substantial resources, not only in drafting decline letters but also because to maintain consistency all must be checked by team leaders before dispatch. This inescapable requirement is ignored by those who claim the Ombudsman's Office is not demand driven.

CONSEQUENCES OF DECISION TO INVESTIGATE

- 3.14 A decision to formally investigate a complaint is taken by an investigation team leader, usually in consultation with the Deputy or an Assistant Ombudsman. The process of formal investigation begins with the issue of a written notice to the public authority(s) involved describing the conduct the subject of the investigation. Formal investigation may involve the exercise of the Ombudsman's powers to demand the production of documents, to inspect premises and to summon witnesses to formal hearings and take evidence on oath.
- 3.15 Investigations which involve formal hearings are highly resource-intensive since they involve the preparation of questions and briefs for the statutory officer who presides at the hearings, the presence of at least one investigation officer and a sound recordist. The follow-up to hearings involves summarising and usually at least part-transcription of the evidence. All this must be done with in-house resources since the cost of commercial transcription services is now beyond the Office's budget.

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- 3.16 Even the simplest formal investigation which runs to completion is necessarily resource intensive. At the very least, an investigation officer will be obliged to produce a detailed written report which examines all relevant evidence and sets out fully the reasons for any findings and recommendations. Apart from the fact S.26 of the Ombudsman Act requires such a report, the fairness which the Office strives for in all its dealings requires no less. The reports are drafted within a strict framework of independence of judgement and procedural fairness - the rocks on which the public credibility of the Office rests.
- 3.17 The process of producing the S.26 report involves providing the public authorities concerned and other persons who may be subject to adverse comment with drafts of the material in the report relevant to them and giving them the opportunity to make submissions about that material. Only after considering all submissions is the report put into final form and then the Ombudsman must (pursuant to S.25 of the Act) inform the responsible Minister he proposes to publish the report and on request by the Minister, consult with the Minister before publishing his report.
- 3.18 S.26 reports can only be issued by one of the four statutory officers and inevitably finalisation of such reports consumes substantial amounts of their time.
- 3.19 The Ombudsman is also required (pursuant to S.29) to report to the complainant on the results of his investigation.
- 3.20 The Ombudsman, if not satisfied with the response to his S.26 report of the public authorities concerned, may make a report on the matter to the Minister for presentation to Parliament. Such reports represent the ultimate sanction at the Ombudsman's disposal.

INCREASING COMPLEXITY OF INVESTIGATIONS

- 3.21 It should also be noted there is a trend for formal investigations to involve ever greater levels of complexity. Some examples where outside expert advice was deemed necessary are mentioned below, but in trying to avoid the expense of outside assistance it is also true the quite diverse range of skills (considering the size of the Office) available among the investigation staff are increasingly stretched. Recent investigations have called on backgrounds in air traffic control, electronic database manipulation, retail management practice and mathematics examining, as well as very diverse range of legal knowledge.
- 3.22 However, this increasing amount of forensic effort needed to do justice to the more difficult and complex investigations comes at a time when the Office's investigative resources are already too thinly spread. In this environment it is inevitable the Office will face with increasing frequency a situation already encountered. This is where the Office has several resource intensive investigations on foot and simply lacks the resources to commence another major complex investigation. If the public interest is so great as to demand commencement of the new investigation, that can only occur at the expense of discontinuing one or more of the investigations already on foot, or by suspending a significant range of the normal services of the Office.

EFFECTIVENESS OF PROCEDURES AND EFFICIENCIES ACHIEVED

- 3.23 The procedures adopted combine strong, consistent central direction from the Office's most senior staff, together with a reasonable (but not excessive) level of supervision and support for individual investigation officers within a manageably-sized team structure. The procedures ensure investigative resources are focussed in the most productive areas and emerging delays are quickly detected. The structure also facilitates monitoring of individuals' productivity and performance by team leaders whose teams, in turn, are monitored by the Principal Investigation Officer and the four statutory officers.
- 3.24 The progress of individual files is tracked through the police complaints database which became fully operational in 1989 for police complaints, and through the PARLAIRS system which became fully operational in 1991 for general area and FOI files. The restructuring of the investigation staff into teams was implemented at the end of 1989. Working in teams has achieved greater consistency in decision making and also established a mechanism to review decisions to decline complaints. The restructuring required the reclassification of a number of positions and the total cost was met from within the office's budget.
- 3.25 After commissioning consultants in October 1989, the Office produced an Information Processing Strategic Plan with the objective of increasing the efficiency and effectiveness of the operations, management and administrative procedures of the office through increased use of computers rather than through additional expenditure on staff. The plan is ongoing and subject to constant review.
- 3.26 Pursuant to the plan, a Vax based network/database was installed in 1990. The \$231,000 cost came from within budget by savings due to leaving positions unfilled. The system was upgraded in April 1992 through purchase of a second-hand mini-computer and 10 additional terminals. The \$30,000 upgrade cost was again met from within budget through leaving vacant staff positions unfilled and from various other savings. Even the 1992 purchase has still not been sufficient to provide every investigative staff member with a terminal of their own. Experience shows obliging officers to share a terminal reduces their productivity.
- 3.27 While it would be foolish to believe 18 years work on the development and refinement of complaint handling procedures (within the current legislative framework) has produced perfection, it is at least equally foolish to believe there remains significant scope to achieve major gains in productivity through further changes to those procedures. While the Office will continue its active search for avenues of improvement, it needs to be recognised future changes to procedures are likely to occur deep within the territory of diminishing returns.

EFFECTS OF MORE RIGOROUS DECLINE POLICIES

- 3.28 The current policy on determining which complaints should be declined was formally adopted in December 1991. Its key features are to decline ALL complaints:
- relating to conduct more than six months old at the time of the complaint;

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- for which there is or was available an alternative and satisfactory means of redress;
 - relating to the discharge by a public authority of a function which is substantially a trading or commercial function;
 - involving minor misconduct which has no widespread implications.

- 3.29 The policy also provides for tighter application of the various discretions which can be used to decline complaints set out in S.13 of the Ombudsman Act and S.18 of the Police Regulation (Allegations of Misconduct) Act. A full statement of the current decline policy is at Appendix A. It is certainly the most rigorous and harsh in the history of the Office. Its application inevitably means some complaints of genuine merit are now not investigated.
- 3.30 The effect of increasing harshness over the last three years has inevitably led to a strong rise in the number of complaints declined (see Figure 4.4). Because of the significant resources involved in declining complaints (see para. 3.12), a continued rise in complaints declined in an environment of shrinking real resources available to the Office could ultimately lead to the absurd position where all investigative resources were consumed in declining complaints with none left to conduct actual investigations.
- 3.31 The current decline policy prescribes priority for complaints that identify systemic and procedural deficiencies in public administration and also preference for complaints likely to lead to practical and measurable changes through recommendations. This means the individual whose complaint does not meet those criteria is more likely to have their complaint rejected, even though it may be valid or intrinsically meritorious.
- 3.32 There is also a less obvious but very real result flowing from these criteria. Since the application of the criteria involves an initial judgement about the likely progress of the complaint should it proceed to investigation, there is a clear bias in favour of better educated, more articulate complainants who are better able to marshal material which would tip the balance against a decision to decline their complaint at the outset. The Office deeply regrets being forced to adopt a policy which, put simply, means those most in need of assistance are least likely to get it.
- 3.33 It goes without saying that a policy which declines genuinely worthy complaints strikes at the heart of the public credibility of the Office. It is also bad for the morale of the Office staff who, despite their professional assessment that cases have merit, must turn away increasing numbers of such complainants.
- 3.34 While it is true some complainants are quite incapable of making any objective assessment of the merits of their case, it is also true many can make such an assessment. Those who correctly perceive their case warrants investigation but is declined, are justifiably angered. Not infrequently they appeal against the decision to decline their complaint, thereby generating often considerable extra work as the decision is reviewed by a senior officer. Where the decision is confirmed, often with an accompanying additional explanation of the reasons for declining, this usually does little to mollify the complainant.

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- 3.35 Because the Office has a strong impression there is an increasing burden being imposed by appeals against decisions to decline and discontinue investigations, from this financial year statistics will be kept on reopened files. Figures in other Ombudsman jurisdictions suggest re-opened files may account for 5-7% of their current file load. If that figure is reflected in this Office it would suggest our own figures for total complaints handled could be understated since it currently takes account of only new, and not re-opened, files.

EXAMPLES OF CASES DECLINED

- 3.36 Some examples of the type of complaints which have had to be declined on the basis of lack of resources follow:

- A complaint alleging negligence and design flaws in a system with the most serious life and death implications for public safety can not be preceded with. Preliminary inquiries made it clear that the Office could not conduct a proper investigation without committing a statutory officer and two investigation officers virtually full-time for many months, as well as engaging substantial outside expert assistance (see para. 3.21). Current budget constraints mean the Office does not have funds to pay for significant outside expertise of any kind, although S.23 of the Ombudsman Act specifically authorises the engagement of such assistance.
- A complaint was made about a country local council's handling of a major subdivision. Allegations included unreasonable delay in determining development consent conditions, unreasonable levying of headworks contributions and unreasonable conduct in relation to a bank guarantee of over \$400,000. After preliminary inquiries the Ombudsman declined to investigate on the grounds that some of the matters complained of were old and resources could be better employed in other investigations given there was little possibility of achieving a result that could provide a satisfactory remedy for the complainant.

The complainant replied to the Ombudsman:

Whilst we must accept now that your Department cannot pursue another matters raised in our correspondence as:

- you do not have the Departmental staff resources;*
- the time effluction [sic] since the initial problems commenced;*
- legal restrictions on your Department undertaking investigations pursuant to the E. P. and A. Act*

The above does not "sit easy" with us and only reinforces the fact that we believe Council staff are "untouchable" and that the injustices perpetrated against us can and will be inflicted on future developers within the [name deleted] Council.

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- Another case involved over \$7,700 subject to goods in custody charges in 1988 being paid into consolidated revenue and not returned to its owner despite a subsequent court determination the cash was his lawful property. After preliminary inquiries following a complaint lodged in March 1991, the case was declined in December 1991 on the basis that \$1,100 had been returned and the return of the remainder of the money was in prospect. Unfortunately the complainant notified the Ombudsman in July 1992 that he had not received his money and was still trapped in "a loop of buck passing". The case is a good example of the cost to an individual of this Office succumbing to resource pressure to decline a complaint meriting investigation. In this case consideration is being given to re-opening the case.
 - A complaint alleged police harassment of the local Aboriginal community, unjust arrest and failure to take a complaint from an Aborigine at a country police station. Subsequent preliminary inquiries involved an interview in Sydney with two of the Aboriginal women from the town. They requested Ombudsman officers visit the town because of the high level of tension and fear a race riot could erupt. The request was denied since the Office had no funds to undertake country travel, and the complaint was declined. The complainant commented about this decision as follows:

Limited investigative powers is not a valid reason for the withdrawal of your services.

The office of the ombudsman has a responsibility to provide all the resources and avenues it has at its disposal...

If, as you have stated "each complaint is considered on its individual merits" then a legitimate investigation is warranted - to do otherwise is discreditable [sic] not only to me but to you and to everything your office supposedly stands for.

- An FOI application was made by a union for reports commissioned by a public authority prior to its multi-million dollar sale of certain public assets. The access sought was denied, principally on the basis of commercial confidence. After confirmation of the denial by an internal review, the union complained to the Ombudsman. The case was clearly one of substantial public interest and an investigation was commenced.

The reports sought are voluminous, complicated and very technical. It was the opinion of the Office that if a decision on the merits of the FOI determination was to be made, expert opinion would be required concerning the technical material in the report and the extent to which commercial confidentiality should attach to it. Since the Office lacks the funds to engage the necessary experts, the Ombudsman decided to discontinue the complaint.

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- A complaint about a metropolitan local council involved a property which had been subject to a mortgagee sale. The mortgagee's solicitor complained the council was demanding payment for services supplied to the previous defaulting (and now bankrupt) mortgagor before council would agree to continue supply of the services to a new owner. The complaint was particularly directed towards council's stated refusal to consider on its merits an application for the supply of the services to the new owner before the mortgagor's debt to council was settled. After preliminary inquiries, lack of resources tipped the balance against sending the matter to formal investigation and it was declined. The complainant expressed their dissatisfaction with the reasoning which had led to the Office's decision as follows:

With respect this is the type of abuse of bureaucratic power from which it is generally understood the office of the ombudsman was intended to protect the public.

- A complaint against the Department of Lands concerned the proposal to auction a Special Crown Lease on the South Coast which would leave the existing lessor (whose home is on an adjoining block) without access to a trafficable road. The complainant sought an inspection of the site by an Ombudsman officer. When informed there were no funds for the country travel involved, the complainant offered "...to raise the necessary funds to provide you with an airfare and accommodation in the area". Obviously acceptance of such an offer would have serious policy implications for the Office and the complaint was declined both on the basis of lack of resources and because it could be seen to relate to a substantially trading or commercial function of a public authority.

MEASURING THE VALUE OF THE OMBUDSMAN'S OFFICE

- 3.37 Attempts to measure the value of the work of the Office of the Ombudsman are fraught with difficulty. The Office shares with a number of other agencies the disability that its most valuable functions are also the most difficult to evaluate.
- 3.38 Just as it is easy to measure the value of stolen property recovered by the police, so it is easy to total the value of ex gratia payments made to individuals following Ombudsman investigations. But how is it possible to put a figure on the preventative value of the police service in relation to crime and similarly how to measure the ameliorative and preventative value of the Ombudsman's contribution to the administration of the police, and state and local government authorities? Despite the impossibility of precision in measuring those preventative and ameliorative functions, it would be extremely difficult to assert their value does not far outweigh the value of stolen property recovered or ex gratia payments prompted by the respective agencies.

EXAMPLES OF SYSTEMIC IMPROVEMENTS ACHIEVED

- 3.39 In this context it is worth recording a few of the systemic changes achieved recently by the Office:
- Stamp Duties Act amended to make provision for refunds for duty paid on transfer of vehicles that are later seized by police as stolen.
 - State Lotteries changes procedures for renewal of Lotto registration players and mounts major education campaign for agents and customers.

- In the wake of Ombudsman recommendations concerning a drug exhibit disappearance from a police station, the Police Service conducted a statewide review and introduced specially designed drug security cabinets with a dual key system and other mandatory security procedures.
- Tweed Shire Council introduces new procedures to cross reference building and development files, co-ordinate Development Control and Building Services sections in assessment of files, involve developers in consultations with objectors over new or amended development applications, and demonstrate commitment to community consultation and mediation approaches in the processing of development applications.
- Housing Department changes Homefund guidelines to pay interest to borrowers on monies held by Housing Societies until approved repairs are completed and provision for full disclosure to the borrower of arrangements at time of loan approval.
- Office of Juvenile Justice issues new staff instructions regarding responsibilities under the Children (Detention Centres) Act and Regulations.
- RTA issues technical and procedural instruction and information booklet relating to refunds/stolen vehicles.
- New policy and procedures on segregation of prisoners.
- New policy on classification and placement of interstate transfer prisoners.
- New policy on prisoner's access to legal papers during court escorts.

3.40 These systemic changes will have significant impact on the lives of thousands of NSW citizens. To assess the total value of those changes would be an exercise not worth the effort involved, but there can be no doubt the value is real and substantial. Eroding the credibility and viability of the Office of the Ombudsman will reduce the capacity to achieve systemic improvements such as those set out above.

COMPLAINTS HANDLING IN THE PUBLIC SECTOR (CHIPS) PROJECT

3.41 As a structural measure to stem in the longer term the strong rise in complaints observed during 1991, the Ombudsman began examining ways in which government agencies handle complaints. The aim was to make available to agencies knowledge of the best complaint handling techniques and to cut the cost and increase the effectiveness of their complaint handling - thereby ultimately reducing the number of complaints to the Ombudsman which should have been dealt with by the relevant agency itself. The project was dubbed with the acronym CHIPS.

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- 3.42 Historically, the Ombudsman has normally refused to consider a complaint until the public authority complained of has been given a reasonable opportunity to resolve the complaint. With an increasingly harsh decline policy, the number of exceptions to this rule has been sharply reduced. The corollary of this stance is that there is at least some moral obligation on the Ombudsman to do what he can to ensure that direct, "first instance" approaches by complainants to a public authority are dealt with as effectively and efficiently as possible.
- 3.43 This Office is uniquely placed to overview complaint handling policies and procedures of public authorities and to make constructive comparisons. The Office has the capacity to move information ideas, experience and skills between authorities, promoting a higher general standard of in-house complaint handling by individual authorities, to their benefit and that of the community generally.
- 3.44 This Office's research suggested 85% of agencies did not have a complaint handling manual, 80% did not have a unit set up specifically for complaint handling and 80% did not have useful records or reporting systems. Very few were using complaints as a management tool of any kind or published their performance to permit comparisons.

CHIPS AND THE 'GUARANTEE OF SERVICE'

- 3.45 The Ombudsman's CHIPS project began in 1991. In March 1992 the Government offered the public a "guarantee of service" in its statement 'NSW - Facing the World'. The Ombudsman supported the concept but said if the Office of Public Management were to implement the proposal, duplicated effort and waste of scarce resources must be avoided. The Director-General, Premier's Department, agreed the two projects must be integrated.
- 3.46 The Ombudsman collected material from both the public and private sectors from both here and overseas with a view to producing a model complaints handling manual. After assessing all the material it was decided to concentrate on the philosophy of the process, to be specific about core elements, leaving each agency to settle its own paperwork, flow charts and provide case studies. The result was the issue in August 1992 by this Office of a document titled Guidelines for Effective Complaint Management.
- 3.47 Seminars were conducted jointly by the Ombudsman's Office and the Office of Public Management in August 1992 for senior officers responsible for implementing the Guarantee of Service and, as an integral part of that, for providing effective complaint handling systems in their agencies.
- 3.48 The Ombudsman also has been examining the methods by which complaints may be resolved - in particular alternative and additional dispute resolution systems. An early step on this path was to seek to increase substantially both the level and the success rate of conciliation of complaints about the police. The Joint Parliamentary Committee on the Office of the Ombudsman in its April 1992 report on Investigating Complaints Against Police adopted virtually all the points made by the Ombudsman in relation to conciliation (see Report P23ff). The lessons learned from this initiative should be capable of productive application elsewhere.

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- 3.49 Conciliation is closely linked to mediation and the Ombudsman has examined the capacity of the latter to resolve complaints in certain circumstances. The process is likely to be useful in situations where the complaint has the character, or contains a significant element with the character, of a dispute. The Ombudsman and another officer have undergone training for accreditation as mediators.
- 3.50 It should be noted all the initiatives in relation to CHIPS, conciliation and mediation have been undertaken entirely from within the budget of the Office.

FUNDING AND RESOURCES

SECTION FOUR

- 4.1 It cannot be stated too often that the essential and fundamental hallmark of an Ombudsman is his independence from the executive government. As noted in his special Report to Parliament on the Independence and Accountability of the Ombudsman (issued on 19 July 1990)

The ultimate control which any executive has over a public official is the power to control his budget. Whilst the Parliament is responsible for passing the annual Appropriation Bills it is the executive which has control over the whole process leading up to the presentation of this legislation to the Parliament.

- 4.2 In his further report on the Effective Functioning of the Office of the Ombudsman (issued on 21 July 1991), the Ombudsman emphasised that, at a time of rising complaint levels, the failure to guarantee sufficient funding and resources in the budget of his Office, was effectively leading to an erosion of his independence. This trend is continuing and will be exacerbated if current proposals to extend his jurisdiction and functions are not properly resourced.

COMPLAINT STATISTICS AND TRENDS

- 4.3 Table 4.1 shows the number of and % changes in complaints received between 1988-89 and 1991-92, including FOI complaints.

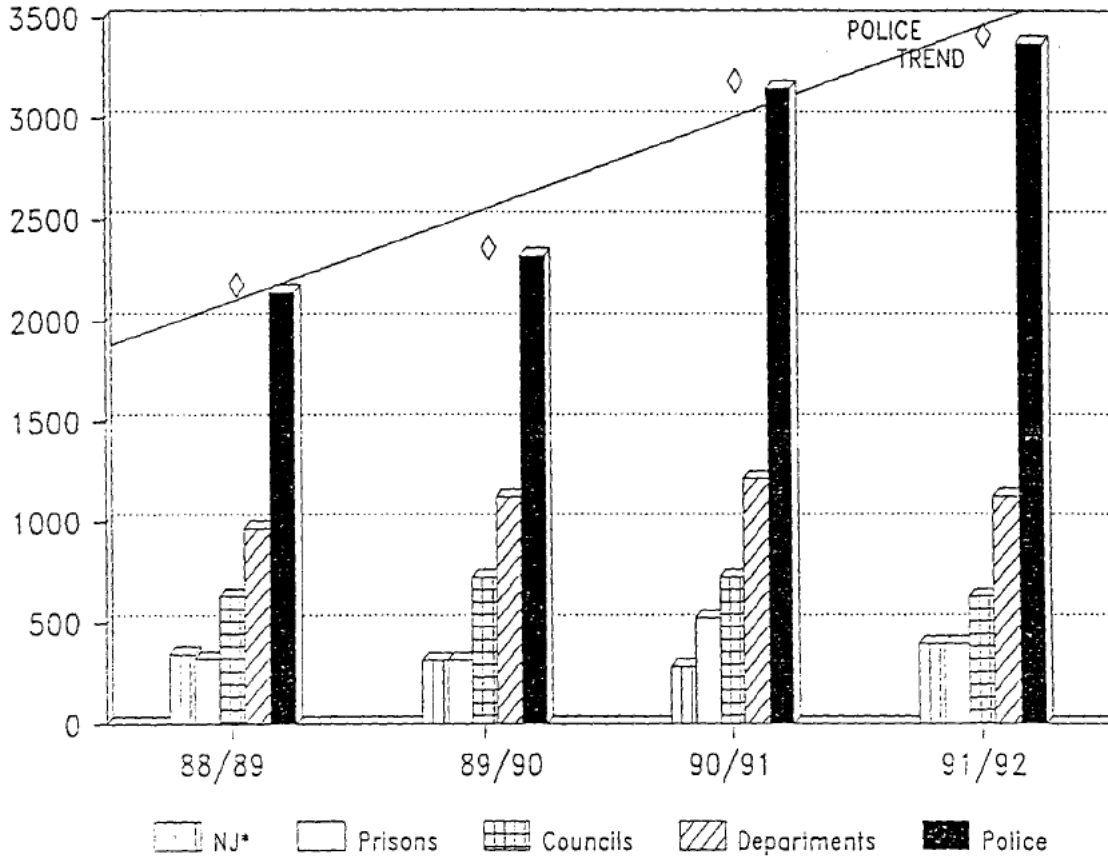
(1) Table 4.1				
Complaints Received - Comparison of Authorities 1988-1992				
	1988-89	1989-90	1990-91	1991-92
Department	969	1124	1214	1125
Councils	633	728	728	629
Prisons	321	313	522	393
Police	2144	2352	3152	3375
Outside Jurisdiction	345	314	280	393
Totals	4712	4831	5896	5915
% change from previous year		+9.5%	+22.0%	+0.3%

(1) Several figures vary slightly from those published in the Ombudsman's report of 21 June 1991 following a reconciliation of manual and computer records.

4.4 Figure 4.2 presents the above information in graph form highlighting the trend in police complaints.

Figure 4.2

COMPLAINTS RECEIVED



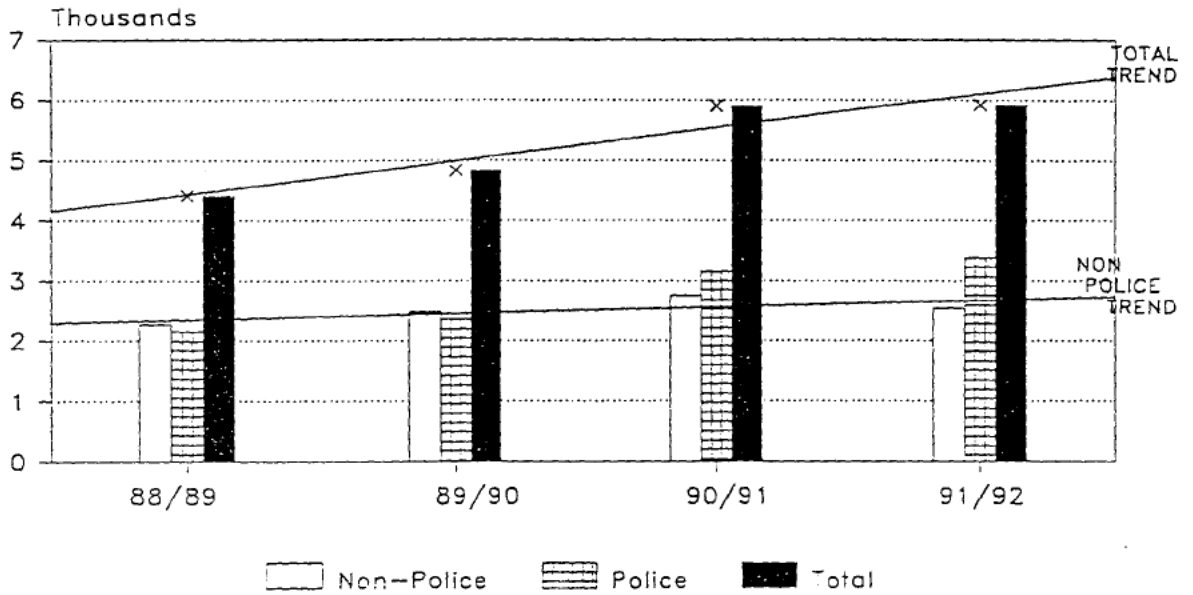
*no jurisdiction

4.5 Figure 4.3 shows a comparison of trend lines for non-police complaints and total complaints for the same period.

Figure 4.3

TRENDS

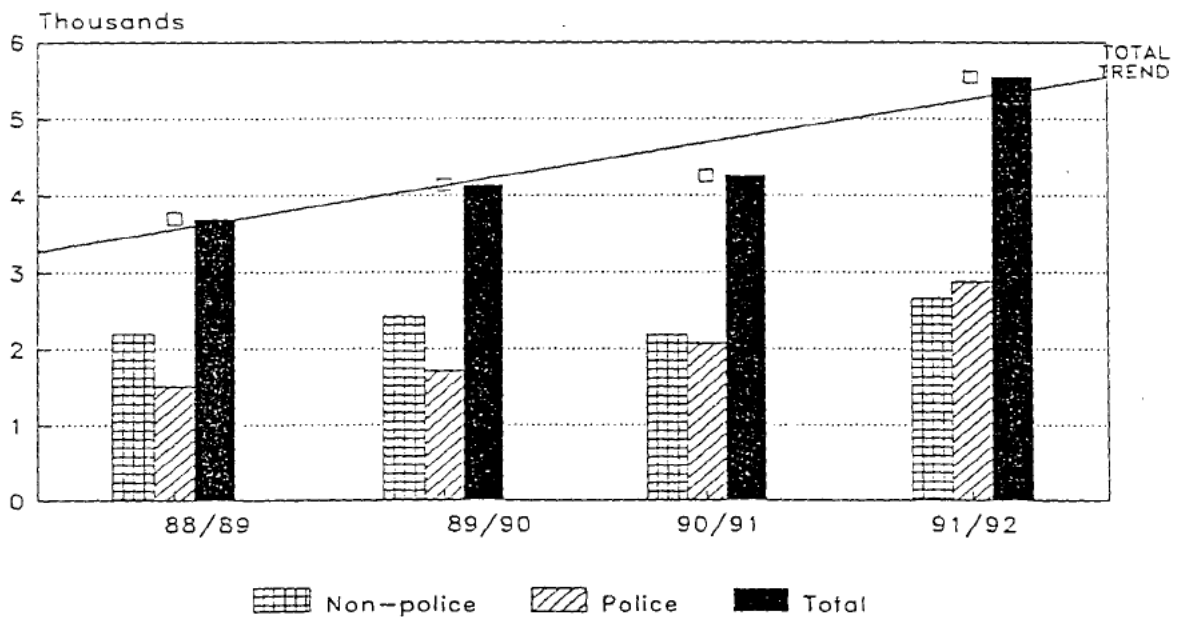
Police and non-police complaints



4.6 The comparative effect of the the Ombudsman's stringent new guidelines for declining complaints (referred to in detail in Section Three) is shown by the following chart.

Figure 4.4

FULL INVESTIGATION DECLINED



ALLOCATIONS

- 4.7 Table 4.5 shows actual appropriations (as opposed to Estimates) from the Consolidated Fund for the Office of the Ombudsman for the years 1988-89 to 1991-92 together with the allocation advised by the Treasury for 1992-93:

Appropriation from Consolidated Fund - recurrent services				
1988-89	1989-90	1990-91	1991-92	1992-93 Est
\$000	\$000	\$000	\$000	\$000
3,470	4,857	4,107	4,246	4,237

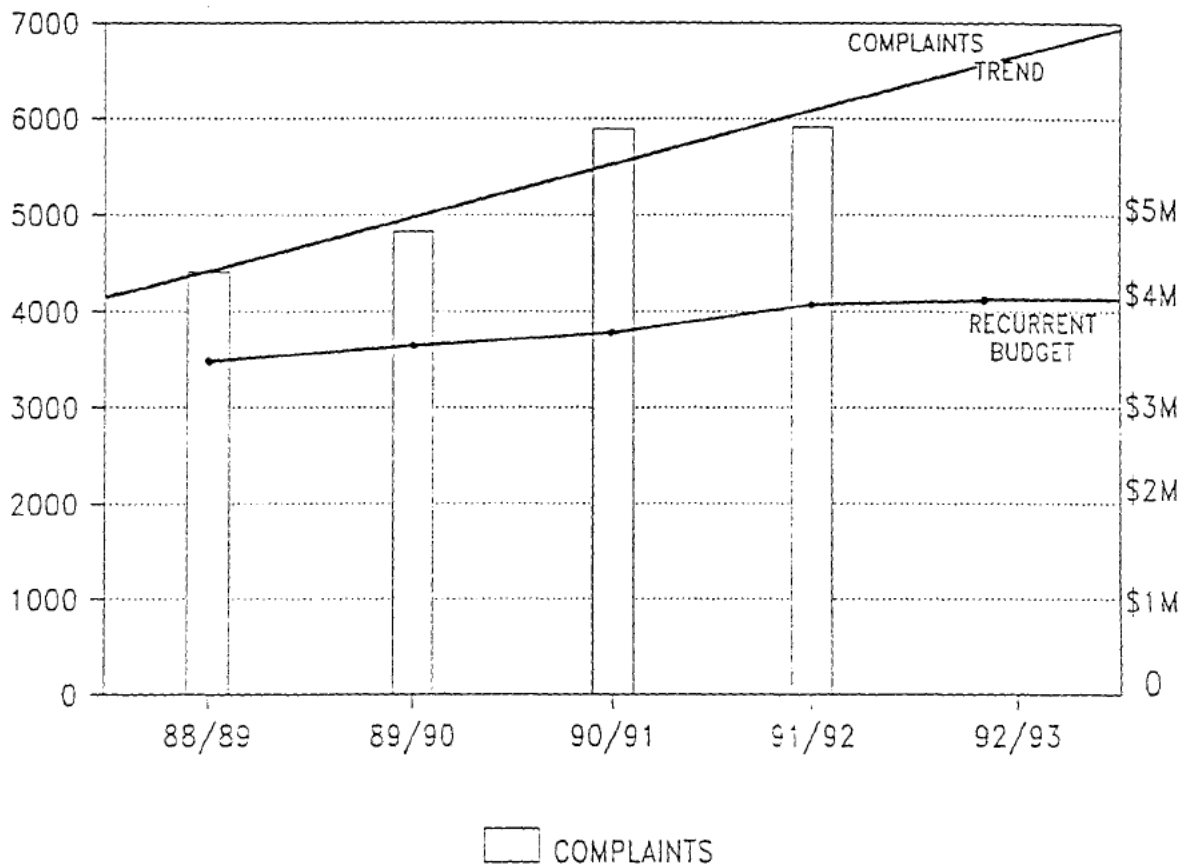
- 4.8 To obtain a fair idea of funding for the recurrent services of the Office, taking as the base year 1988-89, the appropriations must be adjusted to take account of the following:
- Funding for FOI, first introduced in 1989-90;
 - a capital works payment of \$971,000 and a one-off rent payment of \$155,000 in 1989-90 consequent upon the relocation of the Office;
 - supplementation of \$173,000 in 1990-91 to cover the cost of the prisons inquiry, special litigation and the introduction and implementation of accrual accounting, and supplementation of \$67,000 in 1991-92;
- 4.9 The following table shows the adjusted level of funding for recurrent services for 1988-89 to 1991-92, as well as estimates for the current financial year:

Comparative Funding for Recurrent Services					
	1988-89	1989-90	1990-91	1991-92	1992-93 Est
	\$000	\$000	\$000	\$000	\$000
Appropriation	3,470	4,857	4,107	4,246	4,237
Less FOI		123	123	123	123
Fit-out		971			
Rent provision		155			
Supplementation			173	67	
Totals	3,470	3,608	5,811	4,056	4,114

4.10 When these adjustments are made, it is clear that the funding of the Office is no longer sufficient for the Ombudsman to deal adequately with the rising level of complaints which he is receiving and to maintain a proper level of services as illustrated by Figure 4.7 which compares the trends of complaints and relevant funding.

Figure 4.7
Comparison complaints and recurrent funding

COMPLAINTS RECEIVED COMPARED WITH FUNDING FOR RECURRENT SERVICES



PRODUCTIVITY SAVINGS

4.11 The most serious and continuing erosion of the funding base of the Office has been caused by the repeated imposition of productivity savings, commencing in 1988-89. The Ombudsman recognises the government's policy imperative of making and maintaining across-the-board savings in the public sector, although the description "productivity savings" is largely a misnomer for a process that involves a purely arbitrary reduction in the level of appropriations.

Treasury's repeated insistence that productivity savings are to be achieved by improved procedures and administrative arrangements to reduce the unit costs of services "and should not involve service reduction" does not recognise the limits to efficiency gains which can be achieved. Quite simply, the Ombudsman is now unable to maintain services to the public and has in fact had to reduce the level of services. The following table forcefully demonstrates the cumulative effect of productivity savings since 1988-89 on the Ombudsman's budget.

	1988-89	1989-90	1990-91	1991-92
	\$	\$	\$	\$
	50,000			
		53,000		
			47,000	
				55,000
Totals	50,000	103,000	150,000	205,000

- 4.12 In the Forward Estimates for 1992-93, Treasury advised that productivity dividends had been maintained at 1.5% for that year and the two forward years, but that consideration would be given to imposing a surcharge for agencies deemed capable of delivering additional payments, or a discount where it was considered an agency had exhausted efficiency improvements options and faced an increased demand for its services.
- 4.13 The Ombudsman's request for relief from further productivity savings in 1992-93 and forward years was refused. Required productivity savings in 1992-93 appear to amount to a further \$40,000.

RENT AND RENT REVIEW

- 4.14 In his second reading speech on the Ombudsman Bill, the Minister of Justice said:

The Government has decided that the Ombudsman and his staff should be provided with accommodation separate and distinct from that occupied by any section of the administration.

- 4.15 The provision of such accommodation recognises not only that the Ombudsman is independent of the administration of those public authorities over which he has jurisdiction but that he is seen to be so. In support of this, a former Ombudsman was able to negotiate a covenant in respect of premises previously occupied by the Office, restricting the lessor from leasing space in the premises to any state public authority.

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- 4.16 It is hard to understand, therefore, why the Ombudsman should be subject to a single occupancy tenancy threshold of \$100,000 in respect of rent increases, as detailed in the report on the Effective Functioning of the Office of the Ombudsman. The effect of this rule is that the Office must meet any rental increases under \$100,000 from within its annual recurrent funding. For this reason the Ombudsman's request in 1990 for supplementation in respect of a rent review due on 1 March 1991 was refused. The ultimate cost of this rent review was \$24,998 for the 1990-91 year and \$72,115 for the full year of 1991-92.
- 4.17 In January 1992, as part of a further maintenance dispute lodged with Treasury, the Ombudsman again sought funding for a further rent review due in March 1993 and 1995 of \$29,000 in 1992-93, \$88,000 in 1993-94 and \$122,000 in 1994-95. On this occasion Treasury advised that this request had been approved by the Premier and Treasurer on the basis that it was funding for the maintenance of existing activities, not enhancement (supplementation).
- 4.18 Yet, Treasury refused a subsequent request by the Ombudsman to also adjust the maintenance budget to take account of the full cost of the previous rent review for the 1991-92 year. The result is that the Office's funding base has effectively been eroded by \$72,115 and this effect continues into forward years.

RESOURCE BASE AND EXISTING FUNCTIONS

- 4.19 The historically high level of complaints received in 1990-91 continues as a plateau in 1991-92 and has contributed, together with productivity savings and the failure to increase the Office's maintenance budget to an erosion of the Office's resource base. This has had a particular and direct effect on the exercise of the Ombudsman's functions under the Ombudsman, Police Regulation (Allegations of Misconduct) and FOI Acts.

OMBUDSMAN ACT

- 4.20 The direct effects are:
- more complaints are either declined at the outset or after minimal preliminary inquiry
 - fewer complainants are investigated
 - complaints which affect only the complainant have little chance of proceeding to investigation
 - resources available to investigate complex complaints, or complaints requiring expert assistance under S.23 are almost non-existent
 - S.19 inquiries are being drastically restricted.

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT

4.21 The direct effects are:

- more complaints are either declined at the outset or after preliminary inquiry and fewer are investigated
- the Ombudsman's discretion to take over the investigation of a complaint under S.24A after the expiration of the "relevant period" is rarely exercised
- re-investigations under S.25A have dropped markedly.

FOI Act

4.22 While more resources should be applied to FOI investigations because of the complexity of the FOI Act and exemption clauses under Schedule 1, actual resources made available have had to be reduced in recognition of the relative decline in the Office's resource base. This is particularly concerning given that the very nature of FOI matters means that the threshold for the decision to investigate under S.13(1) is more readily reached. Approximately 50% of FOI complaints result in investigations - much higher than in any other jurisdiction of the Ombudsman.

TELECOMMUNICATIONS (INTERCEPTION)(NEW SOUTH WALES) ACT

4.23 This function is quite different from any of the Ombudsman's other jurisdictions, is separately staffed and accommodated and is, presently, adequately funded.

IS THE OFFICE OF THE OMBUDSMAN DEMAND DRIVEN?

4.24 In his report on the Effective Functioning of the Office of the Ombudsman the Ombudsman noted⁽⁵⁾ that no complaint-handling agency has unlimited resources and all such agencies must be responsible for setting priorities for the commitment of resources and must also recognise that there will be fluctuations in the level and mix of complaints. Nevertheless, the Ombudsman made the point that the Office is essentially demand driven, in that it has virtually no control over, and must respond to, the level and nature of complaints it receives.

4.25 In a response to the request for additional funding by the Ombudsman in his special Report, also tabled in the Legislative Assembly, the Secretary of the Treasury stated:

The meaning of the term "Demand Driven" is that the agency has no control over the increase in activity and the cost per unit. An example of a Demand Driven agency is the Department of School Education, where an increase in pupil number creates an immediate commensurate funding requirement. Another example is pensioner water rates rebates, an increase in eligible pensioner creates an immediate cost. (emphasis added)

and later:

(5)

21 June 1991 p.10

Unless some valid methodology is developed which shows a direct relationship in terms of input of resources/output of investigations an increase in budget funding will not be supported. (emphasis added)

- 4.26 In a further letter to the Ombudsman on 15 August 1991, a copy of which he sent to the Chairman of the Committee, the Secretary of the Treasury repeated his definition of the concept of demand driven. In an attached document headed Appendix-Detailed Response to Ombudsman letter of 30 July 1991, the Treasury developed this theme:

In regard to the maintenance dispute and the issue of whether the Office of the Ombudsman is demand driven, it would appear that the use of the term and its applicability has been misunderstood by the Office. In your special report and in your response to the forward estimates it has been argued that the Office of the Ombudsman is "demand driven" and that additional funding should flow from the increases in activity within the agency. In fact the term "demand driven" in the context of the budget process refers to a **limited range of areas where there is an existing government commitment to a formula based service**, examples of which are provided in the Treasury response to the special report. The term does not mean that there is a government commitment to provide additional funds to agencies faced with increased workloads. (emphasis added)

- 4.27 Treasury's reference to "valid methodology" seeks to impose an impossible test on the Office of the Ombudsman. It demands a quantitative measure of "output of investigations" but arbitrarily denies the relevance of the one quantitative factor readily available, ie, the actual number of complaints. What remains are factors which, being essentially qualitative, defy quantitative measurement and for each complaint these include:

- the decision reached on the complaint
- acceptance of outcome by complainant and public authority.
- complexity of investigation process
- the public interest

- 4.28 In fact, Treasury's definition of "demand driven" appears somewhat shifting. On the one hand it refers to an agency "that has no control over the increase in activity and the cost per unit," which would clearly encompass the Office of the Ombudsman. On the other hand, it refers to "a limited range of areas where there is an existing government commitment to a formula based service", which suggests the lack of such a government commitment to the Office of the Ombudsman.

- 4.29 Treasury seems to resolve the dilemma by the implicit suggestion that the Ombudsman has control over inputs (complaints) by use of S.13(4)(a) Ombudsman Act i.e. that in deciding whether or not to investigate any particular complaint, the Ombudsman may have regard to "such matters as he thinks fit" which must include available resources, or the lack thereof.

- 4.30 The result, however, as noted at paras 2.56 and 3.28ff is that complaints which merit investigation are declined and this trend is becoming worse, as Figure 4.4 graphically illustrates.

4.31 Essentially, Treasury's position requires the Ombudsman to acquiesce in some combination of:

- a rising level of the minimum intrinsic merit required before a complaint will be investigated
- a falling level of resources that can be applied to each investigation
- a decreasing number of complaints on which a positive finding in terms of S.26(1) can be made
- a reduction in the accessibility of the Office to disadvantaged groups such as Aborigines, persons in custody, migrants and country residents.

MAINTENANCE DISPUTE

4.32 In this situation, the Ombudsman lodged a further maintenance dispute with Treasury on 31 January 1992, based on the Forward Estimates as advised by Treasury and notified Treasury of the following projected deficits.

1992-93	1993-94	1994-95
\$000	\$000	\$000
468	671	776

4.33 The Ombudsman sought the following additional funds:

- \$46,000 for an appropriate level of visits to gaols and juvenile institutions
- \$21,000 for public awareness visits to country areas
- \$25,000 for temporary assistance staff to replace officers involved in preparing submissions for the Joint Committee.

The balance of funds sought to cover the projected deficit involved increases in employee related payments and provision for further rent reviews.

4.34 With the exception of funds for further rent reviews, the maintenance dispute was unsuccessful, although it appears that in its submission to the Premier's Department, accidentally released by that Department to this Office, the Treasury supported additional funding for visits to persons in custody and temporary assistance, while initially not supporting rental increases.

SURVIVAL STRATEGY

4.35 Faced with a projected deficit of historic proportions, and following exhaustive discussions with senior officers, the Ombudsman concluded that the only method of ensuring a minimum level of services to the public was to adopt a "survival" strategy based on cutting costs as and when opportunities arose. He also sought expert consultant advice which confirmed the suitability of such a strategy as a short to medium term option, despite its drawbacks. Accordingly, the Ombudsman has:

- encouraged base grade staff to seek transfer to other authorities - at least three positions will have to be left unfilled - though without success
- notified staff that some voluntary redundancies will be offered if transfers are unsuccessful

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- not replaced officers, including the Executive Officer, a senior FOI investigator and other staff taking maternity leave or leave without pay
 - only filling other vacant positions where strictly necessary
 - slashing training, travel and other provisions.

4.36 This strategy cannot continue past the end of this financial year. It is already having an adverse impact on staff who routinely work excessive hours for no additional reward. The impasse as to funding must be resolved.

ADDITIONAL RESOURCES : NEW INITIATIVES

4.37 In its Report on the Role of the Office of the Ombudsman in Investigating Complaints Against Police, the Committee noted that it:

... believes that there is an urgent need to create a statutory framework which will help to refocus existing resources to the areas of greatest need rather than spread these resources thinly across all inquiries such that very few are adequately dealt with.

- 4.38 Many of the Committee's recommendations were directed to revamping the Police Regulation (Allegations of Misconduct) Act - the most obvious example of refocussing being the recommendations designed to increase the number and nature of complaints being conciliated. There is no doubt that the Committee's proposals, if implemented, will see a re-ordering of priorities and of resources within the Office of the Ombudsman.
- 4.39 While several of the reforms recommended by the Committee - such as an increase in conciliations and the Ombudsman's discretions to monitor the progress of police internal investigations and consulting with police investigators by being present during investigations and to directly investigate complaints in the public interest - may be revenue neutral, the continuing rise in the level of police complaints may in fact lead to an increase in resources needed.
- 4.40 Although the Ombudsman was given jurisdiction as recently as 1991 over state-owned corporations within the meaning of the State Owned Corporations Act, complaints against such public authorities are routinely declined in accordance with S.13(4)(b)(iii) - the discharge of a function which is substantially a trading or commercial function - although the real constraint is lack of resources.
- 4.41 Similarly, the Ombudsman was given jurisdiction over 127 Aboriginal Land Councils in 1991, yet complaints regarding such authorities are being declined because of a lack of resources.
- 4.42 When the Local Government (Consequential Provisions) Bill 1992 is passed, the Ombudsman will have FOI jurisdiction over all 217 local government authorities in the state, not merely over complaints concerning determinations in respect of documents relating to personal affairs. The repeal of S.16(2) FOI Act will increase the burden on the Ombudsman's already stretched FOI officers as more complaints are received.
- 4.43 If the Ombudsman is to expand his services to meet demand from young persons, particularly those in juvenile detention centres, on a planned basis, and if a further Deputy Ombudsman is to be appointed, adequate funding must be provided.

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- 4.44 Similarly, proposed initiatives under the Government Publicity Control Bill must be properly funded. This legislation creates a wholly new function for the Ombudsman and if the Government Publicity Committee is to function properly some form of secretariat will be needed which will result in some diversion of resources from the Ombudsman's Office (as well as from the Electoral Commissioner and Auditor-General). This must be funded.
- 4.45 The Whistleblowers Protection Bill provides protection for public officials who disclose maladministration to the Ombudsman and to this extent the legislation will serve as an encouragement for disclosures to be made, leading to an inevitable increase in complaints to the Ombudsman. Such a trend would also be exacerbated by Part 4 of the Bill which provides for the referral of matters by other investigating authorities.

INCREASED ADMINISTRATIVE COSTS

- 4.46 Apart from struggling to deal with the investigative workload generated both by high complaint levels and the increasing complexity of the more difficult complaints, the work of the Office has been augmented by additional external demands made on administrative staff. The additional demands usually arise from requirements to calculate and provide additional information in existing accounting and human resources areas or to generate information relating to previously unreported areas.
- 4.47 Most of these demands are imposed by central agencies such as Treasury, the Premier's Department, the Office of Public Management and the Department of Industrial Relations. Some demands arise from new Federal Government requirements, such as introduction of a new FBT tax regime, and the Training Guarantee Act. Some of the demands are essentially "one-off" in nature but many will make continuing calls on the resources of the Office, often after imposing a significant "start-up" cost. It goes almost without saying that in contrast to the frequency of new demands, central agencies seem almost never to relinquish any of their existing requirements.
- 4.48 In rare instances additional funding is provided to meet some of the cost of new demands. An example is the change to accrual accounting for which the Office received \$30,000 in supplementation.
- 4.49 The increase in the requirements of central agencies results in the need for a greater level of experience and responsibility in administrative staff leading in turn to the necessity to upgrade existing positions with a consequent increase in staff. Table 4.9 (on the last page of this section) provides a good example of this.

Treasury's bland response to this development is that these increased costs must be met from within the Office's existing budget.

EQUITY AND ACCESS

4.50 In his special report of 21 June 1991, the Ombudsman said:

The availability of information about and access to services provided by the Ombudsman are matters of fundamental equity and fairness.

and detailed (at sections 6 and 7) the nature of and funding required for public awareness visits to provide access to his Office for disadvantaged groups.

4.51 If you are Aboriginal, from a non-english speaking background, in custody, live outside the Sydney region or lack written communication skills then your access to the Office of the Ombudsman is being curtailed by the erosion of the Ombudsman's resources.

Table 4.9

Administrative Area - staff changes

position	original grade	salary	date upgraded	new grade	new salary	Annual amount	Oncost	Total 1992/93
Executive Officer	Clerk 9/10	47,892	Nov-90	Clerk 11/12	58,132	10,240	1,536	11,776
Human Resource Manager	Clerk 4	31,117	Jul-89	Clerk 5/6	37,016	5,899	885	6,784
Human Resource Manager	Clerk5/6	37,016	Nov-90	Clerk 7/8	42,202	5,186	778	5,964
Financial Accountant	Clerk 5/6	37,016	Nov-89	Clerk 7/8	42,202	5,186	778	5,964
Administrative Clerk	Grade 1/2	27,636	Nov-89	Clerk 2/3	29,277	1,641	246	1,887
Clerical Officer Grade 1/2	Typist				24,093	24,093	3,614	27,707
Additional Staff *								
Clerical Officer Grade 1/2						22,423	3,363	25,786
								85,868

* this position is not permanent - due to staff absences on extended periods of leave, approval was given to employ an extra CO 1/2

DECLINE POLICY FOR COMPLAINTS TO THE OMBUDSMAN

APPENDIX A

PURPOSE

1. The purpose of this policy is:
 - To provide guidelines for exercising the discretion not to investigate.
 - To provide guidelines for the form and content of decline letters.
 - To set goals for greater efficiency in declining complaints at the outset.

PREAMBLE

- 2.1 The public have a right to make complaints to the Ombudsman under both the Ombudsman Act, the Police Regulation (Allegations of Misconduct) Act and the Freedom of Information Act. There are insufficient resources, however, to investigate all matters, including many that appear to have merit.
- 2.2 Given an increasing complaint load and declining resources, the public interest is best served by giving priority to those complaints that identify systemic and procedural deficiencies in administration. Greater resources must also be made available for formal investigations and complex enquiries if the Office is to achieve effective results from its investigation work.
- 2.3 Consequently, a significant and increasing number of complaints coming to the Office will have to be declined in the Ombudsman's discretion. This discretion has to be exercised with great sensitivity and fairness. Even in declining complaints, we must strive to provide a service to those with legitimate grievances.

PRINCIPLES

- 3.1 The following principles apply:
 - Priority is to be given to complaints that identify systemic and procedural deficiencies in public administration and individual cases of serious abuse of powers.
 - Preference is to be given to complaints that, if investigated, are likely to lead to practical and measurable changes through recommendations.

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- Generally, the Ombudsman should be an avenue of last resort:

- complaints are expected to, and are to be encouraged, to take up individual grievances with the public authority concerned before asking the Ombudsman to investigate.

- alternative and satisfactory (to the Ombudsman) means of redress are to be used.

- The lack of resources, both human and financial, is an essential consideration in the exercise of the discretion not to investigate.

DECLINE GUIDELINES

- 4.1 Due regard must be given to section 12 of the Ombudsman Act and section 5(3) of the Police Regulation (Allegations of Misconduct) Act in assessing each complaint. Any complaint that is not a complaint within the meaning of either Act or is outside jurisdiction must be automatically declined.
- 4.2 Section 13 of the Ombudsman Act and Section 19 of the Police Regulation (Allegations of Misconduct) Act provide in similar terms a discretion by the Ombudsman to decide whether or not to investigate a complaint. In making that decision he may have regard to such matters as he thinks fit including matters to do with triviality, vexatiousness, frivolousness, bad faith, remoteness in time, alternative means of redress, personal interest, and in the case of the Ombudsman Act, whether the subject matter of complaint is substantially a trading or commercial function.
- 4.3 All decisions made to decline or discontinue investigations are to be made in the public interest and in accordance with these guidelines.
- 4.4 Complaints that are frivolous, vexatious, not in good faith or which are trivial, are to be automatically declined.
- 4.5 ALL complaints relating to the discharge by a public authority of a function which is substantially a trading or commercial function are to be declined. This includes complaints relating to conflicts with public authorities over leases, tenders and other contracts unless there is prima facie evidence of a pecuniary interest, conflict of interest or possible corruption. It does not apply to complaints by public housing tenants concerning the conduct of the Department of Housing as landlord, although there may be other bases on which such complaints might be declined. Complaints concerning the G.I.O. and other bodies that provide non-monopolistic services in the open market should also be declined on this basis.
- 4.6 All complaints relating to conduct more than 6 months old as at the date of complaint are to be declined.
- 4.7 All complaints in respect of which there is or was available to the complainant an alternative and satisfactory means of redress are to be declined. This includes:-

- conduct where there is an internal appeal mechanism available.

-all complaints concerning the conduct of local government authorities in respect of which there is a right of appeal or review including Class 4 appeals to the Land and Environment Court unless the Assistant Ombudsman responsible for Local Government complaints or the Ombudsman concludes that "special circumstances" exist in terms of section 13(5). Complaints where no special circumstances exist must be declined as they are outside jurisdiction.

-conduct where substantial economic loss is claimed and restitution is only likely as a result of litigation.

- 4.8 All premature complaints, complaints involving minor misconduct which have no widespread implications, and complaints in respect of which the complainant has no direct interest or an insufficient interest are to be declined.

DECLINE LETTERS

- 5.1 Whether at the outset or after preliminary enquiries, every decline letter must
- be prefaced by an explanation of Ombudsman receiving far more complaints than he has resources to investigate and that priority is given to those matters that identify systemic and procedural deficiencies in public administration where complainants have no alternative and satisfactory means of redress.
 - give reasons for the decision not to investigate.
 - wherever possible, provide an explanation or references to relevant legislation, policy or procedures affecting the public authority concerned. If appropriate, provide copies of that relevant material or indicate avenues of access to that material.
 - wherever possible, provide information on avenues of appeal or alternative remedies.

PROCEDURES FOR DECLINING

- 6.1 The Deputy Ombudsman and Assistant Ombudsmen will assess all new complaints and give written directions on 'birth certificates' as to whether a complaint is to be declined at the outset, or whether preliminary enquiries should be undertaken, and if so, in what form. If a complaint is to be declined, an indication of the main reasons will be given. Officers are to expand these reasons into comprehensive explanations.
- 6.2 It must be remembered however, that a discretion is being exercised and if an investigation officer believes there are any grounds for varying those directions they are to discuss them with the assessing officer before further action is taken. Otherwise these assessments are to be treated as directions.
- 6.3 Complaints that are to be declined at the outset need not be acknowledged. Final letters are to be issued, however, within 7 working days of file creation date.

6.4 Preliminary enquiries:-

Written preliminary enquiries in respect of complaints under the Ombudsman Act should only be made when absolutely necessary; greater use is to be made of the telephone for such enquiries. The purpose of telephone enquiries should be:

- (a) To gather further information in order to better assess complaint.
- (b) To enquire if there are avenues for re-consideration/resolution.

Where preliminary enquiries either under the Ombudsman Act or the Police Regulation (Allegations of Misconduct) Act are made in writing, there are to be no further written preliminary enquiries without the approval of the relevant Senior Investigation Officer.

6.5 Complaints are to be declined where, after preliminary enquiries, it appears to the investigation officer that the matter can be satisfactorily resolved either by explanation, or by further action that the public authority is willing to take, and/or the complainant can take.

6.6 Investigations:

No investigation is to be commenced under Section 16 of the Ombudsman Act without the specific approval of the relevant SIO. All section 16 notices under the Ombudsman Act are to be notified to the Principal Investigation Officer for recording purposes. A copy is also to be given to the Deputy Ombudsman or the Assistant Ombudsman wherever relevant. Any section 16 notice that includes a demand under s.18 of the Act has to be referred to the relevant statutory officer for signature. All re-investigations in the police area are to be approved by the Assistant Ombudsman (Police).

6.7 Senior Investigation Officers are to conduct three monthly reviews of all current non police files that are more than 3 months old from file creation date in terms of preliminary enquiries and from date of issue of S.16 notice in matters under investigation. The Deputy Ombudsman and Assistant Ombudsman (Prisons and Local Government) will review all non-police files unresolved after 6 months from file creation date or date of issue of S.16 notice in the case of investigations on a tri-annual basis.

DETERMINATION CATEGORIES

7.1 Statistical reporting on disposal of complaints should reflect the amount of work/assistance provided to complainants by this office.

7.2 Determination categories for complaints are to be as follows:

NJ complaint is not within the Ombudsman's jurisdiction. (includes referrals to Commonwealth Ombudsman, Banking Ombudsman, Consumer Affairs, etc.)

DECO1	13(4)(b)(i) - frivolous, vexatious or not in good faith (ii) - trivial (iii) - trading or commercial (iv) - too remote in time (more than 6 months) (vi) - complainant has no or insufficient interest
DECO2	13(4)(b)(v) - alternative means of redress 13(5) - right of appeal in local government matter
DECO3	explanation/advice provided (eg, relevant legislation or conduct of public authority explained, no prima facie evidence of wrong conduct, referred to legal adviser to explore other remedies, general advice given on how to deal with problem)
DECO4	premature & referred to public authority for internal complaints resolution
DECO5	declined on resources/priority basis
DECE1	complainant assisted (same as DECO 3 but after preliminary enquiries)
DECE2	complaint withdrawn; insufficient evidence or no utility warranting investigation
DECE3	investigation declined on resources/priority basis
RES	outcome of written or telephone preliminary enquiries considered to have resolved complaint to satisfaction of Ombudsman
DISC 1	Complaint discontinued after issue of s.16 due to matter being resolved
DISC 2	Complaint discontinued after issue of s.16 as no utility in proceeding
DISC 3	Complaint discontinued after issue of s.16 as complaint withdrawn
NWC	No adverse findings
WC	Conduct falling within s.26(1)

APPENDIX 3

*Ombudsman's Second Submission,
dated 7 December, 1992*

Office of the Ombudsman

2nd
Submission
to the
Joint Committee
on
the Office of
the Ombudsman

**Inquiry into the Adequacy
of the Funds and Resources
Available to the Ombudsman**

7 December 1992

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PART 1 INTRODUCTION

1.1 This submission provides further information to the Parliamentary Joint Committee on the Office of the Ombudsman in relation to its inquiry into:

- ◆ the adequacy of the funds and resources available to the Ombudsman to perform his duties effectively.

1.2 It is in addition to the comprehensive submission of the Office dated 28 August 1992. In addressing the adequacy of funds, this submission specifically looks at the issue of *effectiveness* relating to the

- ◆ political
- ◆ economic
- ◆ social and
- ◆ legal

factors which impact on the Office of the Ombudsman.

The submission also discusses two of the main issues raised during the evidence of other witnesses before the Committee -

- ◆ the lease at the Coopers & Lybrand building and
- ◆ the suggestion to charge public authorities for the investigations conducted by the Ombudsman.

The submission concludes by outlining the most pressing funding needs of the Office.

PART 2 THE EFFECTIVENESS OF THE OFFICE OF THE OMBUDSMAN

- 2.1 *Effectiveness* for the purpose of the submission refers to the extent to which the Ombudsman offers a *value for money* service to its clients. In this context, *clients* mean the key stakeholders of the Office of the Ombudsman - the Parliament, the community and government agencies who provide services to the Office, or are the subject of investigation by the Office.
- 2.2 In judging the effectiveness of the Office it is re-emphasised that performance standards or indicators cannot always be subjected to quantitative analysis. In providing this information it is also noted that central agencies have not provided a set of standards or benchmarks for the whole of the public sector on which agencies can model their own systems and make judgements about performance.

POLITICAL FACTORS

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- 2.3 **The Ombudsman, as an independent Officer of the Parliament, provides leadership in promoting and upholding the principle of an ethical and accountable public administration.**
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- 2.4 During the last ten years, governments increasingly have embraced concepts of corporate management and economic rationalism to counter a growing debt burden and limited availability of resources. Key principles of the corporate management model include clear objectives, wide administrative discretions for letting the managers manage, management incentives, performance monitoring and competitive neutrality. Increased accountability of governments and bureaucracies to their constituents has been identified as a cornerstone of the public management reform process. The Ombudsman supports the corporate management model but is aware that two major issues for the Office at a political level emerge in this paradigm.
 - 2.5 In an external sense, devolution of authority away from central agencies to operating agencies and the encouragement of risk management practices within agencies almost inevitably results in an increased incidence of official mistakes and a consequent rise in the number of complaints. The Ombudsman has an important role to play in this context, by being a credible and visible independent investigator and mediator who can uphold the principle of accountability in an apolitical sense. By bringing issues of maladministration to notice and recommending remedial action the Ombudsman makes a significant contribution to public policy development and implementation.
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- 2.6 However, there is an inevitable conflict between the advent of risk management principles in the public sector and the wish of citizens for redress of their individual grievances on the one hand and the ability of the Ombudsman, in a climate of declining resources, to deal with individual complaints. The necessity to develop a vigorous policy for setting priorities in the use of resources has increasingly led to a focus on investigating complaints which raise systemic issues.
- 2.7 Governments, while not always welcoming the contributions of the Ombudsman, are provided with an early warning system about negative and potentially damaging aspects of their administration. Parliament as an institution promoting the ideals of responsible government can also be seen to be providing the appropriate independent controls on, and standards for, governments which the community now demands. Like the ICAC and other independent bodies established by governments with special briefs to watch over the public arena, the Office of the Ombudsman has a crucial role to play in maintaining the integrity of a parliamentary system of government.
- 2.8 Measurement of effectiveness in the role of the Ombudsman relevant to political factors is problematic yet goes to the very heart of the concept of the independence of the Ombudsman. In attempting to address a complaint, the Ombudsman can become involved in the political arena in issues which may not have bipartisan support. In this sense, the political objectives of governments may conflict with the objectives of the Ombudsman to provide checks and balances on public administration. Effectiveness of the Office is therefore difficult to measure and indicators of success are open to debate.
- 2.9 To date the Office has concentrated on efficiency indicators and is yet to develop a comprehensive set of indicators of effectiveness. One outcome of the current inquiry of the Joint Committee will hopefully be the development of a meaningful performance monitoring framework, ensuring a consistent approach to evaluating performance. For example, one way of qualitatively judging performance in the political arena could be:
- ◆ to survey Parliamentary members, say every two years, to determine their perceptions of the Office of the Ombudsman.
- An indicator of performance could be:**
- ◆ the percentage differential, over time, of the rating of the Office of the Ombudsman as credible and essential.
- 2.10 Public agencies in North America pursuing a strategic client focus regularly use surveys of internal and external constituents as indicators of performance. Surveys are legitimate ways of obtaining feedback from constituents that allow managers of public agencies to make enhanced determinations about priorities, resource allocation, efficiency, effectiveness and economy. The NSW Treasury itself recently recognised the essential need to survey its clients.

In recent years the Office has requested additional funding to undertake surveys of its constituents, but to date funding has not been forthcoming. A recommendation by the Office's Treasury Inspector for approval of such funding, in response to the maintenance dispute for 1991-1992, was not acted upon.

- 2.11 Another way to determine effectiveness is to analyse qualitative case study material outlining the changes which have occurred as a result of Ombudsman's enquiries and investigations. The 1991 Annual Report attempted to do this. *Constructive Action taken by Public Authorities*, as a result of the intervention of the Office, is briefly described in the Annual Report (1991: 149-156). A similar qualitative approach under the heading *Achievements* has been taken in the 1992 Annual Report. Exemplary case studies, if published annually, could be developed and used by other agencies.
- 2.12 Useful quantifiable indicators of performance are also difficult to develop in this area to determine how the Office provides value for money. Additionally, establishing a cause and effect relationship between certain factors and a stated outcome is equally problematic. For example, one indicator for confirming an increasing workload could be:
- ◆ the trend in the number of complaints.

In this sense, performance indicators can be developed to act as a guide to management decision making, but cannot be used as true measurements of performance.

- 2.13 Internally, the Ombudsman needs to operate as a *model agency* in accordance with increased public accountability. In a small Office like the Ombudsman, in comparison to other government organisations such as the Police Service and Corrective Services, the need to respond to central agency and other reporting requirements in the same way as the larger agencies can be an onerous burden for the administration. As outlined in the submission of 28 August 1992, cost cutting exercises already undertaken within the Office have resulted in decreases in the number of staff available to respond to external requirements at a time when government policy demands greater accountability. While wanting to maintain his own Office in exemplary administrative order, the lack of adequate resources makes it increasingly difficult for the Ombudsman to fulfil those obligations.

ECONOMIC FACTORS

- 2.14 The Ombudsman has been particularly conscious of the need to enhance productivity of the Office in accordance with government policy.
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- 2.15 In the financial years 1988-1989 to 1992-1993 the Office has been exceptionally responsive to the requirements of government and has achieved productivity savings totalling \$374,000. However, the Office's capacity to continue to enhance the level of efficiency is diminishing. In reality, each productivity gain potentially reduces the opportunity for further efficiency gains.
- 2.16 The threshold for continuing productivity cuts in a smaller organisation like the Ombudsman's Office obviously will be reached sooner than in larger organisations. Staffing and related costs consume 71% of the Office's budget. Downsizing has already occurred in both administrative and investigative support areas. Further opportunities for cost cutting are non-existent and the functioning of the Office is squeezed to the point where it is in danger of becoming irrelevant, as its capacity to undertake its core business continues to be threatened.
- 2.17 While the Office can provide some quantitative indicators to support an argument for more funds, no benchmark has been established by Treasury or other central agencies to determine an acceptable unit cost. For example, the total Full Time Equivalent (FTE) costs of organisations such as the Police Internal Affairs Branch, the Health Department Complaints Unit, the Anti-Discrimination Board, the Office of the Director of Equal Opportunity in Public Employment, the Guardianship Board, the Cabinet Office, Budget Division of Treasury and the ICAC, whose officers, like the Ombudsman, are required to bring professional judgment to bear in the performance of their duties, are not used as standards for the rest of the public sector.

FTE figures for those agencies are set out later in this submission. If such benchmarks did exist they could be used as a guide on which to base decisions about appropriate levels of funding. In the absence of such standards it is difficult for any agency to compare its financial performance to other agencies or to make substantiated claims that it is seriously under-funded. This is a matter which the Committee should investigate.

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- 2.18 The Ombudsman has already provided detailed financial information, including working papers, as a result of a costing exercise conducted by the Office from which some measurements of unit costs might be made. Comments on the costing exercise as a measure of comparative performance appear later in this submission.
- 2.19 In the New Zealand public sector model of corporate management, for example, chief executives of government agencies are required to identify and to be responsible for the outputs (efficiency) of those agencies. Effectiveness (outcome) is the responsibility of individual ministers and the government. This situation supports a claim that it is difficult, if not impossible, for individual agencies operating in a diverse public sector to develop meaningful, comparative indicators of performance.
- 2.20 It should also be noted that contemporary strategic management literature, while encouraging the development of formal analytical frameworks of performance management, also emphasises the importance of combining formal analytical processes with more informal management decision making processes when assessing performance. In this sense, while indicators can be produced for the benefit of the Committee, attention to recommendations of the Office and other witnesses based on their extensive experience and relevant qualifications is also important.
- 2.21 The role of Treasury in recommending an appropriate financial resource level for the Office must also be questioned. Given that Treasury could be the subject of investigation by the Office there seems to be a fundamental problem when the Ombudsman in effect has to go begging to Treasury for additional resources. The objectives of the agencies are also in conflict. While the Treasury has a broad financial objective of efficiency and economy for the whole of the public sector, the Office of the Ombudsman is responsible for providing a quality service to the community which cannot always be reduced to a dollar value.
- 2.22 Treasury has also suggested that the Office is not demand driven yet the Office argues that it must be able to respond to the public demand for the services of the Ombudsman. As outlined previously, the figures relating to the number of complaints can be seen to have increased significantly between 1988 and 1992. In effect, the Ombudsman has been unable to respond to the demand for service and, in accordance with government economic policy, has been selective in addressing constituents' complaints with the implementation of a rigorous decline policy. The decline rate is clear evidence that management decisions of the Office are made on the basis of demand, not supply. However, with such a high decline rate it is apparent that client satisfaction will also diminish.

SOCIAL FACTORS

- 2.24** The Office of the Ombudsman operates in the public interest as an organisation designed to uphold the principles of democracy, justice and fairness.
- 2.25** In this role, the Office provides opportunities for the community to participate in public life. It is a public good funded by governments to address issues of maladministration both on an individual and systemic basis. The difficulty, of course, arises when trying to put a monetary value on such a public good as a basis for funding decisions. In attempting to identify priority areas, the Office has instituted a corporate planning process as outlined in its previous submission.
- 2.26** In the current economic climate of recession, unemployment and government policy which affects many constituents adversely, it is also likely that the community will expect and demand more from its independent institutions. In this sense, competing demands for the services of the Ombudsman, and other similar institutions, will place additional pressures on the management of the Office. Clearly, the Office is unable to meet the total demand and this is evidenced in the decline rate of complaints. Core activities, as described in the Corporate Strategy (Mission statement and Key Result areas), therefore need to be agreed upon and confirmed. Yet evidence to the Joint Committee suggests that different witnesses emphasise different priority areas.
- 2.27** For example, as a result of limited funding, the Office has chosen to cut back on prison visits as a productivity strategy. Witnesses before the Committee have argued, however, that prison visits and the provision of an adequate service to prisoners are essential aspects of the role of the Ombudsman, particularly his visibility in upholding the principles of his Office. The Ombudsman agrees with this view but in the present economic climate the Office cannot do all that it would wish to do to fulfil its mandate.
- 2.28** The Office's jurisdiction has increased in recent years and its mandate includes responsibility for:
- ◆ general complaints about public agencies at state and local government level
 - ◆ complaints about police
 - ◆ complaints about prisons
 - ◆ Freedom of Information
 - ◆ telecommunications interception inspection.

-
- ◆ general complaints about public agencies at state and local government level
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 - ◆ Freedom of Information
 - ◆ telecommunications interception inspection.

2.29 Suggestions have also been made that some complaints can be dealt with internally by subject departments and the Office has always emphasised the desirability of this course. However, independent investigations and advice also need to be offered by an external body, as internal units operating on the basis of self-scrutiny of an organisation can have difficulty maintaining public confidence. The Internal Affairs Branch of the NSW Police, which has been surrounded by controversy relating to its objectivity and credibility, illustrates this point. The evidence of the Secretary of the Treasury on this point is naive.

2.30 The Office, as outlined in the previous submission, has actually anticipated the government's policy of focusing on customer service (and a service guarantee) with the continuing implementation of its Complaint Handling in the Public Sector (CHIPS) program. By providing advice to other government organisations, the Office is providing another public good which has not been given a monetary value. With the implementation of CHIPS across the public sector there is an obvious cost-benefit even if it cannot be quantified at this stage.

2.31 In the meantime, managing the Office of the Ombudsman involves a balancing act between allocating scarce resources to priority areas while attempting to fulfil the Ombudsman's overall mandate. Additionally, in operating as a public good there is an imperative for the Ombudsman to address the individual and specific needs of minority and underprivileged groups, relating to equity access to services.

2.32 There is, however, a systemic danger with the corporate management model which proposes that only those issues which can be reduced to economic performance indicators will be valued by governments. In this case the inherent and less tangible benefits of services, such as those provided by the Ombudsman to society, will be overlooked. Again, it is extremely difficult to quantify effectiveness in this context. The cost of providing the service could be compared with Ombudsman's Offices in other states but difficulties arise with such a comparison as funding (particularly for rent and administrative support) and services do not correlate. Again, the only real way to determine the value of the service that the Office provides to constituents is:

- ◆ to undertake a survey or conduct focus groups to obtain feedback from constituents.

An indicator of the performance of the Office could be:

LEGAL

2.33 As well as political, economic and social expectations, the role of the Ombudsman is bound by strong formal mandates within an expanding area of jurisdiction:

- ◆ Ombudsman Act, 1974
- ◆ Police Regulation (Allegations of Misconduct) Act, 1978
- ◆ Freedom of Information Act, 1989
- ◆ Telecommunications (Interception) (New South Wales) Act, 1987.

2.34 The legislation provides the framework in which the Office must operate. The Ombudsman and other statutory officers have a legal responsibility to ensure that those mandates are met. This responsibility is not taken lightly within the Office. Unlike many socially oriented agencies, the Ombudsman has limited discretion to include or exclude services and programs. Discretion that does exist relates mainly to the level of service that is provided rather than to the type of service. Yet increasingly the Office has been forced to compromise its mandate and downgrade both the level and type of service on the basis of diminishing resources. Not only is there a risk that the service will become irrelevant but there is also a strong likelihood that the government itself will not be fulfilling the legislative mandate given to the Ombudsman by the Parliament to operate at an effective level and type of service.

PART 3 PERFORMANCE MANAGEMENT

- 3.1 In the past the Office has failed to address adequately the need for corporate and management review. As noted in the evidence of the Secretary of the Treasury and the former Deputy Ombudsman, Dr B Jinks, the former Ombudsman sought exemption in 1987 from the five year performance evaluation program, although Dr Jinks failed to mention it was he who suggested the exemption be sought. In the past two years, however, the Ombudsman has implemented a number of performance management strategies to improve the efficiency and effectiveness of the Office. The principal features are described below.

CORPORATE PLAN

- 3.2 The Committee has already been provided with a copy of the Ombudsman's Corporate Strategy for 1992. The Ombudsman recognises that for a corporate plan to be successful it must be *owned* by staff. The corporate plan was produced over a period of six months in extensive consultation with all members of staff at all stages of its development and represents the first attempt by the Office to deal with a changing environment in any systematic fashion. The plan was developed with the initial assistance of consultants from the Office of Public Management (OPM) who acted as facilitators at the very first workshop in September 1991. At that time the most important factors confronting the Office were the increasing level and complexity of complaints and diminishing resources, both comparative and real.
- 3.3 While recognising the limitations of this first corporate strategy, it has enabled the Ombudsman to more efficiently allocate the scarce resources available to service the identified priorities of the Office, eg, investigating complaints which suggest systemic deficiencies in administration. Nevertheless, it must be recognised there is an inevitable conflict between the setting of priorities and the demands for services, particularly where those services are labour intensive and with relatively high overhead costs, eg, visits to prisons and juvenile detention centres. These tensions highlight the fact that the *efficient* use of resources in such a situation is at best only a comparative one which fails to make any judgment about the opportunity cost of particular uses of resources.
- 3.4 The corporate plan of the Office of the Ombudsman will be reviewed during the month of December by a working group consisting of the statutory officers and senior investigation and administrative staff.

MANAGEMENT REVIEWS

- 3.5 Contrary to the gratuitous suggestion of Mr Baxter in his evidence to the Committee, the Ombudsman is in no way confused about the distinction between the independence and accountability of his Office. The Ombudsman's Office should be independent of the executive government and accountable to Parliament. This was made abundantly clear by the Ombudsman in his Special Report to Parliament on Independence and Accountability on 19 July 1990. In line with the Ombudsman's recommendation in that report, a proper mechanism to ensure a full measure of accountability has been introduced. **This Committee is that mechanism and it exercises its authority on behalf of Parliament, not the government.** That is as it should be and the Ombudsman has responded to every question and issue raised by the Committee in its current inquiry.
- 3.6 Mr Baxter and the Secretary of the Treasury also were wrong to suggest that the current Ombudsman was totally resistant to external management review. The Ombudsman certainly resisted the suggestion that his Office should be reviewed by the Office of Public Management. Firstly, as a matter of principle, the Ombudsman saw a contradiction in a review conducted by OPM, itself a public authority subject to the Ombudsman's jurisdiction. Secondly, the Ombudsman believed that the decision for OPM to conduct a review had been made following, and in the context of, a dispute between the government and the Ombudsman concerning procedures adopted by the Office in carrying out its investigations.
- 3.7 Attachment 1 of this submission is a copy of a letter sent by the Ombudsman to the then General Manager of the Office of Public Management confirming concerns raised at a meeting with Dr Hunt the previous day and asking that the review *be deferred* pending the issue of a report to Parliament. That report¹ was made two days later. It was that report which recommended the establishment of the Joint Parliamentary Committee on the Office of the Ombudsman as the principal accountability mechanism for overseeing the Office.
- 3.8 At all times during discussions with Dr Hunt, and the subsequent discussions with Mr Humphry, the Ombudsman made it clear he did not oppose an external management review as long as it was requested by Parliament or a Parliamentary committee and the report was made to Parliament and not directly to the executive government. As an important matter of principle, the Ombudsman has always resisted any moves of the executive government to intrude into areas of discretion of the Ombudsman.

¹ Special Report to Parliament Pursuant to section 31 of the Ombudsman Act on the Independence and Accountability of the Ombudsman, 19 July 1990.

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- 3.9 Further, and contrary to the suggestion by Mr Baxter that the Ombudsman was concerned that peer reviews would embarrass his Office, the Ombudsman earlier this year engaged the services of Ms Judy Johnston, a private management consultant (and incidentally, the former Director, Strategic Management Division, Office of Public Management), to review the management of the Office with particular regard to its financial position. Her report has already been provided to the Committee. The Ombudsman immediately acted to implement most of the recommendations made in that report.
- 3.10 The need for an independent management review arose during the final stages of the development of the corporate plan. Given the budgetary situation, the Ombudsman concluded, at least in the short term, that the Office had to adopt a *survival* strategy to preserve the core staff and functions of the Office, while making savings wherever possible. Ms Johnston was familiar with the problems facing the Office from her work on the corporate plan when at OPM. She supported the Ombudsman's survival strategy, but confirmed the presence of some dysfunctional areas in the Office and revealed some management deficiencies. As a consequence of recommendations in the report, the Ombudsman gave priority to implementing changes to the management structure and practices, as well as reviewing the operation of the Inquiries Section and identifying excess positions among the investigation assistants. Further details of the latter two initiatives are described below as they have direct budgetary implications.

RESTRUCTURE OF INQUIRIES SECTION

- 3.11 Prior to making any decision about how an Inquiries Section should be structured, the Ombudsman sought the views of the existing staff before deciding that the most appropriate course of action was to restructure the section, taking officers out of the existing investigation team structure and focusing on inquiry work. Following this period of consultation and review, the Ombudsman eventually exercised his power under the Public Sector Management Act, 1988, deleted all existing positions, creating four new positions at the following grades:
- ◆ Senior Inquiry Clerk, Clerk Grade 5
 - ◆ Inquiry Clerk, Clerk Grade 3/4 (3 positions)
- 3.12 On 5 August 1992 the Ombudsman wrote to the Industrial Authority seeking approval to the classification and grading of new positions. Approval was given on 27 August, 1992. In addition, the Ombudsman wrote to each of the inquiry staff outlining his reasons for the restructure. Recruitment action was then commenced.

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- 3.13 The Public Service Association wrote to the Ombudsman on 7 August 1992 concerning the re-organisation of the Inquiries Section. The Association expressed concern at the lack of consultation with the staff and/or the Association about the restructure. In responding to this letter the Ombudsman outlined his reasons for restructuring the section. Unhappy with this response, the Association sought a meeting with the Ombudsman to discuss this issue, which took place.
- 3.14 On 13 October 1992 the Association advised the Industrial Registrar at the Industrial Commission of a dispute pursuant to section 204 of the Industrial Relations Act 1991. The Ombudsman has engaged the services of the Public Employment Industrial Relations Service, on a consultancy basis, to act for him in the Commission.
- 3.15 Recruitment action continued, however, and has been finalised. Only one of the current inquiries staff was successful in securing one of the new positions. Not all staff made applications. The positions of the two other staff members have been declared excess and action will be taken to seek permission to offer them voluntary redundancies and to seek redeployment. The Office is obliged to carry the positions for at least one year in the event of staff not being redeployed or accepting voluntary redundancy.

INVESTIGATIVE ASSISTANTS

- 3.16 As a result of the introduction of technology into the office over the past few years, in particular the development of computerised file tracking systems and the development of word processing skills among most investigation staff, and as a result of the natural ceiling to the efficient use of investigative assistants for investigation work, it became evident during the corporate planning exercise that the Office had, relative to other investigative positions, too many investigative assistant positions (clerical officer grade 1/2 and grade 3/4) on its establishment. In addition, financial difficulties meant the Ombudsman had to reduce the number of positions in the Office to meet budget projections. This matter was specifically addressed by the management review and following the receipt of that report and further review, the Ombudsman decided that four positions of investigative assistant were to be formally declared excess to requirements.
- 3.17 Earlier in the year, the Office sought expressions of interest from investigative assistants in transferring to other public sector organisations and steps were taken to identify vacant positions and facilitate transfers. Unfortunately no positions were found for the transfer of staff. Consequently, on 18 August 1992 the Ombudsman wrote to the Premier seeking approval to offer voluntary redundancies. The Premier approved the request to proceed with voluntary redundancies subject to advice from the Department of Industrial Relations, Employment Training and Further Education (DIRET FE) regarding redeployment. After discussions with staff from DIRE T FE, the Ombudsman sought expressions of interest from investigative assistants for voluntary redundancies. Only one staff member expressed interest.

3.18 The Ombudsman then took steps to identify investigative assistants (based on the principle of merit) whose positions were to be formally declared excess. The Ombudsman requested all supervisors to prepare a report on the investigative assistants so he could decide which positions were to be made excess. All supervisors were asked to assess their investigative assistants against the same performance appraisal criteria so a merit comparison could be made. All investigative assistants were given the opportunity to sight and discuss the reports before they were referred to the Ombudsman. The Principal Investigation Officer and the Acting Executive Officer were directed by the Ombudsman to consider all evaluations and then to recommend to the Ombudsman a course of action.

- 3.19 The excess positions have now been identified and those staff members affected have been given two options:
- ◆ seek redeployment to another position elsewhere in the public sector at the same grade or
 - ◆ accept voluntary redundancy.

One has since accepted voluntary redundancy. The Office is obliged to carry the remaining staff for at least one year if they are unable to be redeployed. The voluntary redundancies have had to be met from the existing budget.

SES PERFORMANCE AGREEMENTS

- 3.20 Since May 1991, the Deputy Ombudsman and the two Assistant Ombudsmen have been part of the Senior Executive Service. As part of the SES requirements, each has a personal performance agreement with the Ombudsman which covers their substantive areas of responsibility in the Office. The performance agreements are linked to the strategic initiatives detailed in the Office's corporate plan.
- 3.21 The performance agreements have been developed as part of a SES Performance Management System which is being implemented in the Office. A draft of that system was supplied to the Office of Public Management earlier in the year. It is still in the process of being finalised following the receipt of some suggestions for minor modifications from OPM.

NON-SES PERFORMANCE MANAGEMENT

- 3.22 Following the Premier's memorandum of 29 October 1991 advising Chief Executive Officers that a performance management system covering non-SES staff should be developed and implemented before 31 December 1992, the Ombudsman invested the Principal Investigation Officer and the Human Resource Manager with responsibility for developing such a system.

3.23 The Office of the Ombudsman will be subject to the Auditor-General's review of performance management systems in his annual audit of organisations. The objective of the audit reviews will be to ascertain whether organisations have in place appropriate performance management systems which comply with the principles of the performance guidelines. The audits will include:

- ◆ the number and percentage of staff covered by the system
- ◆ the number of reviews completed
- ◆ cases where accelerated progression was approved
- ◆ cases where the period of probation was extended as a result of the performance review.

3.24 The Ombudsman directed that the objective of a performance management system should focus on:

Performance improvement, key features of which are to include:

- ◆ development of valid measures of performance goals.
- ◆ translation of corporate goals into individual accountabilities and goals
- ◆ provision of appropriate and regular feedback to staff.
- ◆ providing supervisors with access to communication, problem solving and performance enhancement training.
- ◆ agreement (staff/supervisors) on job goals/outputs and processes.

And **staff development** which will involve:

- ◆ training and development programs to focus on the more specific knowledge and skills necessary to meet specific requirements of a job.
- ◆ identification of competencies (knowledge and skills) which individuals have to develop to contribute to the organisation's goals.

3.25 The development of a performance management system is continuing and valuable lessons have been learnt from the assessment process involving investigative assistants mentioned earlier.

COMPLAINT HANDLING IN THE PUBLIC SECTOR (CHIPS)

3.26 As one of the principal corporate strategies for 1992, the CHIPS project aims in the long term to reduce the number of complaints coming to the Ombudsman, by encouraging public authorities to improve in-house complaint mechanisms to complement a customer service focus.

- 3.27 The Ombudsman like many public and private sector organisations recognises that complaints about one's own organisation provide an important feedback mechanism to management through which to evaluate the effectiveness of risk management and policies concerned with the delivery of service. This is a message that the CHIPS project is attempting to convey to NSW public authorities. The embracing of customer service values and concepts, such as total quality management, however, is not always implemented uniformly and sometimes produces contradictory results. A trend in some private and public sector agencies, for example in moving to a TQM approach to management, has meant the closing of internal complaints units in favour of giving employees the power to fix mistakes at the outset. This is fine in theory as long as the intelligence gathered from complaints still gets fed back to management. Where this does not happen there is a danger management will not be alert to significant levels of client dissatisfaction.
- 3.28 This is nowhere better illustrated than in the evidence of the Secretary of the Treasury to the Committee about complaints concerning the Office of State Revenue (OSR). Mr Allan boasted that despite a 15% current reduction in staff numbers, there had been a dramatic increase in productivity in the OSR (achieved, it should be noted, largely as a result of the installation of expensive computer systems) and that there had been a decline in complaints about OSR to the Ombudsman from at least 70 (in 1984) to one or two per annum currently. He maintained this turnaround had been achieved by the adoption of better management practices and noted with pride OSR did not have any internal complaint unit.
- 3.29 While the principle that Mr Allan was attempting to illustrate is appreciated, his example (and the conclusion he seeks to draw) is falsely based. The following table shows complaints made to the Ombudsman about the OSR since 1985-86.

1985-1986	1986-1987	1987-1988	1988-1989	1989-1990	1990-1991	1991-1992
57	37	3	22	37	27	29

- 3.30 Clearly the absence of any internal complaints mechanism in OSR has robbed management of one very simple piece of feedback about its performance. When it is realised that research has consistently shown that those who complain represent a tiny fraction of all dissatisfied customers, somewhere between 2 and 4 per cent², this misperception of the success of better management practices in the OSR is somewhat amusing.

²Assistance Research Programs Institute, *Customer Complaint Handling in America: An Update Study for the US Office of Consumer Affairs* [Washington DC 1986] Part 11, chapter 3.

*Office of the Ombudsman Annual Reports 1985-86 - 1991-92. Note for years 1985-86 - 1987-88 statistics relate to Department of Finance, Land tax Office and Stamp Duties Office, now combined in OSR.

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- 3.31 The principles of good complaint handling advanced by the CHIPS project do emphasise the need and desirability of handling complaints at the service delivery level wherever possible. They recognise, however, that approach must be complemented by the availability of internal review by more senior management where resolution is not possible and the referral of still unresolved matters to external alternative dispute resolution bodies such as the Ombudsman. The imperative for management to know the level and nature of complaints received in an organisation is seen as vital for identifying systemic deficiencies in practices and procedures.

EFFICIENCY INDICATORS

- 3.32 As mentioned earlier, quite apart from difficulties in establishing qualitative indicators, many quantitative indicators are either relatively unsophisticated or are useful only as a measure of comparative efficiency over time. The Ombudsman concedes that most of the performance indicators listed in previous annual reports are not in fact performance indicators in terms of measures of efficiency. They were designed by Dr Jinks when he was the former Deputy Ombudsman and are at best only simple indicators of some of the work performed by the Office.
- 3.33 In the past year some steps have been taken to develop better measures that will be reported upon for the first time in the Ombudsman's Annual Report for the 1992-93 financial year. The determination categories, for example, as set out in paragraph 7.2 of appendix A of the Ombudsman's original submission to this Inquiry are thought to better represent the work of this office. The majority of complaints received by the Ombudsman are not made the subject of formal investigations under section 13 of the Ombudsman Act, but are disposed of either at the outset by the provision of information or referrals, or through the process of preliminary enquiries. In terms of the statutory options, these complaints have to be determined as *declines* and have been reported on in such terms in previous annual reports. It was felt, however, that this technical reporting of determinations actually masked the positive work performed by this Office in relation to most of those matters and consequently may have misled many people. The new categories should provide better indicators of the effectiveness of the work performed on complaints.
- 3.34 The Ombudsman has also taken steps to gather data for the basis of other indicators of efficiency. The indicators reported on below will provide a measure of variation on an annual basis, which will allow judgements to be made on a comparative basis of the use of resources (assuming all other variables remain constant).

COSTING OF COMPLAINTS

- 3.35 In December 1991, as part of the development of the corporate plan, the Ombudsman decided to cost a representative sample of complaints in order to establish a base line for future comparison.
- 3.36 Detailed methodology for the costing exercise was developed to ensure that the projected sample size (500) would be statistically significant (8.01% of complaints for 1991 - 92) and advice was sought from both the Auditor-General and the Office's internal auditors to confirm the validity of the proposed methodology.
- 3.37 Table 3.2 shows the break-up of files involved in the costing.

Area	Year's Total of Complaints	% of Total Complaints	Sample Size for Costing	% of Total Sample
Police	3375	56	282	59.0
General	1125	19	97	20.3
Local Government	629	10.6	43	9.0
Prisons	391	6.4	27	5.6
FOI	64	1	7	1.5
Non Jurisdiction	431	7	22	4.6
Total	5914	100	478*	100

- 3.38 Costing sheets were attached to the subject files each week from the time of receipt of complaints and every officer who handled the files, whether statutory, investigative, or administrative, had to fill out all times worked and average salary costs were allocated accordingly. Results from the costing exercise are not yet complete with 28 police, eight general, three local government and four FOI files outstanding. These files are the subject of formal investigations under the Police Regulation (Allegations of Misconduct), Ombudsman and FOI Acts. A methodology for calculating the distribution of overhead costs has still not been decided on although a number of options have been considered, including the method adopted by the ICAC.
- 3.39 However, preliminary figures for the salary cost alone of handling complaints outside jurisdiction, those declined at the outset for discretionary reasons and those finalised after preliminary enquiries are available and are set out in Tables 3.3 - 3.5

*Note: Although projected to be 500, the sample size finally costed was 478 files.

Table 3.3
Salary Costs: Complaints Outside Jurisdiction

Number	\$ Average	\$ Low	\$ High
22	20.22	2.75	197.42

Table 3.4
Salary Costs: Complaints Declined at Outset

Area	Sample No	\$ Average	\$ Low	\$ High
Police	103	27.30	8.35	90.39
General	54	36.82	11.17	108.33
Local Government	26	34.73	11.13	76.15
Prisons	11	36.90	17.58	81.90
FOI	1	98.33	98.33	98.33

Table 3.5
Salary Costs:
Complaints Finalised after Preliminary Inquiry

Area	Sample No	\$ Average	\$ Low	\$ High
Police	72	65.11	21.15	278.25
General	29	50.24	19.42	96.94
Local Government	11	68.31	35.08	143.45
Prisons	12	35.42	15.42	67.22
FOI	N/A	N/A	N/A	N/A

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- 3.40 A preliminary analysis of these figures reveals the following points:
- ◆ the average cost of declining complaints under the Ombudsman Act at the outset is generally higher than for complaints under the Police Regulation (Allegations of Misconduct) Act.
 - ◆ there is a marked variation of the average cost of declining complaints after preliminary enquiries across the categories of complaints
 - ◆ there are huge variations between the low and high point costs in each complaint category.
- 3.41 The last mentioned point, which reflects the wide variation in the nature and complexity of complaints when coupled with the fact that there is only limited specialisation in the Office, makes the task of program budgeting for discrete complaints areas extremely difficult. Nevertheless, the costing exercise has established a benchmark for future comparison.
- 3.42 The costing exercise provided little useful information about the cost of handling FOI complaints. However, given that just over 60 such complaints were processed in the past year by FOI staff, who work exclusively in this area, and that salary related costs are approximately \$130,000 per annum, the average cost of an FOI complaint is roughly \$2,000.

COMPLAINT TURNAROUND TIMES

- 3.43 Despite the significant rise in the number of complaints in recent years, the Ombudsman has endeavoured, as far as possible, to maintain or improve the efficiency of his Office's operations. As a result of several measures implemented to deal with the growing level of complaints, overall efficiency as measured by complaint turnaround times has actually improved in the past two years. The results of a pilot study are set out in Tables 3.6 - 3.11.
- 3.44 The cases that proceeded to a formal investigation under section 13 of the Ombudsman Act where the Ombudsman's coercive powers may be used are relatively few in number. They tend by nature to be the most complex or disputed cases. Among local government complaints, less than two percent were formally investigated during the 1991/1992 financial year. Among prison complaints six percent resulted in formal investigations and in the general area the figure was three percent of the total number of complaints received in that area. Despite the low number, a significant proportion of the time of investigation officers and statutory officers are taken up in these formal investigations.

Table 3.6
Turnaround Times - Non Police Complaints Declined at
Outset (DECO) - Mean No of Days

1990-1991	1991-1992	1 July - 30 Sept 1992
33	24.1	13.1

Table 3.7
Turnaround Times - Non-Police Complaints
Declined at Outset (DECO) - % within Time Period

	1990-1991 %	1991-1992 %	1 July - 30 Sept 1992 %
Within Two Weeks	40.3	58.6	75.9
Within Two Months	87.1	92.6	98.5

Table 3.8
Turnaround Times -Non-Police
Complaints Finalised after
Preliminary Inquiry (DECE) -
Mean No of Days

1990-1991 %	1991-1992 %	1 July - 30 Sept 1992 %
80.3	88.4	55.1

Table 3.9
Turnaround Times - Non-Police Complaints
Finalised after Preliminary Inquiry (DECE) -
% Within Time Period

	1990-1991 %	1991-1992 %	1 July - 30 Sept 1992 %
Within Two Weeks	17.4	22.1	29.4
Within Three Months	72.8	70.1	79.9

- 3.45 Formal investigations are usually commenced after preliminary enquiries are made. If a matter proceeds to a report of *wrong conduct* under section 26(1) of the Ombudsman Act the Ombudsman is required to provide opportunities for affected public authorities to make submissions on intended adverse comment. Time must be allowed for this process. The responsible minister must also be given an opportunity to consult and a period of time must also be allowed for the minister to consider whether he or she wishes to avail themselves of that opportunity. It is rare for a final report to be issued within three months of the initial preparation of a provisional report or a statement of evidence for this reason.
- 3.46 Given those considerations, there also appears to have been a general improvement in turnaround times for formal investigations since 1990. The Ombudsman considers, however, that the average time taken to complete formal investigations is unacceptable. It is unlikely this average time can be significantly further improved without additional staff resources.

	1990-1991	1991-1992
Total No	42	40
Less than 12-14 Months	17%	46%
Less than Two Years	35%	82%
Average Time (Months)	23	16

- 3.47 A number of formal investigations do not proceed to a final report but are discontinued. Reasons may include the resolution of matters, the withdrawal of the complaint, but more often than not, a decision is taken that it is not in the public interest to expend further resources on an investigation given the unlikelihood of obtaining sufficient evidence to report under section 26(1) or to make recommendations that would lead to practical and measurable changes in public administration. The need and ability to make such decisions may not, however, be evident early in the investigation as reflected in the following statistics.

**Table 3.11
Formal Non-Police Investigations
Discontinued**

	1990-1991	1991-1992
Total No	42	40
Less than 12-14 Months	62%	50%
Less than Two Years	91%	100%
Average Time (Months)	12	11

3.48 Figures for police complaints have not been calculated as this Office does not have control over the time taken for the police to carry out preliminary enquiries or investigations before submitting their reports to this Office. Absolute turnaround times for finalisation of police complaints is therefore not reflective of the efficiency of this Office. Calculation of turnaround time for the periods when police complaints are solely actioned in this Office would require complicated data collection and statistical analysis which the Office is currently unable to undertake.

EFFECTIVE FULL TIME (EFT) COSTS

3.49 As noted earlier, neither Treasury nor any other central agency has provided any benchmark to establish an acceptable unit cost for the provision of any professional service. While not necessarily a measure of efficiency, comparisons of effective full time staff costs of agencies performing similar work can be indicative of value for money and/or underfunding. Comparisons with organisations such as the Office of State Revenue are apt to be misleading not only because of the level of involvement of capital funds in computerised systems, but because of the very fact that much of the work of such agencies is able to produce significant unit cost efficiencies because of its nature, ie, rote, repetitive and high volume.

3.50 By contrast, agencies such as the Office of the Ombudsman and the other agencies set out in Table 3.12 below, are concerned with analysis, assessment and professional judgement - all qualitative factors which are much less amenable to quantitative measurement. However, EFT costs, ie, total budget divided by total number of employees, gives at least a starting point for a quantitative performance indicator of comparative costs.

Table 3.12*
Cost of EFT Staff

Agency	Budget \$M	Staff No	EFT \$
Internal Affairs Branch**	4.323	91	47,000
Health Complaints Unit	2.880	43	66,975
Anti-Discrimination Board (including Equal Opportunity Tribunal)	2.671	39	68,487
Office of the Director of Equal Opportunity in Public Employment	1.097	16	68,562
Guardianship Board	2.895	42	68,928
Cabinet Office	6.839	88	77,716
Treasury - Budget Division	5.493	69	79,608
Independent Commission Against Corruption	14.903	145	102,779
Office of the Ombudsman	4.246	72	58,972

3.51 Clearly, on the basis EFT Costs, the Office of the Ombudsman compares more than favourably with all other agencies in the Table, with the exception of IAB, particularly with the Budget Division of Treasury (2nd highest EFT cost) and Cabinet Office (3rd highest EFT cost). It should also be borne in mind that the EFT cost of the IAB is deceptively low given that all but \$400,000 is salary related.

* Annual Reports; Budget Paper No 3 1992-1993, actual expenditure 1991-1992

** Information supplied by Police Service

PART 4 CONCLUSIONS ON EFFICIENCY SUBMISSIONS

- 4.1 It is difficult, if not impossible, to determine an appropriate level of resources based only on economic or quantifiable indicators of performance. Fundamentally, the Ombudsman performs a critical social and political function central to the health of our parliamentary system of government. The adequacy of the level of resources must be evaluated on the basis of his place in that system. It is essentially a question of political will and priorities, not only economics.
- 4.2 To the best of its ability the Office of the Ombudsman, in both this and the previous submission, has attempted to show that:
- ◆ there has been a significant increase in the demand for the services offered by the Office in accordance with its mandate
 - ◆ the jurisdiction of the Ombudsman has been increased without adequate commensurate resource allocation adjustment from Treasury
 - ◆ the Office has met productivity targets imposed by central agencies
 - ◆ the Office has operated at a high level of administrative efficiency despite the increasing workload
 - ◆ major reviews have been undertaken and changes implemented so that all existing opportunities for effective resource allocation are being addressed
 - ◆ the Office continues to plan for its future at a strategic level by undertaking an iterative process of corporate planning
 - ◆ that despite the above, the Ombudsman is unable to properly fulfil the functions mandated by Parliament in terms of the current demand for his services
 - ◆ the current demand for his services is a false indication of the true demand as he is unable to properly make known his availability to the citizens of New South Wales.

PART 5 ANCILLARY ISSUES RAISED IN EVIDENCE BEFORE THE COMMITTEE

LEASE OF PREMISES

- 5.1 In view of the Committee's evident concern about the rental cost of the Ombudsman's current premises, as well as evidence about the issue by several witnesses before the Committee, the following matters should be considered.
- 5.2 The first point to bear in mind is that the Office's current financial resource constraints cannot be sheeted home wholly and solely to the cost of rent, as Table 5.1 shows:

1986-1987	1987-1988	1988-1989	1989-1990	1990-1991	1991-1992
13.18	12.06	14.99	14.31	11.87	12.64 (accrual) 13.48 (cash)

Although rental payments have risen in the last two years and are expected to rise in the current year, as a percentage of total budget, the rent for the last two years is lower than in 1986-87 and is expected to be only marginally higher in 1992-93.

- 5.3 The Committee should consider the following salient points about the decision to lease the current premises, which can be confirmed by an examination of the correspondence.
- ◆ the Hooker House lease was due to expire in February 1990, with no option for renewal
 - ◆ the premises were no longer adequate to meet accommodation needs; the Office was concurrently leasing space in the Landmark Building to house the Telecommunications Interception Inspection Unit and a second S.19 hearing room, reflected in the fact that rent for 1988-89 as a percentage of total budget was 14.99%
 - ◆ even if a new lease for larger premises in Hooker House could have been negotiated, a significant increase in rental would have occurred given that the prevailing vacancy rate in the CBD was less than 2%; in fact no additional space was available

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- ◆ an extensive and costly new fitout would have been necessary with no likelihood of contribution from the lessor; whereas the present lessor contributed \$215,000 to the fitout of the current premises
 - ◆ the Ombudsman acted at the earliest opportunity - April 1988 - to alert the Office Accommodation Bureau (OAB) of the need to obtain rental space for the Telecommunication Interception Inspection Unit and the eventual need to relocate the whole Office at the expiration of the Hooker House lease
 - ◆ the Ombudsman expressed a preference for new premises on the CBD fringe, also the preference of the Auditor General, as the two agencies had agreed to be located together
 - ◆ the then Minister for Administrative Services, responsible for the OAB sought the Premier's approval for a short term lease for the new unit and eventual relocation of the whole Office in the long term (26 May 1988)
 - ◆ the Minister's letter included a cost benefit analysis, prepared by OAB, of remaining in Hooker House or seeking new accommodation on the CBD fringe; the analysis supported the move to the CBD fringe
 - ◆ the Premier approved a short term lease for the new Unit pending the relocation of the Ombudsman's Office to appropriate accommodation on the CDB fringe (22 July 1988)
 - ◆ as early as August 1988 the Ombudsman provided OAB with a detailed submission on the Office's total accommodation and fitout requirements
 - ◆ the OAB was dilatory in advertising (17 December 1988) for expressions of interest for combined space of 2800 sq m. for both the Ombudsman's Office and the Auditor-General, not having sought the Premier's approval until 1 November 1988
 - ◆ the Premier approved the relocation of the Ombudsman's Office and the Auditor-General together and in seeking expressions of interest (5 December 1988)
 - ◆ the Ombudsman advised OAB that its target of a maximum of \$330 per sq m pa was unrealistically low (given prevailing rents and the low vacancy rate) - exchange of letters 9 and 16 December 1988, 9, 20 and 31 January 1989
 - ◆ no expressions of interest pursuant to the advertisement were received which met OAB's requirements
 - ◆ the Ombudsman considered engaging an independent agent to search for and negotiate premises on behalf of his Office due to the dilatoriness of and dissatisfaction with OAB, but was obliged to deal with OAB by virtue of Premier's memorandum 88-24, as agencies are currently obliged to deal with the Property Services Group by Premier's memorandum 92-07

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- ◆ the Acting Secretary of the Department of Administrative Services wrote to the Director-General of the Premier's Department seeking approval for relocating the Office to the present premises (then called the Carringbush Tower in February 1989).
 - ◆ the Acting Secretary's letter enclosed a cost benefit analysis prepared by OAB which examined the following options:
 - ☛ remain at Hooker House
 - ☛ Carringbush Tower
 - ☛ 255 Pitt Street - Capita Centre
 - ☛ 55 Market Street - City Centre
 - ◆ contrary to the evidence of Mr Hunt to the Committee, the OAB cost-analysis recommended relocation to the present premises as the best option
 - ◆ contrary also to suggestions that have been made that the Ombudsman at all times insisted on relocation to the current premises, the Ombudsman urged consideration of these premises only after suffering the delay and ineptitude of the OAB and after concluding that the premises were the best of the options then available
 - ◆ despite the evidence of the Director General of the Premier's Department to the Committee, Mr Humphry approved the proposal after discussions with the Ombudsman (and presumably with the Premier) while being severely critical of the OAB's performance - letter of 10 February 1989
 - ◆ the Ombudsman was required to leave all negotiations concerning the lease and its provisions, including the provision relating to rent review, in the hands of the OAB.
 - ◆ OAB informed the Ombudsman by fax on 13 February 1989 that "Premier's approval obtained for lease".

5.4 Apart from the above matters, many of which came to the Ombudsman's attention only after the OAB provided its file to the Office when responsibility for future dealings in respect of its tenancy was devolved to the Office, the Ombudsman believes that the Committee should give the closest consideration to the following:

- ◆ in the Ombudsman's opinion, the rent review provision approved by the OAB was drafted in such a way as to be unduly favourable to the lessor
- ◆ the most recent rent review resulted in a determination out of step with prevailing rents, given the downturn in the property market and the high vacancy rate in the CBD
- ◆ accordingly, the Ombudsman sought legal advice as to whether there was evidence of negligence on the part of the valuer who made the rent review determination sufficient to warrant legal proceedings;

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- ◆ legal advice was not favourable to commencing proceedings
 - ◆ while the question of the Ombudsman's single occupancy tenancy has been canvassed in evidence before the Committee, the then Premier, Premier's Department and Treasury knew that the Ombudsman's Office had traditionally enjoyed such a position, understood the policy reasons for that decision and approved its continuation in circumstances where, unless the single occupancy tenancy threshold, which was designed to prevent the proliferation of such tenancies, was waived, it would work to the disadvantage of the Office
 - ◆ accordingly, it was unreasonable that Treasury did not support the waiver of the threshold rule in 1990-91, during the maintenance dispute lodged with Treasury
 - ◆ it was both reasonable and in accordance with policy for the former Premier and Treasurer to waive the threshold rule following the second maintenance dispute with Treasury in 1991-92 and for Treasury to adjust the Office's maintenance and working expenses for 1992-93 and forward years to take account of future rent reviews
 - ◆ it was unreasonable, and contrary to the spirit of that decision for Treasury not to further adjust the Ombudsman's maintenance and working expenses to take account of the 1991 rent review which has effectively eroded the Office's budget by \$72,000 for all forward years.

PART 6 USER PAYS FUNDING

6.1 A number of witnesses have expressed opinions in evidence to the Committee about the potential beneficial effects of charging public authorities for complaints investigated by the Ombudsman. It has been said that this would send a message back to the public authorities to take complaints more seriously and get their own houses in order. That may be so. However, the apportioning of costs according to complaint levels is impractical for the following reasons:

- ◆ public authorities would feel a justifiable sense of outrage at having to pay for enquiries by the Ombudsman that found no fault with the conduct of the public authority. This is the case in the vast majority of complaints processed by the Ombudsman.
- ◆ the burden of costs would fall upon those public authorities engaged in law and order issues and those having high face to face contact with the public eg. Police department, Department of Corrective Services, Housing Department etc.
- ◆ if liability for costs was limited to cases where an adverse finding was made by the Ombudsman, it is highly likely that public authorities would resist resolution of simple matters and engage in protracted defences of more complex or serious matters knowing that admissions of error or adverse findings by the Ombudsman would lead to extra expense to the public authority concerned. That would be against the public interest.
- ◆ it is highly likely that the discretion of the Ombudsman to make enquiries on complaints would be continually questioned and that accusations of his taking up trivial complaints would be common. The seriousness of this potential problem is clearly illustrated by events surrounding the introduction of the Police Regulation (Allegations of Misconduct) Amendment Bill 1988 and the subsequent examination of that Bill by a Select Committee of the Legislative Council ("the Bignold Committee"). That committee took evidence from a range of senior police including the Commissioner and found that there was a perception that the Ombudsman investigated trivial complaints present throughout all ranks and levels of police administration including the Police Board. The Committee however found that the Ombudsman did not investigate trivial or vexatious complaints and that the perception among the Police Force had no basis in reality. This false perception had been so strong, however, that the then Minister for Police had introduced this bill to reduce the Ombudsman's powers over police complaints. The Committee seriously questioned the wisdom of creating legislation to address a perception that had no basis in reality.

- ◆ Investigations would be costlier as the Ombudsman would have to account for all services involved in each investigation and extra administrative systems would have to be developed to do this.
- ◆ there would be little likelihood of savings to the public purse as the substantial cost to consolidated revenue would simply be transferred to the Ombudsman indirectly instead of directly. Indeed there might be extra administrative costs associated with such transfers.

6.2 Proposals that special investigations be made on a cost recovery basis also present problems. The central problem is in defining what is a special investigation. In the past three years the most costly investigations undertaken by the Ombudsman in terms of staff resources and support costs such as legal expenses and transcriptions have been the following:

(i) an investigation into the use of force in prisons arising from a complaint by the former Minister for Corrective Services and Professor Tony Vinson (including a 30 day hearing with 148 witnesses)

(ii) a re-investigation of a complaint against police by Mr L H Ainsworth and the Ainsworth Group alleging the disclosure of confidential information and the authorising of police to appear as witnesses in civil proceedings in Puerto Rico (including a 18 day hearing with 22 witnesses)

(iii) an investigation into alleged assaults on prisoners and malicious damage to prisoners' television sets following the riot at Parklea Prison on 23 September 1990 (including a 16 day hearing with 74 witnesses)

(iv) an investigation of *Operation Sue* where 135 police including the Tactical Response Group raided ten premises in Eveleigh Street Redfern (including a hearing involving 66 witnesses)

(v) an investigation into the Department of Housing's conduct relating to the Local Government and Community Housing Program.

(vi) a re-investigation of the hanging of Angus Rigg and the associated police investigation (including an 8 day hearing involving 25 witnesses)

Only the first investigation, which was requested by a Minister of the Crown, was the subject of supplementation. Even so, the investigation was undertaken without any commitment to supplementation and the supplementation was only received very late in the financial year after most expenses had been met.

All the other investigations were undertaken at the discretion of the Ombudsman. They were not referred to the Ombudsman by the government or parliament.

Are all these investigations *special* because of their cost and complexity?

What is also clear is that the public expects the Ombudsman to investigate many matters that receive media attention. Witness the examples of the past few weeks where the press reported without any confirmation that the Ombudsman was overseeing investigation of the death of an aboriginal person in police custody and the handling of the Family of God case. If that did occur, would they be considered *special* and deserving of supplementation? Who would decide?

- 6.3 In a previous report to Parliament the Ombudsman recommended that his budget be supplemented to cater for these resource intensive inquiries. It is recommended below that perhaps the most efficient way to deal with this dilemma is to supplement the Ombudsman's budget by means of a protected item that the Ombudsman could draw from for large scale, costed investigations. If this supplementary budget is not used the money would automatically revert to consolidated revenue each year.

PART 7 RESOURCES REQUIRED

- 7.1 As noted in the previous submission to the Committee, the Ombudsman emphasised that the current Inquiry is the first systematic review of the funding of the Office since its inception, despite the history of continual extensions of the Ombudsman's jurisdiction and functions.
- 7.2 In his recent evidence to the Committee, the Secretary of the Treasury agreed that there had been a steady expansion of the Ombudsman's functions, but noted that whilst inflation since 1982 had been in the order of 60 - 70%, there had been a threefold increase in the Office's budget, the implicit suggestion being that the Office is more than adequately funded.
- 7.3 Mr Allan's evidence provides no basis for any considered analysis of the extent and cost of the increases in functions since 1982 - the broadening of the local government jurisdiction; the police discipline package of 1983 and other reforms to the police complaints system since then; the advent of FOI, etc. While most of these increased functions have been funded for salary related costs, infrastructure or overhead costs have been funded only where it could not be avoided. For instance, following reforms to the police complaints system in 1983-84 there was an increased provision for rental to accommodate up to 10 seconded police officers. Otherwise, the Ombudsman has had to absorb costs. This piecemeal approach to funding has resulted in a steady erosion of funds for maintenance and working expenses with resultant cuts in funds available for visits to prisons, juvenile detention centres and country public awareness campaigns, printing and publications, transcriptions and capital works.

PRODUCTIVITY SAVINGS

- 7.4 Since 1988-89, the Office has absorbed productivity savings of \$374,000. This is a considerable sum when the size of the Office's budget is considered and has been the largest single factor affecting adequacy of funding. Productivity savings have led to a reduction in services to the public.

EFFECTIVE FULL-TIME STAFF COSTS

- 7.5 The Office has an authorised staff number of 74, divided into investigations, investigation support and administration. The salary related costs of these positions (salary, leave loading, payroll tax) is:

	\$
Investigations (44)	2,242,344
Investigation support (18)	550,897
Administration (12)	377,049
<u>TOTAL</u>	<u>3,179,290</u>

However, the Office has only been able to budget for expenditure of \$3,012,900 in salary related expenses for 1992-93.

OVERTIME

- 7.6 It is important to understand that the above salary related costs take no account of overtime. In 1991-92 staff in the Office of the Ombudsman worked the equivalent of \$80,000 in unclaimed overtime. Similar unclaimed hours are being worked at present with a budget of only \$29,000 for overtime in 1992-93. In effect, the personal commitment of staff is being devoted to attempting to maintain services to the public. Such dedication should not be taken for granted.
- 7.7 Savings have had to be found in two ways. Firstly, by not filling positions which fell vacant for whatever reason. Such a "survival" strategy produces only limited breathing space; in the past 12 months savings have been made principally by not replacing staff on maternity leave. The second method of saving has been voluntary redundancies/declaring positions excess. All this entails a reduction in services. Savings from not replacing staff on maternity leave over the last and current financial years have amounted to \$188,747. Savings from voluntary redundancies (2) will amount to \$6269 for the balance of the current financial year and \$48,553 in a full year. Savings from declaring positions excess (2) will amount to \$43,998 in a full year.

EQUITY AND ACCESS - VISITS

- 7.8 Equity and access are fundamental notions in the delivery of a public service. These notions are being undermined by the resource constraints facing the Ombudsman's Office, particularly for citizens who are in custody, live in the country or are from non-english speaking backgrounds.

- 7.9 There are 29 adult prisons, 13 situated in the metropolitan or outer metropolitan area, and 16 in country areas. Table 7.1 shows prison visits over the past three years.

Table 7.1 Prison Visits		
1989-1990	1990-1991	1991-1992
36	20	27

In fact, the figure for the last financial year is misleading because only 18 of the 29 prisons were visited.

- 7.10 Similarly, visits to the 5 metropolitan and 4 country juvenile institutions have had to be reduced in recent years, as shown in Table 7.2, despite the Ombudsman's recognition that this is an area which requires greater resources.

Table 7.2 Visits to Juvenile Institutions		
1989-1990	1990-1991	1991-1992
12	5	3

- 7.11 However, the curtailment of resources required for visits is most evident in relation to public awareness visits to country areas, as shown by Table 7.3.

Table 7.3 Country Public Awareness Visits		
1989-1990	1990-1991	1991-1992
33	11	0

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- 7.12 In his special report of June 1991, the Ombudsman stated that the optimum number of visits to prisons was between 93-97 per annum whilst the optimum number of visits to juvenile institutions was 32 per annum. The direct and indirect (or opportunity) costs of such a program are in excess of \$70,000 per annum with travel/ accommodation in excess of \$20,000 - yet in the current financial year the Ombudsman has only been able to budget that latter amount for all travel, including that related to investigations. In his special report to Parliament, the Ombudsman estimated the true shortfall of the cost of the program as \$46,000. Those figures are based on a frequency of visits to correctional centres that is significantly less than Professor Vinson deemed to be the minimum for the Ombudsman to properly perform his statutory functions as well as the critical but unstated role of keeping the peace in prisons. If that schedule had to be met, the required funding would need to be substantially increased and additional staff engaged.
- 7.13 Country residents have immediate access to the Ombudsman's Office through a 008 telephone number. This facility, however, is no substitute for the direct contact that is often needed to deal with complaints, particularly complicated ones. A properly managed program of community visits would require expenditure of at least \$31,000.

EQUITY AND ACCESS - INFORMATION

- 7.14 The dissemination of information about any public service is essential if equity and access are to be meaningful. This is particularly so of the Ombudsman. A right of review by the Ombudsman of administrative actions by NSW public authorities is of no use to a person who is not aware of it. The major publication produced by the Ombudsman is the Office's Annual Report and it is the single largest project of the Office each year. No attempt has ever been made to cost the time which all staff devote to the Report each year, but it is considerable. The cost of printing is easy to quantify. The 1991-92 Annual Report cost \$12,000 to print, with a print run of 1200 and 2000 copies of a 16 page summary. A print run of 2000 annual reports is probably the minimum necessary, at a further cost of \$5000. The annual report is a vehicle for the Ombudsman to obtain considerable free publicity and needs to be seen in that light.
- 7.15 The current stock of English and multilingual pamphlets is not only depleted but seriously outdated and there is an immediate need to produce new publications to meet client needs:
- ◆ **general role/functions/services (English)**
 - ◆ **general role/functions/services (multilingual)**
 - ◆ **problems with police (English)**
 - ◆ **problems with police (multilingual)**
 - ◆ **how to solve a dispute with a government department (self-help for complainants)**
 - ◆ **FOI - independent review.**

The estimated total cost of a print run of 4000 for each pamphlet is estimated at \$7000.

7.16 Other information costs (largely printing) are estimated as follows:

	\$
◆ Special reports to Parliament (6 per annum)	24,000
◆ Ombudsman's newsletter	7,000
◆ Display stands for Law-week	5,000
◆ Office manual	2,000

7.17 The total cost of printing outlined in the preceding paragraphs is \$62,000. The Ombudsman has only been able to budget for expenditure of \$28,000 in 1992-93.

CAPITAL WORKS

7.18 The previous special report to Parliament gave a detailed account of expenditure on the Office's Information Processing Strategic Plan. The Ombudsman had been able to implement the plan only through a combination of fortuitous circumstances and it is doubtful whether future extension and development of the plan will be possible. The speedy processing and storage of data is absolutely essential for a complaint handling agency. At present the production of performance indicator statistics is severely handicapped by lack of funds. The Ombudsman has been able to budget for expenditure of only \$33,000 on plant and equipment in the current financial year; more than half of this live item will be used in replacement of the Office's main large photocopier.

7.19 The recurrent allocation for capital equipment in Treasury's budget allocation to the Office of the Ombudsman is less than 1% of the total budget. It is manifestly inadequate to meet the continuing demand for maintenance and renewal of existing equipment. That allocation has never been reviewed to take into account the maintenance/renewal of the substantial capital infrastructure of the computer networks and associated software that have almost completely been financed out of fortuitous savings (largely extended vacancies in positions) in the budget in previous years.

SECTION 19 INQUIRIES

- 7.20 There is no better example of the failure to properly fund infrastructure within the Office of the Ombudsman than the lack of resources available to conduct Inquiries under S.19(2) of the Ombudsman Act. The Ombudsman's 'royal commission' powers are the most powerful means to aid complex investigations involving disputed questions of fact or where the credibility of witnesses is to be tested. This is so not only in relation to investigations under the Ombudsman and FOI Acts, but also in exercise of the Ombudsman's power to reinvestigate (s.25A) and to take over an investigation (s.24A) as in the Rigg case, under the Police Regulation (Allegations of Misconduct) Act. The speedy and efficient conducting of s.19(2) Inquiries will be fundamental to the exercise of the direct investigation power recommended by the Committee and approved by Cabinet for police cases.
- 7.21 Such Inquiries have always been conducted drawing from the pool of existing investigations and support staff. When the new police powers were granted in 1983, additional investigation staff (ie, seconded police) came to the Office; but apart from extra vehicles there was no corresponding increase in infrastructure to support the investigative activities that those staff were to be engaged in, eg, transcription services and sound recording.
- 7.22 An *ordinary* s.19(2) inquiry within the office, for instance, would absorb the labour of an investigation officer 85-90% for at least three months. Another officer may be assigned to assist on a 20% basis. During hearings, the investigation calls for a statutory officer full time (say, a week); two officers full time; and a sound recordist. Hearings may be in the country, and require airfares, car hire and subsistence; overtime payments are also likely. At the report writing stage, for a run of the mill matter, a transcript would not be obtained because of the expense; an officer would work almost full time for say, a month, working from tapes; a statutory officer would then need, from two days to a week to revise and redraft depending on the complexity of the matter.
- 7.23 At the other end of the scale is a major investigation such as the current Rigg Inquiry. This case has so far involved one statutory officer full time for two months; the Ombudsman full time for a week; three other officers at 85-90%, including an overtime bill to date of \$6,000 and travel, accommodation, and transcript costs of \$11,000. The report itself will require a statutory officer full time for three weeks.
- 7.24 The Assistant Ombudsman (Police) estimates that once powers of direct investigation are granted, the Office under existing resource constraints would only be able to do as little as three such investigations a year. More would certainly be desirable or demanded in the public interest.

7.25 In terms of essential support from capital equipment items, s.19(2) inquiries at present are inefficient and ramshackle affairs. Sound recording equipment is outmoded and in short supply. The purchase of two portable tape recorders (\$4,000) and two laptop computers with portable printers to aid investigators in the field, particularly during s.19 hearings, are the only new capital expenditure in this area in recent times. While sound recording ensures the accuracy of evidence, it is an inefficient way of processing evidence during an investigation. The most efficient means of processing evidence is by transcription service with transcripts available on disk for accessing, searching and cross-referencing by computer. This essential service is expensive and the Ombudsman has only been able to budget for expenditure of \$10,000 in 1992-93. With the advent of direct investigation powers and the need to undertake public interest investigations expeditiously, this line item would need to be increased four fold.

SPECIAL INQUIRIES

7.26 The investment of adequate financial and capital resources in s.19(2) inquiries is cost efficient, as this type of inquisitorial proceeding remains much less expensive than Royal Commissions and other types of official inquiries. Yet, in the past the Ombudsman had to virtually beg for supplementary funding to cover the cost of the inquiry into the Use of Force in NSW Prisons, commenced after a matter was referred by a former minister for Corrective Services. Supplementation was eventually received for this inquiry in May 1991, virtually at the end of the financial year. This present method of seeking supplementation causes gross distortions in the Office, both in terms of planning investigations and in the hiring of temporary assistance.

7.27 At the moment significant investigations are being delayed and even discontinued because of the inability to fund s.19(2) inquiries and the temporary assistance and/or expert assistance they may necessitate. The Ombudsman can understand Treasury's reluctance to provide additional money from the Consolidated Fund on the basis that the number and cost of significant inquiries cannot be precisely predicted. In these circumstances Treasury should at least consider an adjustment to the Office's budget of \$100,000 per annum for Special Inquiries, as a protected item. This would mean that if no such Inquiries eventuated in a particular year, the funds could not be expended for any other purpose and would have to be returned to Treasury.

TEMPORARY ASSISTANCE

- 7.28 A further example of the erosion of the Office's infrastructure and resource base is shown by the present inability to budget for temporary assistance. For many years the Office was able to deal with sudden surges in complaints or replace staff working exclusively on major investigations, by recruiting staff on a temporary short term basis. Specific funds were set aside in the Office's budget annually to meet these contingencies. Over the years, this annual provision has disappeared, being progressively drawn on to meet permanent requirements.
- 7.29 The former Ombudsman was able to create the position of a second Assistant Ombudsman (now absolutely essential to the functioning of the Office) only on the express undertaking that it would be funded from within the Office's current budget. Salary related costs were met by deleting one seconded police officer position and by drawing on the temporary assistance line item. Another major and final erosion of temporary assistance followed the decision in 1988 to restructure the Office's investigative resources into four teams each headed by a senior investigation officer to increase efficiency. This involved the upgrading of three positions. Again, this restructure which was the first substantive organisational restructure since the inception of the Office was approved only on the basis that the increased salary costs were met from within budget.
- 7.30 Despite the substantial extension of jurisdiction of the Ombudsman over the years and the great increase in the knowledge and skills that has necessitated from investigation officers, there has been no upgradings of investigation officer positions, apart from the creation of the above mentioned supervision positions, in the eighteen year history of the Office.

CLIENT SURVEYS

- 7.31 The Ombudsman recognises that potentially the most valuable source of feedback on the efficiency and effectiveness of the Office is likely to come from regular surveys of client expectations and satisfaction levels. To date there has been insufficient funds in the Office's budget to carry out such detailed surveys. Steps currently are being taken to investigate the possibility of undertaking an initial survey through maximising the use of in-house resources to minimise costs. Clearly however, such surveys need to be a regular feature of the organisation's accountability measures and the budget needs to be adjusted to cater for such.
- 7.32 The Ombudsman is aware that there was support from our Treasury Inspector for a very modest request for extra funds for this purpose, however, no extra funds were made available by Treasury. The Ombudsman estimates that a figure of \$20,000 is necessary to commission appropriate surveys.

CHIPS

- 7.33 The Ombudsman hopes that one result of this major initiative will be a reduction in the number of complaints to the Office over time. For that reason an attempt has been made to devote resources to the project as a priority. This has meant that already scarce human resources have been switched from other important work to service CHIPS, again leading to distortions in work flow in the Office.
- 7.34 It is trite to say that it is a matter for the Ombudsman to allocate resources for various priorities in terms of his overall budget. The fact is that, valuable as the CHIPS project is, it is totally ancillary to the main statutory responsibilities of the Ombudsman. The staff resources allocated to the project to date have been at the expense of performing core activities which the Ombudsman is duty bound to perform. In April 1992, in response to a request from the Office's Treasury Inspector to provide costings on a number of the former Premier's undertakings arising of the Vision Statement, *Facing the World*, the Ombudsman advised the Secretary of the Treasury of the expected costs of CHIPS which was regarded as an important complement to the Premier's initiative, as:

	\$
1 Recruiting and employing a Senior Executive Assistant Grade 9	48,920.39
2 Media Officer's time @ 30%	12,763.00
TOTAL	<u>61,683.38</u>

- 7.35 In addition, the Ombudsman advised he would be seeking approval in principle for a recoup of costs associated with:

- ◆ compilation, printing and distribution of a CHIPS procedures manual
- ◆ surveys of public sector organisations
- ◆ cost of conducting seminars
- ◆ costs of reviews of internal complaint handling systems

No funds have been provided by Treasury.

- 7.36 It is envisaged that to function effectively the CHIPS project would need an operating budget of at least \$30,000 in addition to staff costs to carry out such activities.

SERVICING JOINT COMMITTEE ON THE OMBUDSMAN

- 7.37 In his previous submission (at 4.33 - 4.34) the Ombudsman referred to his request for \$25,000 in temporary assistance funding, as an adjustment to the Office's maintenance role, to replace officers involved in preparing submissions for the Joint Committee.
- 7.38 The Office has no research officer and all work associated with servicing the Committee's information needs has to be performed by taking staff off core duties. Although no detailed costings have been made, a considerable amount of time of the Ombudsman, Deputy Ombudsman, Assistant Ombudsmen, as well as investigation officers, media officer and executive assistant has been devoted to the current inquiry and the previous inquiry into the police complaints system.
- 7.39 Again, despite support for temporary assistance funds from both the Treasury Inspector and the Secretary of the Treasury, no funds were forthcoming as a result of the previous maintenance dispute.

RESEARCH AND EXECUTIVE SUPPORT

- 7.40 There is an urgent need to provide extra staff for research purposes associated with investigations and s.19 (2) inquiries. At present all research and special projects requested by statutory officers have to be handled by investigation staff. Because this involves further erosion of investigative resources, they tend to be given lower priority than dealing with specific complaints from citizens. Research associated with identifying systemic deficiencies in administrative procedures however is an important adjunct to the investigation of citizen complaints. It forms the basis for using the Ombudsman's *own motion* powers of investigation to inquire into administrative conduct that affects large numbers of citizens and the making of recommendations for better practice. Due to the current demand on the Ombudsman's resources this power is rarely used. The Ombudsman estimates that there is a need for two additional staff at a Grade 7-8 level at an annual cost of \$91,445 to supplement the existing investigation staff for this purpose.

EXPERT ASSISTANCE

- 7.41 Section 25 of the Ombudsman Act provides that in an investigation under the Act, the Ombudsman may engage the services of any person for the purpose of getting expert assistance. In past years the Ombudsman has engaged a number of such experts to facilitate his investigation of complaints including drainage engineers, forensic document analysts, even a neurosurgeon.

7.42 In the more recent past, our budgetary constraints have forced us to go without such assistance in many cases where it was needed. In those cases, investigations have proceeded without expert assistance and to that extent they have been less than fully professional. In other cases, the matters have been declined due to the absolute necessity for such assistance and the lack of funds to pay for it. The following recent cases illustrate the variety of matters that confront the Ombudsman where his inability to engage expert assistance has a fundamental affect on his ability to properly investigate legitimate complaints.

7.43

Case A

A businessman complained about the conduct of some police officers in the production and distribution of a "dossier" on him which was clearly aimed at undermining his business in Australia and overseas. Some of the highly damaging information in the dossier was untrue but was given credibility by the inclusion of leaked police intelligence reports. The Ombudsman's investigation eventually gained access to the original documents which had been sent to an American citizen (some seven years previously) who appears to have produced the report on assignment for one of the complainant's competitors. Linking a number of police officers to the documents could only be proved if their fingerprints could be found on the documents. There were approximately 120 pages of documents. Forensic analysis of ten pages of the documents was undertaken and a fingerprint expert was able to identify a latent fingerprint of a key civilian witness who was known to be an associate of some of the police under investigation. The cost of analysing the rest estimated as costing approximately \$15,000, was beyond the resources available for the investigation.

7.44

Case B

A complaint was made that the State Rail Authority lacked an overall plan for signalling requirements on its lines, that large amounts of capital expenditure were made on an ad hoc basis, that signalling systems throughout the state operated on very slim safety margins, and that out of date signalling system records posed risks for interfacing old and new systems, maintenance and fault finding. The complaint raised extremely serious concerns about public safety on the state's railway network.

Following preliminary enquiries, it became obvious that a formal investigation would have to consider not only technical questions involving the evaluation of signalling systems in terms of design, testing, certification and operating functions, but also questions of risk analysis and social economic evaluation. Conceptual issues such as "*how unsafe is unsafe?*", "*what are reasonable steps for management to have taken in response to criticisms of critical deficiencies in safety standards*" and "*has SRA discharged its duty if it has already engaged expensive experts to look into the matter and yet they are said to be still ineffective*" would also need to be addressed.

An expert on signalling systems together with legal and transcription assistance for a hearing predicted to take at least eight weeks was seen as essential to proceed. Costs were predicted to be in the vicinity of \$100,000 and were beyond the means of the current budget. As the complaint raises critical issues of public safety, the Ombudsman intends making a special report to parliament on the matter.

7.45

Case C

A complaint was made that Bellingen Shire Council was failing to take proper consideration of the likely pollution impact on the Bellingen River of its approval of a fish farm. The complaint raised crucial questions about the likely nutrient composition of water to be discharged by the farm into the river. To properly determine the issue, expert assistance from an environmental chemist was necessary to assess and interpret technical reports supplied during the enquires. After some delay caused by this impasse the file was eventually closed without a determination being made due to the project failing to proceed.

7.46

Case D & E

A patient of a country hospital sustained certain injuries as a result of an anaesthetic during surgery. A complaint was made to the Health Department's Complaints Unit which had investigated the matter and made a determination that displeased the complainant. They then complained to the Ombudsman, claiming the Complaints Unit had been negligent in its investigation and had failed to properly examine further critical medical evidence obtained by the complainant. To assess whether that further *evidence* was indeed relevant required expert medical opinion

In another example, a 10 year old boy with kidney disease was taken to a Sydney hospital when he developed high blood pressure. He was monitored and treated in the Accident and Emergency Centre for over seven hours before he was assessed as stable and returned home. Shortly after returning home, he had a cerebral haemorrhage. He was rushed to the nearest hospital but died later that day.

A complaint was made to the hospital and the Complaints Unit. The hospital conducted an initial investigation and some months later the Complaints Unit conducted a file review. As the complainants were still dissatisfied with these investigations, they complained to the Ombudsman. They argued the investigative process had been flawed.

These cases are typical of many of the complaints received about the adequacy of investigations by the Complaints Unit, and also certain complaints about the Prison Medical Service. Professional medical judgement is a critical factor and the Ombudsman often needs independent expert medical advice to properly assess such complaints.

If parliament acts to make the Complaints Unit into an independent statutory authority, this problem will become exacerbated as the current proposal is that the Ombudsman will be the chief appeal mechanism open to citizens dissatisfied with the services and judgements of the Unit. Without supplementation to the maintenance budget, the Ombudsman will not be able to effectively respond to such complaints.

7.47

Case F

For decades an access road in the Oberon area had deviated from its crown reserve and ran through private property. After numerous disputes with the users of the road, the landowners eventually refused access. This made a number of properties inaccessible. The dispute was taken to the local council which was then faced with the option of building a new road along the original reserve or resuming the existing road where it crossed the private land. A critical factor in the decision-making became the estimated cost of building the new road. The complainants who did not want their land resumed obtained a quote significantly cheaper than council's estimates. The council was not willing to act on that quote and was favouring the resumption option. The landowners and their local member appealed to the Ombudsman to arbitrate. In order to fairly do that it would have been necessary for the Ombudsman to satisfy himself about the reasonable likely cost to make the road in the existing reserve. Scarcity of resources meant at the time he was not able to obtain the necessary engineering advice to properly determine whether council's action had indeed been reasonable and the complaint had to be declined.

7.48

Case G

A citizen complained about Warringah Shire Council's failure to act to stop stormwater run-off from its road which caused landslip and property damage on the complainant's land. The council argued it had provided adequate drainage to meet the particular problems in the area. The complainant claimed the particular design used had proved to have failed elsewhere and that the reconstructed drainage system was designed to allow some run-off to escape over the lower side of the road, which in fact had contributed to both the run-off and seepage that had caused the landslip. Resolution of the complaint clearly embodied arguments of technical merit which properly necessitated professional engineering advice.

The Ombudsman has received many complaints over the years about liability for drainage and flooding problems and many of them necessitate the kind of expert assistance demonstrated by the above example.

A freedom of information request had been made to Pacific Power for copies of consultant's reports concerning the future and sale of ten coal mines in the Hunter Valley. The reports had been denied in full by the authority. An appeal was eventually lodged with the Ombudsman. The reports were voluminous, complex and technical addressing issues of a complicated nature concerning financial, statistical, economic and energy related matters. Unless one was well versed in such complex issues, much of the contents of the reports were not readily understandable. It became clear that a determination of the validity of the grounds for the exemptions claimed would require a thorough understanding of the complex issues contained in the reports. It was also likely that expert assistance from a commercial lawyer would be needed. The scarcity of precedents in the FOI realm in regard to the type of exemptions claimed also did not assist the situation and had the Ombudsman proceeded it was likely that the case would have set an important precedent for the interpretation of certain sections of the FOI Act. Due to the likely costs of obtaining that expert assistance needed, the Ombudsman was forced to discontinue the investigation. The complainant was left with the only option of taking an expensive appeal to the District Court to obtain redress.

A resident's group complained about the failure of the Environmental Protection Authority and the Waste Recycling and Processing Service to properly control the Castlereagh Liquid Waste Disposal Depot and raised serious public health concerns over the proposal to overtop the liquid waste cells on the site with solid waste.

A number of issues were raised including the possible leakage of toxic waste from clay cells into ground and surface water, the high incidence of specific health problems and birth deformities occurring within the local community, inexplicable crop and stock losses, inadequate monitoring and testing procedures, inadequate safety procedures and the incomplete maintenance of records.

Preliminary enquires into the complaint have revealed that there has been an environmental audit conducted and that a second stage audit is to commence shortly. That may be reason for the Ombudsman delaying further enquires. However, if such external inquiries were not taking place, or in the case of the complainants raising serious criticisms of the methodology adopted and thoroughness of the audits, the Ombudsman would be placed in a difficult position regarding an investigation of the complaint given the important public health issues involved and the need to engage expert assistance to accurately assess the complex scientific documents relating to the operation of the Depot.

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- 7.51 As the need for expert assistance cannot be predicted, it is recommended that an adjustment be made to the Ombudsman's budget of \$50,000 per annum for expert assistance **as a protected item**. If not expended, the funds would return to consolidated revenue.

LEGAL ASSISTANCE

- 7.52 Fortunately the NSW Ombudsman has had fewer jurisdictional challenges in the past than many of his interstate colleagues. The Office did receive supplementation to cover one Supreme Court challenge initiated in 1990 arising from a re-investigation of a police complaint. The case has been settled at the moment though the costs to this Office were over \$80,000. In the last two years, however, there has been a noticeable tendency for public authorities to raise jurisdictional points and engage in other detailed legal argument in response to provisional findings of the Ombudsman. As far as possible the Office has dealt with such submissions on the basis of in-house advice due to the strained budgetary situation.
- 7.53 In 1991 almost half of the years budget for legal advice was eaten up in obtaining opinions on only two complex investigations. One of those cases resulted in a local council setting aside \$142,000 plus accruing interest in a separate reserve fund for future development of a senior citizens centre. The legal advice was crucial for the success of that investigation. The other case is still being finalised. As a result of the high costs associated with those two cases, the Ombudsman directed that the legal budget be reserved for urgent and unavoidable occasions. As a consequence, some cases that would have benefited from specialist legal advice have been forced to go without. The underspending of the legal budget in 1991/1992 was, therefore, a false reflection of the need. It is considered that the legal advice line item would need to be doubled to achieve a satisfactory resource level.

PART 8 CONCLUSION

- 8.1 The Ombudsman looks to the Committee to fully consider the evidence put forward in support of his call for additional funds so he can properly perform his statutory and public duties. He has outlined specific areas that are being neglected or that are being compromised through inadequate resources. The Committee must decide what priority Parliament should give to this most important institution.
- 8.2 Some of the issues are very simple. Does the Committee believe:
- ◆ it is important and necessary that the Ombudsman make his services known and available to disadvantaged groups, such as rural dwellers and citizens from non-english speaking backgrounds?
 - ◆ it is important and necessary for the Ombudsman to be highly visible in the state's correctional institutions to prevent the kind of conduct alluded to by the former Chairman of the Corrective Services Commission?
 - ◆ it is important and necessary that the Ombudsman be able to engage the expert assistance that certain investigations require?
 - ◆ it is important and necessary for the Ombudsman to undertake enquires on all complaints from citizens that the Ombudsman considers are not trivial or premature and indicate some prima facie suggestion or evidence of wrong conduct?
 - ◆ it is important and necessary that the Ombudsman have sufficient infrastructure resources to properly conduct royal commission hearings under s.19(2) of the Ombudsman Act?
- 8.3 The Ombudsman expects the Committee to answer such questions in the affirmative. He further expects the Committee to carefully consider whether his current resources are adequate to meet these needs. The Committee has had the benefit of its own expert financial consultant to advise it on this question. If the advice the Committee receives and adopts is that the current resources are sufficient, the Ombudsman seeks the benefit of the Committee's wisdom on how to meet these needs from those resources.

If the Committee comes to the conclusion that the current resources are inadequate, the Ombudsman implores the Committee to take whatever steps are possible to ensure additional funds are made available as soon as possible for the benefit of the people of New South Wales.

PART 9 RECOMMENDATIONS

9.1 Having regard to the matters contained in this and the Ombudsman's previous submission, to ensure the independence of his Office and to maintain the services of the Office at a minimum level, the Ombudsman urges the Joint Committee to recommend that:

- 9.2 The Joint Committee on the Ombudsman be authorised to recommend, and to report to Parliament its recommendation, the annual appropriation from the Consolidated Fund for the Office of the Ombudsman.
- 9.3 The Office of the Ombudsman be regarded as demand driven in respect of the receipt of complaints.
- 9.4 The Office of the Ombudsman be relieved of future productivity savings for 1993-1994 and forward years.
- 9.5 The appropriation for the Office of the Ombudsman from the Consolidated Fund for 1992-1993, be immediately supplemented in respect of the following:

	\$
Rent review (1991-92)	72,000
Salary costs	166,000
Client surveys	20,000
TOTAL	238,000

- 9.6 The appropriation for the Office of the Ombudsman from the Consolidated Fund for 1993-1994 and forward years be adjusted as follows:

	\$
Rent reviews	72,000
Salaries	166,000
Overtime	80,000
Visits (gaols & juvenile institutions)	46,000
Public awareness	31,000
Special Inquiries	100,000 (protected item)
Printing	34,000
S.19 infrastructure	30,000
Expert assistance	50,000 (protected item)
Client surveys	20,000
CHIPS	92,000
Research staff	91,000
Temporary assistance (Servicing JCO)	25,000
TOTAL	837,000

David Landa
NSW Ombudsman

ATTACHMENT 1

Ombudsman letter to General Manager
Office of Public Management
dated 18 July 1990



OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

Our reference: DEL.bc

Your reference:

Dr Blair Hunt
General Manager
Office of Public Management
State Office Block
Macquarie Street
SYDNEY NSW 2000

Dear Dr Hunt

I was pleased to have the opportunity to meet with you yesterday morning. I acknowledge that you have been directed to institute a review of the Office of the Ombudsman.

I confirm that I advised you that a report, on this issue amongst others, was being prepared for Parliament. I confirm that the issue of a review being conducted by the Office of Public Management raised issues that have previously been seen to give rise to concern. As the report that I refer to deals with these issues I confirmed that commencement of the review be deferred to enable the serious issues that are raised to be dealt with. I will make contact with the Director General of Cabinet Office.

Yours sincerely

David Landa *DL 18/7/90*
OMBUDSMAN

APPENDIX 4

Decline Policy

DECLINE POLICY FOR COMPLAINTS TO THE OMBUDSMAN

PURPOSE

1. The purpose of this policy is:
 - To provide guidelines for exercising the discretion not to investigate.
 - To provide guidelines for the form and content of decline letters.
 - To set goals for greater efficiency in declining complaints at the outset.

PREAMBLE

- 2.1 The public have a right to make complaints to the Ombudsman under both the Ombudsman Act, the Police Regulation (Allegations of Misconduct) Act and the Freedom of Information Act. There are insufficient resources, however, to investigate all matters, including many that appear to have merit.
- 2.2 Given an increasing complaint load and declining resources, the public interest is best served by giving priority to those complaints that identify systemic and procedural deficiencies in administration. Greater resources must also be made available for formal investigations and complex enquiries if the Office is to achieve effective results from its investigation work.
- 2.3 Consequently, a significant and increasing number of complaints coming to the Office will have to be declined in the Ombudsman's discretion. This discretion has to be exercised with great sensitivity and fairness. Even in declining complaints, we must strive to provide a service to those with legitimate grievances.

PRINCIPLES

- 3.1 The following principles apply:
 - Priority is to be given to complaints that identify systemic and procedural deficiencies in public administration and individual cases of serious abuse of powers.
 - Preference is to be given to complaints that, if investigated, are likely to lead to practical and measurable changes through recommendations.

-
- Generally, the Ombudsman should be an avenue of last resort:

- complaints are expected to, and are to be encouraged, to take up individual grievances with the public authority concerned before asking the Ombudsman to investigate.

- alternative and satisfactory (to the Ombudsman) means of redress are to be used.

- The lack of resources, both human and financial, is an essential consideration in the exercise of the discretion not to investigate.

DECLINE GUIDELINES

- 4.1 Due regard must be given to section 12 of the Ombudsman Act and section 5(3) of the Police Regulation (Allegations of Misconduct) Act in assessing each complaint. Any complaint that is not a complaint within the meaning of either Act or is outside jurisdiction must be automatically declined.
- 4.2 Section 13 of the Ombudsman Act and Section 19 of the Police Regulation (Allegations of Misconduct) Act provide in similar terms a discretion by the Ombudsman to decide whether or not to investigate a complaint. In making that decision he may have regard to such matters as he thinks fit including matters to do with triviality, vexatiousness, frivolousness, bad faith, remoteness in time, alternative means of redress, personal interest, and in the case of the Ombudsman Act, whether the subject matter of complaint is substantially a trading or commercial function.
- 4.3 All decisions made to decline or discontinue investigations are to be made in the public interest and in accordance with these guidelines.
- 4.4 Complaints that are frivolous, vexatious, not in good faith or which are trivial, are to be automatically declined.
- 4.5 ALL complaints relating to the discharge by a public authority of a function which is substantially a trading or commercial function are to be declined. This includes complaints relating to conflicts with public authorities over leases, tenders and other contracts unless there is prima facie evidence of a pecuniary interest, conflict of interest or possible corruption. It does not apply to complaints by public housing tenants concerning the conduct of the Department of Housing as landlord, although there may be other bases on which such complaints might be declined. Complaints concerning the G.I.O. and other bodies that provide non-monopolistic services in the open market should also be declined on this basis.
- 4.6 All complaints relating to conduct more than 6 months old as at the date of complaint are to be declined.
- 4.7 All complaints in respect of which there is or was available to the complainant an alternative and satisfactory means of redress are to be declined. This includes:-

- conduct where there is an internal appeal mechanism available.

-all complaints concerning the conduct of local government authorities in respect of which there is a right of appeal or review including Class 4 appeals to the Land and Environment Court unless the Assistant Ombudsman responsible for Local Government complaints or the Ombudsman concludes that "special circumstances" exist in terms of section 13(5). Complaints where no special circumstances exist must be declined as they are outside jurisdiction.

-conduct where substantial economic loss is claimed and restitution is only likely as a result of litigation.

- 4.8 All premature complaints, complaints involving minor misconduct which have no widespread implications, and complaints in respect of which the complainant has no direct interest or an insufficient interest are to be declined.

DECLINE LETTERS

5.1 Whether at the outset or after preliminary enquiries, every decline letter must

- be prefaced by an explanation of Ombudsman receiving far more complaints that he has resources to investigate and that priority is given to those matters that identify systemic and procedural deficiencies in public administration where complainants have no alternative and satisfactory means of redress.
- give reasons for the decision not to investigate.
- wherever possible, provide an explanation or references to relevant legislation, policy or procedures affecting the public authority concerned. If appropriate, provide copies of that relevant material or indicate avenues of access to that material.
- wherever possible, provide information on avenues of appeal or alternative remedies.

PROCEDURES FOR DECLINING

- 6.1 The Deputy Ombudsman and Assistant Ombudsmen will assess all new complaints and give written directions on 'birth certificates' as to whether a complaint is to be declined at the outset, or whether preliminary enquiries should be undertaken, and if so, in what form. If a complaint is to be declined, an indication of the main reasons will be given. Officers are to expand these reasons into comprehensive explanations.
- 6.2 It must be remembered however, that a discretion is being exercised and if an investigation officer believes there are any grounds for varying those directions they are to discuss them with the assessing officer before further action is taken. Otherwise these assessments are to be treated as directions.
- 6.3 Complaints that are to be declined at the outset need not be acknowledged. Final letters are to be issued, however, within 7 working days of file creation date.

6.4 Preliminary enquiries:-

Written preliminary enquiries in respect of complaints under the Ombudsman Act should only be made when absolutely necessary; greater use is to be made of the telephone for such enquiries. The purpose of telephone enquiries should be:

- (a) To gather further information in order to better assess complaint.
- (b) To enquire if there are avenues for re-consideration/resolution.

Where preliminary enquiries either under the Ombudsman Act or the Police Regulation (Allegations of Misconduct) Act are made in writing, there are to be no further written preliminary enquiries without the approval of the relevant Senior Investigation Officer.

6.5 Complaints are to be declined where, after preliminary enquiries, it appears to the investigation officer that the matter can be satisfactorily resolved either by explanation, or by further action that the public authority is willing to take, and/or the complainant can take.

6.6 Investigations:

No investigation is to be commenced under Section 16 of the Ombudsman Act without the specific approval of the relevant SIO. All section 16 notices under the Ombudsman Act are to be notified to the Principal Investigation Officer for recording purposes. A copy is also to be given to the Deputy Ombudsman or the Assistant Ombudsman wherever relevant. Any section 16 notice that includes a demand under s.18 of the Act has to be referred to the relevant statutory officer for signature. All re-investigations in the police area are to be approved by the Assistant Ombudsman (Police).

6.7 Senior Investigation Officers are to conduct three monthly reviews of all current non police files that are more than 3 months old from file creation date in terms of preliminary enquiries and from date of issue of S.16 notice in matters under investigation. The Deputy Ombudsman and Assistant Ombudsman (Prisons and Local Government) will review all non-police files unresolved after 6 months from file creation date or date of issue of S.16 notice in the case of investigations on a tri-annual basis.

DETERMINATION CATEGORIES

7.1 Statistical reporting on disposal of complaints should reflect the amount of work/assistance provided to complainants by this office.

7.2 Determination categories for complaints are to be as follows:

NJ complaint is not within the Ombudsman's jurisdiction. (includes referrals to Commonwealth Ombudsman, Banking Ombudsman, Consumer Affairs, etc.)

DECO1	13(4)(b)(i) - frivolous, vexatious or not in good faith (ii) - trivial (iii) - trading or commercial (iv) - too remote in time (more than 6 months) (vi) - complainant has no or insufficient interest
DECO2	13(4)(b)(v) -alternative means of redress 13(5) - right of appeal in local government matter
DECO3	explanation/advice provided (eg, relevant legislation or conduct of public authority explained, no prima facie evidence of wrong conduct, referred to legal adviser to explore other remedies, general advice given on how to deal with problem)
DECO4	premature & referred to public authority for internal complaints resolution
DECO5	declined on resources/priority basis
DECE1	complainant assisted (same as DECO 3 but after preliminary enquiries)
DECE2	complaint withdrawn; insufficient evidence or no utility warranting investigation
DECE3	investigation declined on resources/priority basis
RES	outcome of written or telephone preliminary enquiries considered to have resolved complaint to satisfaction of Ombudsman
DISC 1	Complaint discontinued after issue of s.16 due to matter being resolved
DISC 2	Complaint discontinued after issue of s.16 as no utility in proceeding
DISC 3	Complaint discontinued after issue of s.16 as complaint withdrawn
NWC	No adverse findings
WC	Conduct falling within s.26(1)

APPENDIX 5

Minutes of Committee Proceedings



COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

Minutes of the meeting of the Committee held on
25 June, 1992, at Parliament House, Sydney

Members Present:

Mr A Tink, MP (Chairman)
Mr P C Scully, MP
Mr M Kerr, MP
The Hon S Mutch, MLC

Mr J Turner, MP
Mr K Moss, MP
The Hon Dr M Burgmann, MLC

Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Ronda Miller (Clerk to the Committee) were also in attendance.

Apologies: The Hon L Coleman, MLC

1. The minutes of the previous meeting held on 8 April, 1992 were confirmed on the motion of Mr Kerr, seconded by Mr Scully.

2(a) The committee discussed the draft reply to correspondence received from the General Manager of Botany Council dated 15 January, 1992 concerning procedures within the Ombudsman's Office for handling FOI complaints. The committee resolved that on the basis of advice from the Ombudsman, dated 4 May, 1992, no further action was warranted on the issues raised by Council and that the general procedures used by the Office in handling the release of documents relating to FOI complaints were adequate. Draft response approved by Committee.

2(b) The committee noted the draft letter to Ms Gelman and approved its dispatch, provided that it was amended to alert Ms Gelman in a general way of potential defamation problems that could arise from partially quoting from transcripts of evidence and refer her to the Committee Clerk for all enquiries in this regard.

2(c) The Chairman gave background to correspondence relating to the circulation and reporting of the committee's report following tabling.
The committee noted the Chairman's letters.

2(d) The committee noted the correspondence between the Clerk and the Chairman regarding a request from the Committee on the National Parks (Aboriginal Ownership) Bill for a contribution towards their study tour.

2(e) The Crown Solicitor's advice on committee powers was noted.

2(f) The Ombudsman's letter to the Chairman, dated 22 April, 1992 correcting details of his submission to the Round Table Conference was noted.

3. Committee Inquiry

The Committee resolved, on the motion of Mr Kerr, seconded by Mr Scully:

THAT the suggested terms of reference be adopted subject to the inclusion of a preamble relating to previous minutes of the Committee and one other minor amendment and that the standard form of inquiry advertisement be placed in the Australian, Sydney Morning Herald and Mirror/Telegraph seeking submissions, the closing date to be four weeks after the date of the advertisement.

The Committee agreed that the Chairman should write to the Ombudsman enclosing a copy of the advertisement, noting his earlier submissions on the subject of the terms of reference, but seeking an update.

4. The Chairman advised the Committee that the Ombudsman and the Police Commissioner had formed a Working Party including the Assistant Ombudsman and Assistant Commissioner (Professional Responsibility) to examine the recommendations contained in the Report. The Chairman had received informal advice that the proposals contained in the Report were to be included in legislative amendments to the PRAM Act to be put forward in the 1992 Budget Session.

5. The Committee noted the Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992.

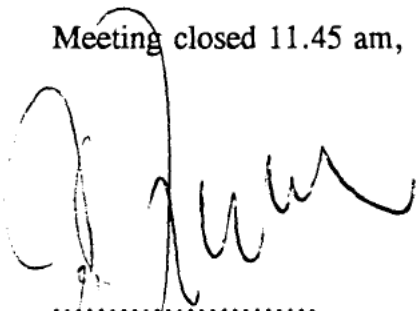
The Project Officer undertook to advise the committee of the commencement date of the Act at the next meeting.

6. The Committee discussed the Budget Estimates that had been forwarded to the Financial Controller. The Clerk advised that application could be made to the Presiding Officers for supplementation for consultants, if necessary once the inquiry took shape.

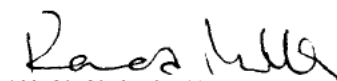
7. Information on the Australia and New Zealand Society of Criminology Conference to be held in Melbourne from 30 September to 2 October, 1992 and an abstract of a proposed paper on the Committee's Police complaints inquiry was noted.

8. The committee noted various newspaper clippings and Hansard excerpts which were circulated for information.

Meeting closed 11.45 am, sine die.



.....
Chairman



.....
Clerk to the Committee



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Thursday, 3 September, 1992
Parliament House, Sydney at 4.45 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr M. Kerr, Mr K. Moss, Mr P. Scully.

Ronda Miller ((Clerk-Assistant (Committees)) and Helen Minnican (Project Officer) were also in attendance.

Apologies

Mr Hatton, Mr Schultz

Election of new Chairman

Resolved on the motion of Mr Coleman, seconded Mr Mutch: that Mr Turner be elected Chairman of the Joint Committee on the Office of the Ombudsman.

Resolved on the motion of Mr Kerr, seconded Mr Coleman: that Mr Mutch be elected Vice-Chairman of the Joint Committee on the Office of the Ombudsman.

1. Correspondence Received

- (a) Letter from Mr Rietkerk dated 30 June, 1992 concerning complaints about the Ombudsman and Assistant Ombudsman (Police).

The Committee noted the correspondence and approved the draft letter for dispatch.

- (b) Letter to Chairman from Mr E Azzopardi, dated 2 August, 1992 concerning certain aspects of the Committee's police complaints report with which he is dissatisfied.

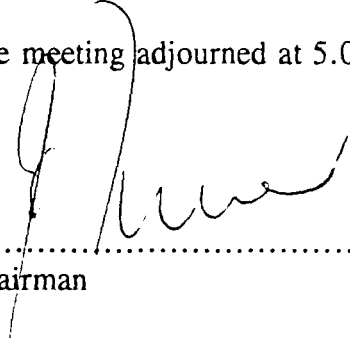
The Committee noted the correspondence and approved the draft letter for dispatch.

2. Inquiry into the funding and resources of the Ombudsman's Office correspondence and conduct of inquiry.

Briefing folders containing all copies of submissions received were distributed at the meeting. The Committee resolved to discuss the inquiry further and set hearing dates at its next meeting.

3. The Committee agreed to meet on Thursday, 17 September, 1992.

The meeting adjourned at 5.05 p.m.



.....
Chairman



.....
Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Thursday, 17 September, 1992
Parliament House, Sydney at 3.30 pm

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr M. Kerr, Mr K. Moss, Mr P. Scully.

Ronda Miller ((Clerk-Assistant (Committees)), Helen Minnican (Project Officer) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr Hatton

1. The Minutes of the previous meetings held on 25 June and 3 September, 1992 were confirmed on the motion of Mr Moss, seconded by Mr Scully.
2. Correspondence arising from the Minutes was noted by the Committee.
3. Business arising from the Minutes - the Project Officer advised the Committee that the Statutory Appointments (Parliamentary Veto) Amendment Act 1992 commenced on the date of assent 19 May, 1992 and that Public Accounts Committee had recently considered the recommended applicant for the position of Auditor General under this amendment.
4. The Committee noted correspondence received. The Committee also noted details of correspondence from Mr Lynch and agreed upon the terms of a reply.
5. Inquiry into the funding and resources of the Ombudsman's Office.

The Committee noted the following correspondence relating to its inquiry:

- a) letter from the Chairman to Mr Landa dated 25 June, 1992 outlining terms of reference and closing date of submissions.
- b) letter from Mr D Landa dated 10 September, 1992 concerning difficulties involved in comparing resource and complaint statistics for Ombudsman

- c) letter from Mr P Wilmshurst dated 11 September, 1992 advising of his intention to make a submission to the Committee and the essential position he would be taking on the funding issue.
- d) a further submission from Mr Max Mueller dated 6 September, 1992.
- e) letter from Mr Paul Murray, Legislative Counsel, Ontario Standing Committee on the Office of the Ombudsman, dated 2 September, 1992 concerning funding arrangements and resources for the Ombudsman in Ontario and the work of the Committee.
- f) letter from Mr F Radburn, Assistant Auditor General, Ottawa Ontario dated 25 August concerning information on funding for Ombudsman Offices throughout Canada.

Hearing dates for the inquiry were set as Friday 16 October (full day), Friday 23 October (full day), and Tuesday 27 October (evening).

The Committee resolved to call the following witnesses to give evidence:

Mr David Landa (Ombudsman)
 Mr John Pinnock (Deputy Ombudsman)
 Mr Percy Allan (Secretary, Treasury) and any other relevant Treasury Officials.
 Mr Ken Baxter (Deputy Director General and Manager OPM, Premier's Department)
 Auditor General
 Manager, Property Services Group
 Margaret Allars, Sydney University
 Professor Dennis Pearce
 Mr Brian Jinks
 Mr John Marsden, President Law Society
 Professor Tony Vinson and Ms Eileen Baldry
 Mrs Melinda Jones
 Mr Terry Murphy, Acting Director, Legal Aid Commission
 Mr Peter Wilmshurst

Distribution Ombudsman's submission:-

The Committee resolved to circulate the Ombudsman's submission on a confidential basis to those people being called to give evidence in the same manner as was done for the Committee's previous inquiry. The Ombudsman has indicated to the Committee that he has no objection to this proposal and fully supports it.

It was also agreed that submissions from other individuals giving evidence should be circulated on a confidential basis also but only after obtaining the consent of each author, preferably in writing.

CONSULTANT

The Committee resolved to seek approval for the appointment of a consultant to provide expert advice in relation to its inquiry into the resources and funds available to the Ombudsman to effectively perform his functions and that the cost be approved by the Chairman.

The Committee requested the Project Officer to make inquiries and seek quotations for an expert in financial analysis and public sector resource management, and to make a recommendation for the Chairman to approve.

MEMBER RESIGNATION

Mr John Hatton briefly attended the meeting to deliver his apologies for being absent and to advise the Committee of his intention to resign from the Committee.

CRIMINOLOGY CONFERENCE

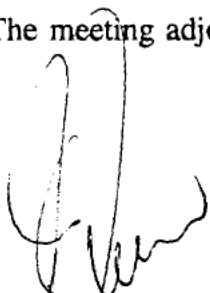
Moved by Mr Turner seconded by Mr Scully that the Committee approved Mr A Tink, MP former Chairman of the Committee, and Ms. H Minnican, Project Officer to attend the Conference.

It agreed to cover the expenses of the trip, including accommodation, registration fees etc from Committee funds.

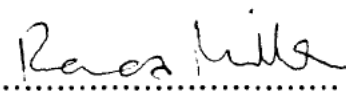
INTERVIEW WITH OMBUDSMAN AND OFFICIALS

At 4.15 pm Mr David Landa (Ombudsman), Mr John Pinnock (Deputy Ombudsman), Mr Keiran Pehm (Assistant Ombudsman) and Mr Gregory Andrews (Assistant Ombudsman) met with the Committee to discuss the Ombudsman's submission and other matters relating to the inquiry.

The meeting adjourned at 4.55 pm. Next meeting to be set by Chairman.



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Friday 16 October, 1992
Parliament House, Sydney

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr P. Scully, Mr M. Kerr.

Ronda Miller Clerk Assistant (Committees), Helen Minnican (Project Officer), Mr Bill Arkinstall (Consultant) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr K. Moss, Hon. S. Mutch, MLC

Dr Brian Edwin Jinks, Consultant, affirmed and acknowledged receipt of summons. He tabled a submission.

Members of the Committee questioned the witness. The Ombudsman's submission was received, tabled and released with his permission.

Ms Eileen Baldry, Administration Officer, Faculty of Professional Studies, University of N.S.W., appearing as the convenor of the NSW Prison's Coalition, affirmed, and acknowledged receipt of summons. Submission tabled.

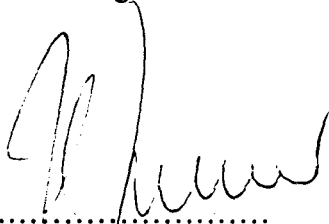
Professor Tony Vinson, Dean of Faculty of Professional Studies UNSW, former Chairman of Corrective Services Commission of NSW, was sworn in and acknowledged receipt of summons. Submission tabled.

Mr Anthony Clement Harris, Auditor General of NSW, affirmed. Submission tabled.

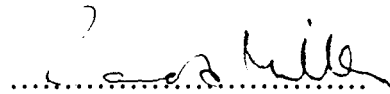
Mr Terence Anthony Murphy, Acting Director, Legal Aid Commissioner of NSW, was sworn in and acknowledged receipt of summons. Submission tabled.

The witnesses answered questions put to them by the Committee.

The Hearing concluded at 3.35 pm.



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday 27 October, 1992
Parliament House, Sydney - 6.30 - 8.00 pm

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. S. Mutch (Vice-Chairman), The Hon. L. Coleman

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr P. Scully, Mr T. Windsor, Mr K. Moss, Mr M. Kerr,

Ronda Miller, Clerk Assistant (Committees), Helen Minnican (Project Officer), Mr Bill Arkinstall (Consultant) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

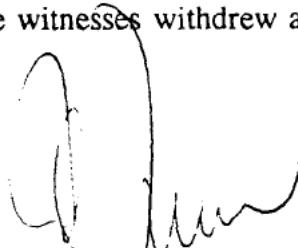
Mr B. Morris

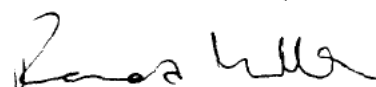
Mr Percy Allan, Secretary, New South Wales Treasury, State Office Block, Macquarie Street, affirmed and acknowledged receipt of summons.

Ms Susan Kelemen, Budget Officer, New South Wales Treasury, State Office Block, Macquarie Street, affirmed and acknowledged receipt of summons.

Mr Allan addressed the Committee and the witnesses answered questions put to them by the Committee.

The witnesses withdrew at 7.35 pm and the Committee deliberated until 8.10 pm.


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CHAIRMAN


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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Friday 13 November, 1992
Parliament House, Sydney - 11.00 am

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman.

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr P. Scully, Mr T. Windsor.

Ronda Miller Clerk-Assistant (Committees), Helen Minnican (Project Officer), Mr Bill Arkinstall (Consultant) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr M. Kerr, Mr K. Moss, Mr B. Morris, Mr S. Mutch

Minutes of meeting held on 16 October, 1992 were confirmed on the motion of Dr Burgmann, seconded by Mr Coleman.

Minutes of the meeting held on 27 October, 1992 were confirmed on the motion of Mr Windsor seconded by Mr Coleman.

The Consultant briefed the Committee on his work to date.

The Committee resolved to request from the Ombudsman:

- a) a breakdown of travel item expenditure to indicate that spent on conferences, etc. as opposed to travel relating to investigations;
- b) costings of activities and any related material done by the Office earlier in 1992; and
- c) any other material required by the Consultant and approved by the Committee.

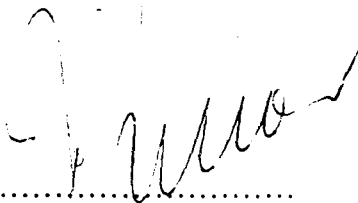
The Committee noted a letter from the Ombudsman to the Chairman dated 12 November, 1992 containing information in response to the Committee's request for details of several items of expenditure relating to the Inquiry. (Committee's request dated 22/10/92).

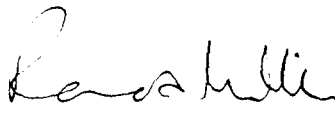
The Chairman informed the Committee that the Ombudsman was unable to attend a public

hearing previously arranged for 23 November, 1992. The secretariat was instructed to arrange a new hearing date for the Ombudsman, preferably on 7 December, 1992.

The Committee requested the Consultant to provide comparative material on expenditure by other Ombudsman within Australia, in a spread sheet format.

Meeting closed 11.55 am.


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CHAIRMAN


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CLERK



MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

Proceedings of Hearing held Monday, 16 November, 1992
Room 814-815, Parliament House, Sydney

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon S Mutch MLC. (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr C Scully, Mr K. Moss

Ronda Miller (Clerk), Helen Minnican (Project Officer) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr M. Kerr MP, Mr B. Morris, Mr A. Windsor, MP.

Meeting opened 10.05 am.

Mr Blair Lynn Hunt, Director, Property Management Divisions, Property Services Group and Ms Jennifer Kay Lewis, Manager, Property, Property Services Group were sworn in, and acknowledged receipt of summons.

Mr Hunt made opening remarks to the Committee. The Committee questioned the witnesses. The witnesses withdrew.

Committee adjourned at 10.40 pm until 11.00 am.

Melinda Jones made an affirmation and addressed the Committee. The Committee questioned Miss Jones.

Graham Lloyd McDonald, Banking Industry Ombudsman, [REDACTED]
[REDACTED] was sworn in.

Mr McDonald answered questions put to him by the Committee and distributed explanatory material to the members. The witness withdrew at 1.08 pm and the Committee adjourned until 1.27 pm..

Meeting of the Committee on the Office of the Ombudsman
16 November 1992

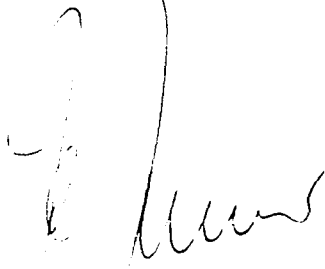
At 1.30 pm, Mr John Robert Marsden, President of the Law Society of NSW, took the oath, acknowledged receipt of summons and answered questions put by the Committee.

The Committee went in camera in the course of questioning of Mr Marsden for a short period (1.55 - 2.00 pm):

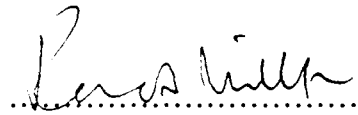
Professor Dennis Charles Pearce, Professor of Law, ANU, affirmed and acknowledged receipt of summons.

Professor Pearce answered questions addressed to him by the Committee. The witness withdrew.

The room was cleared and the Hearing concluded at 2.45 pm.



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Meeting held Monday, 16 November, 1992
Room 814-815, Parliament House, Sydney

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon S Mutch MLC. (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr C Scully, Mr K. Moss

Ronda Miller (Clerk), Helen Minnican (Project Officer) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr M. Kerr MP, Mr B. Morris, Mr A. Windsor, MP.

The Committee resolved on the motion of Mr Mutch, seconded by Mr Coleman, that the Chairman write to the Ombudsman concerning the costing of Freedom of Information inquiries.

The Chairman asked members to confirm their availability for the hearing on 7 December 1992, to be attended by Mr Landa.

The next meeting of the Committee is the hearing at 2.00 pm on Monday 23 November, 1992.

Meeting closed 2.50 pm.

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CHAIRMAN

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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Monday 23 November, 1992
Parliament House, Sydney - 2.00 pm

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr P. Scully, Mr T. Windsor, Mr K. Moss.

Helen Minnican (Project Officer), Mr Bill Arkinstall (Consultant) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr M. Kerr, Hon. L. Coleman.

Mr Kim Swan, Senior Investigation Officer, Office of the Ombudsman, 580 George Street, affirmed and acknowledged receipt of summons.

Ms Jenny Mason, Principal Investigation Officer, affirmed and acknowledged receipt of summons.

Ms Mason addressed the Committee and the witnesses answered questions put to them by the Committee.

The Committee went in camera for a short period in the course of questioning Ms Mason and Mr Swan.

Mr Richard George Humphry, Director-General of the Premier's Department took the oath and acknowledged receipt of summons.

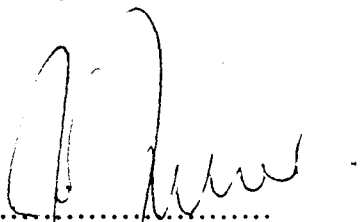
Mr Humphry referred in the course of proceedings to the Freedom of Information Annual Report 1989-90.

Mr Kenneth Peter Baxter, former Deputy Director-General, Premier's Department, former Manager of Office of Public Management, took the oath and acknowledged receipt of summons.

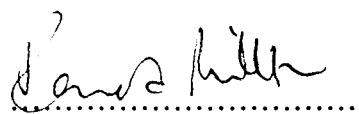
Mr Baxter addressed the Committee. The Committee questioned the witness.

The witness withdrew.

Meeting adjourned 5.12 pm, sine die.



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Monday 7 December, 1992
Parliament House, Sydney at 11.50 am

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr B. Morris, Mr T. Windsor, Mr M. Kerr.

In Attendance:

Helen Minnican (Project Officer), Bill Arkinstall (Consultant), Les Gonye and Jenny Goodwin.

The press and public were admitted.

By the direction of the Chairman, the Clerk read the terms of reference of the Committee and Legislative Assembly Standing Order 362 relating to the examination of witnesses.

EVIDENCE

Mr David Landa, Ombudsman, Mr John Pinnock, Deputy Ombudsman and Mr Greg Andrews, Assistant Ombudsman all sworn and examined.

Evidence concluded.

The witnesses withdrew.

The Committee adjourned at 2.40 pm.


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CHAIRMAN


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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Monday, 7 December, 1992
Parliament House, Sydney at 2.40 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr B. Morris, Mr K. Moss, Mr P. Scully, Mr T. Windsor.

In attendance:

Helen Minnican (Project Officer) and Bill Arkinstall (Consultant).

Apologies

Mr Kerr.

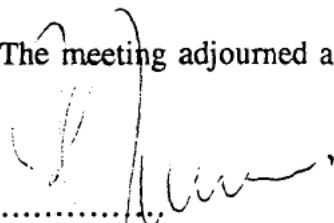
1. Inquiry into the funding and resources of the Ombudsman's Office

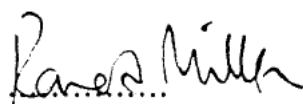
The Committee discussed the issue of a management review of the Ombudsman's Office and agreed that such a review was necessary and should be conducted as soon as possible.

It was resolved that the review should not be conducted by the Office of Public Management but should be independent and that the review team should report to the Committee. Application for additional funds to enable the Committee to conduct an external management study of the Office of the Ombudsman would be made to the Treasurer.

The Project Officer and Consultant were directed to prepare draft guidelines for the review for the Committee's consideration.

The meeting adjourned at 2.50 p.m.


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Chairman


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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 23 February, 1993
Parliament House, Sydney at 2.30 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

Mr B. Morris, Mr A. Windsor.

The Chairman made a brief opening statement concerning confidential Committee documents in response to a press article regarding the contents of a confidential submission.

1. Minutes of meetings held on 17 September, 16 October, 27 October, 13 November, 16 November, 23 November and 7 December 1992 were confirmed on the motion of Dr Burgmann, seconded by Mr Scully.
2. Correspondence Received
- 2(a) Correspondence from The Hon. J Burnswoods, MLC, to the Chairman concerning the application of section 26 of the Police Regulation (Allegations of Misconduct) Act 1978

Resolved on the motion of Mr Mutch, seconded by Mr Scully, that the Chairman should seek advice from the Commissioner on Ms Burnswoods specific assertions about the application of s.26(1) in relation to her complaint. The Committee would then consider the Commissioner's advice and the general effect of s.26(1).

- 2(b) Letter from Ms A. Simpson to the Chairman, dated 21 December, 1992 regarding the Ombudsman's handling of an FOI complaint in which she

was involved.

Resolved on the motion of Mr Scully, seconded by Dr Burgmann, that the Committee should seek the Ombudsman's advice on the matters which were raised by Ms Simpson.

- 2(c) Letter from Mr Andrew Tink, MP, to the Chairman requesting the Committee consider the case of one of his constituents, Mr Andy Soames.

Resolved on the motion of Mr Scully, seconded Mr Mutch, that the Committee forward Mr Tink's correspondence to the Ombudsman as a matter which he may wish to consider of relevance to the investigations he is conducting into the need for systemic change in this area. Mr Tink to be advised accordingly.

In view of the number of appeals made by dissatisfied complainants to the Committee it was resolved that this issue should be raised with the Ombudsman at a general meeting.

- 2(d) Letter from Mr A Janas to the Chairman dated 10 December 1992 concerning a recent complaint he made to the Ombudsman about the Adult Migrant English Service (A.M.E.S.)

Resolved on the motion of Mr Scully, seconded Mr Mutch, that the Committee forward Mr Janas's letter to the Ombudsman for all necessary attention. Mr Janas to be advised accordingly.

- 2(e) Letter from Messrs. Murray and Cunningham, Alexander Park Action Group, concerning the Ombudsman's handling of a number of complaints and Freedom of Information applications by the group.

Resolved on the motion of Mr Scully, seconded by Mr Mutch, that the Committee note the contents of the correspondence especially in view of its consideration of possible future inquiries.

3. Inquiry into the funding and resources available to the Ombudsman's Office - correspondence

3(a) PROPOSED MANAGEMENT REVIEW

The Clerk to the Committee provided an update on a formal request by the Presiding Officers for supplementation in order to conduct the management review.

The Committee approved the draft guidelines for the management review subject to the inclusion of a client survey in the review.

The Committee resolved on the motion of Mr Scully, seconded Mr Mutch, that the guidelines for the review should be sent to the following consultancy firms, and any other established accounting firm determined by the Secretariat as appropriate, inviting expressions of interest in the review:

KPMG Peat Marwick Management Consultants
Ernst & Young Chartered Accountants
Deloitte Ross Tohmatsu
Arthur Anderson & Co
Price Waterhouse Urwick Management Consultants

It was resolved that the Steering Committee for the review should consist of the Chairman, Mr Scully, Mr Mutch, Mr Arkinstall (Financial Consultant) and a representative from the Office of the Ombudsman. The Steering Committee would manage the review and receive weekly reports from the review team of consultants.

3(b) CORRESPONDENCE RELATING TO THE INQUIRY

The Committee noted the following correspondence about its inquiry received since its last meeting:

- i) Letter from the Ombudsman to the Chairman dated 8 December, 1992 providing information about the professional backgrounds of investigation staff as requested by the Committee during evidence from the Ombudsman.
- ii) Letter from the Ombudsman to the Chairman dated 8 December, 1992 providing information about visits to prisons and juvenile institutions.
- iii) Letter from the Secretary, Treasury to the Chairman dated 18 November 1992 providing answers to several questions on notice taken during evidence in October last year.
- iv) Letter from the Director-General, Premier's Department, to the Chairman dated 3 December, 1992 providing written clarification of two issues raised during evidence - arrangements for relocating the Office to Coopers and Lybrand building and submission by Ombudsman concerning a maintenance dispute with Treasury.
- v) Letter from Dr Blair Hunt, Property Services Group, to the Chairman dated 20 November, 1992 providing further information about rental rates and lease arrangements for the Ombudsman's current accommodation.
- vi) Letter from Secretary, Treasury to the Chairman dated 13 November, 1992 containing a commentary on evidence given to

the Committee by Dr Brian Jinks.

4. POSSIBLE SHORT-TERM INQUIRY TOPICS

In view of the fact that it will not be possible to initiate and complete the management review for some time the Committee resolved on the motion of Dr Burgmann, seconded by Mr Moss, that the following short inquiry would be conducted in the interim:

An inquiry into the level of understanding among young people, aborigines, members of ethnic communities and other minority groups of the role of the Ombudsman and the extent of their access to his Office.

5. TRAVEL PROPOSALS

- (a) Letter from the Ombudsman to the Chairman dated 19 February, 1992 inviting the Committee to accompany him on a forthcoming visit he would be making to the New Zealand Ombudsman and the Parliamentary Committee on the Ombudsman.

The Committee instructed the Project Officer to prepare a proposal for such a trip by the full Committee. This would include a costing of a 2-3 day visit and relevant agencies or authorities to be seen. A response was to be made to the Ombudsman as soon as possible in view of his need to confirm travel arrangements.

- (b) Proposal for a trip by representatives of the Committee to visit several relevant overseas destinations, including Canada, Britain and Sweden.

The Committee considered a draft overseas travel proposal and resolved on the motion of Mr Scully, seconded Mr Mutch, that funds to cover such a trip should be built into the Committee's budget estimates submitted for the 1993-4 financial year.

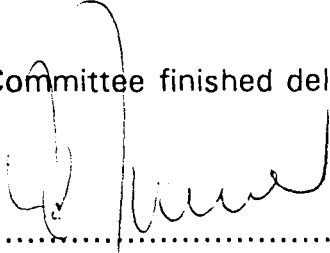
6. GENERAL BUSINESS

- (a) The Committee noted the Chairman's letter to the Ombudsman dated 28 January, 1993 concerning the issue of a general meeting between the Ombudsman and the Committee. The Committee agreed that a general meeting should be held and directed the Project Officer to arrange a convenient time.

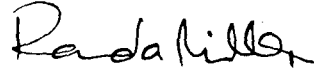
- (b) Letter from the Ombudsman to the Chairman dated 8 February, 1993 requesting the Committee to consider as its next inquiry its own role and function and its relationship to Parliament.

The Committee agreed that this issue should be included as an item for discussion at the first general meeting with the Ombudsman.

The Committee finished deliberations at 3.20 p.m.



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Chairman



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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 23 February, 1993
Parliament House, Sydney at 3.25 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr Kerr.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

Mr B. Morris, Mr A. Windsor.

Meeting opened 3.20 p.m.

Mr David Evatt Landa, NSW Ombudsman, took the oath and acknowledged receipt of summons. He made a public address at the commencement of the hearing and requested permission to table documents under the confidentiality provisions section 31H(1)(b) of the Ombudsman Act 1974.

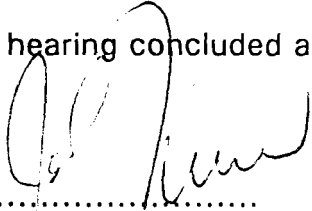
Committee resolved on the motion of Mr Coleman, seconded by Mr Mutch, that the documents be treated confidentially in accordance with section 31H(1)(b) of the Act and Mr Landa's request. The Committee questioned the witness and then withdrew.

Mr Anthony Peter Wilmshurst part time lecturer, University of Macquarie Law School, took the oath and acknowledged receipt of summons. The witness's original and supplementary submissions were tabled.

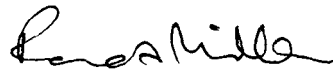
The witness answered questions put to him by the Committee.

The Committee went in camera for a short period towards the end of Mr Wilmshurst's evidence and the witness tabled documents.(4.40-4.54 p.m.)

The hearing concluded at 4.54 p.m.



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Chairman



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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 9 March, 1993
Parliament House, Sydney, 3.35 pm.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr M. Kerr, Mr T. Windsor.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

Mr B. Morris, Mr S. Mutch.

Meeting opened at 3.35 p.m.

Briefing - Ombudsman Officers

The Deputy Ombudsman, Mr J Pinnock, and Assistant Ombudsman, Mr G Andrews, briefed the Committee on recent management initiatives undertaken by the Office in relation to a client study and office restructuring.

The briefing concluded at 4.05 p.m.

1. Confirmation of minutes of meeting held on 23 February, 1993 were confirmed by Mr Kerr seconded by Mr Coleman.
2. Correspondence

The Committee noted the following correspondence:

- a) Letter from Chairman to Ombudsman dated 1 March, 1993 regarding several matters resolved at the Committee's last meeting, including, the Management Review, next inquiry topic and a general meeting.
- b) Letters from the Chairman to the Managers of the following consultancy firms:
 - Ernst and Young Chartered Accountants
 - KPMG Peat Marwick Management Consultants
 - Deloitte Ross Tohmatsu Chartered Accountants
 - Arthur Anderson and Co.
 - Price Waterhouse Urwick Management Consultants
 - Morgan and Banks Group
- c) Letter from Chairman to Ombudsman dated 3 March, 1993 enclosing a copy of the advertisement for the Committee's next inquiry.
- d) Letter from the Ombudsman to the Chairman dated 3 March, 1993 confirming representative on Management Review and seeking inclusion of Coopers and Lybrand in expressions of for the Review.
- e) Letter from the Chairman to the Ombudsman dated 4 March, 1993 in response to the previous letter re Coopers and Lybrand.
- f) Letter from the Ombudsman to Chairman dated 3 March 1993 regarding the Toomelah Report.
- g) Chairman's response to letter at f) dated 4 March, 1993..
- h) Letter from the Chairman to the Ombudsman dated 4 March, 1993 regarding recent initiatives undertaken by the Office, including a client survey.
- i) Letter from Mr T Benjamin, Medical Consumer Associations of NSW, to the Chairman dated 4 March 1993 concerning the proposed Health Care Complaints Commission.

Committee resolved on the motion of Mr Kerr, seconded by Mr Coleman, that Mr Benjamin be advised that in view of the status of the Health Care Complaints Commission Bill the Committee had decided not to pursue the matters raised in his correspondence.

3. Inquiry into the funding and resources available to the Ombudsman's Office - correspondence.

Client Survey - The Committee resolved on the motion of Dr Burgmann, seconded by Mr Kerr, that it should conduct its own client survey, in addition to that being undertaken by the Ombudsman. The Steering Committee should consider a draft survey and refer it to the full Committee for approval.

4. General Business

The Committee agreed that, in accordance with procedures adopted by the ICAC Committee for its general meetings with the ICAC Commissioner, questions on notice should be prepared for its meeting with Mr Landa on 25 March 1993. Answers to these questions should be received by the Committee approximately one week prior to the meeting to enable members to prepare supplementary questions.

Meeting closed 4.35 p.m.


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Chairman


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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Thursday 25 March, 1993
Parliament House, Sydney at 1.30 - 3.00 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr P. Scully, Mr Kerr.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

The Hon. Dr. M. Burgmann, Mr B. Morris, Mr A. Windsor, Mr K. Moss,

The Committee received presentations from Management Consultants who had submitted expressions of interest in the Committee's Management Review of the Ombudsman's Office.

Committee adjourned 3.00 pm.

A large, stylized handwritten signature in black ink, likely belonging to the Chairman.

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Chairman

A handwritten signature in black ink, likely belonging to the Clerk, Ronda Miller.

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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Thursday 25 March, 1993
Parliament House, Sydney at 3.00 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr Kerr.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Peita Burgess (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

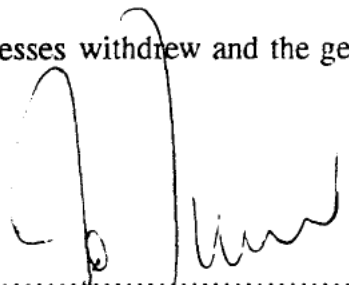
Mr B. Morris, Mr A. Windsor.

The Committee asked the Ombudsman, Mr Landa, and the Deputy Ombudsman, Mr Pinnock, further questions to those given on notice to the Ombudsman prior to the meeting. The Ombudsman's written answers to the questions on notice from the Committee had been distributed prior to the meeting and were tabled by the Ombudsman.

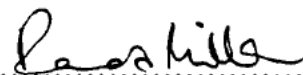
The Committee also asked Mr Landa and Mr Pinnock supplementary questions to those taken on notice.

The Committee went in camera for a short period of time during questioning.

Witnesses withdrew and the general meeting concluded at 5.20 pm.



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Chairman



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Clerk



MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF
THE OMBUDSMAN

Wednesday , 19 May, 1993
Room 1136, Parliament House, 3.15 p.m.

Members Present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr J Turner (Chairman), Mr A Windsor, Mr K Moss, Mr C Scully, Mr M Kerr.

Apologies

Mr B Morris.

In attendance:

Ms R Miller (Clerk), Ms H Minnican (Project Officer), Ms P Burgess (Assistant Committee Officer), Mr B Arkinstall (Financial Consultant).

1. Minutes of meeting held on 9 March, and consultants' presentations and general meeting with the Ombudsman both held on 25 March, 1993 confirmed on the motion of Dr Burgmann, seconded Mr Mutch.
2. Correspondence Arising from the Minutes.

The Committee noted the following correspondence on the motion of Mr Windsor, seconded Mr Mutch:

- i) Letter from the Chairman to Mr T Benjamin, dated 9 March, 1993 concerning the Health Care Complaints Commission Bill.
- ii) Letter from the Chairman to the Ombudsman, dated 15 March, 1993, containing questions on notice for the general meeting between the Ombudsman and the Committee.

3(a). Correspondence Received.

- i) Letter from the Director-General, The Cabinet Office, to the Chairman dated 24 February, 1993 concerning a complaint made by Ku-ring-gai Municipal Council about an investigation of the Council by the Ombudsman.
- ii) Letter from the Chairman to the Ombudsman, dated 26 March, 1993 requesting information and advice on the Ku-ring-gai Municipal Council complaint.
- iii) Letter from the Ombudsman to the Chairman, dated 21 April, 1993 providing advice on the complaint by Ku-ring-gai Municipal Council.

The Committee resolved that no further action was necessary in relation to items i), ii) and iii).

- iv) Letter from Ms Annette Simpson, dated 17 March, 1993 regarding an article by John Slee in the Sydney Morning Herald on 12 March, 1993.
- v) Letter from the Ombudsman to the Chairman, dated 16 April, 1993 containing advice requested on complaint by Ms Simpson.

The Committee resolved to seek further clarification from the Ombudsman on certain aspects of his advice to the Committee regarding Ms Simpson's complaint.

- vi) Letter from the Ombudsman to the Chairman, dated 10 March, 1993 providing advice about a complaint about the Ombudsman to the Committee by Mr A Tink, on behalf of Mr Soames.

The Committee noted the contents of the Ombudsman's letter and agreed to forward Mr Tink a copy of the advice.

- vii) Letter from the Ombudsman to the Chairman dated 10 March, 1993 regarding a complaint by Mr Janas.

The Committee resolved that no further action was required in relation to this correspondence.

- viii) Letter from the Ombudsman to the Chairman, dated 27 April, 1993 concerning the Community Services (Complaints, Appeals and Monitoring) Act 1993.

Resolved on the motion of Dr Burgmann, seconded by Mr Coleman, that, in view of the number of occasions on which the Ombudsman claimed he had not been consulted on proposed legislation affecting his Office, the Committee should seek the advice of the Director-General of the Cabinet Office regarding exact consultation process in relation to legislative proposals affecting the Ombudsman's jurisdiction.

- ix) Letter from Mr Peter Boardman, dated 19 March, 1993 regarding a complaint from the Albury and District Private Nursing Home

The Committee resolved to seek advice from the Ombudsman regarding Mr Boardman's complaint as there was insufficient background documentation to permit an adequate assessment of the correspondent's concerns. Mr Boardman would be notified in the interim of the Committee's action and its inability to review the particulars of a complaint.

- ix) Letters from Mr George Greer, dated 1 and 26 April, 1993 requesting further information from files held by the Ombudsman's Office.

The Committee agreed to advise Mr Greer that it is not empowered to review the particulars of his case nor is it able to release material on his files within the Ombudsman's Office.

- 3(b) Correspondence from the Hon. J. Burnswoods MLC regarding section 26(1) of the PRAM Act, referred to the Ombudsman for advice on 23 February, 1993.

The Committee resolved to advise Mrs Burnswoods of the Commissioner's assurances of new procedures in relation to section 26(1) of the PRAM Act and that in view of this advice it would not be proceeding further with this issue.

4. Inquiry into the funding and resources available to the Ombudsman's Office

The Committee noted the following correspondence:

- i) Letter from the Ombudsman to the Chairman, dated 10 March, 1993 concerning the proposed restructure of the Ombudsman's Office.
- ii) Letter from Secretary, Treasury to the Speaker, Legislative Assembly, dated 5 March, 1993 regarding the latter's application for supplementation for the Committee's Management Review Consultancy.
- iii) Letter from the New Zealand Ombudsman to the Chairman, dated 9 March, 1993 concerning management reforms undertaken by his Office.

The Chairman provided an update on the Management Review of the Ombudsman's Office and the meetings of the Steering Committee.

Client Survey - the Committee resolved on the motion of Dr Burgmann, seconded by Mr Coleman, that KPMG Peat Marwick should proceed with its proposed survey of public authorities as part of the Management Review subject to consideration of any comments submitted by Committee Members by Thursday, 20 May, 1993.

5. Inquiry into the awareness of, and access to, the Ombudsman by members of minority groups

The Committee resolved to take evidence in relation to this inquiry from the following individuals and organisations in addition to the Ombudsman:

Mr S Kerkyasharian
Chairman
Ethnic Affairs Commission of NSW

Mrs Edna McGill
Chairperson
Ethnic Communities' Council of NSW

Chairman
Aboriginal Justice Committee
NSW Law Society

Professor Cheryl Saunders
President
Administrative Review Council

NSW Community Justice Centres

NSW Council for Civil Liberties

Aboriginal Legal Service

Anti-Discrimination Board

NSW Law Reform Commission

Adult Migrant Education Service

Mr Bernie Shipp
Solicitor
Adolescent Legal Service , Burnside.

Ms Carol Vleeskens
Senior Manager

Burnside Khmer Program

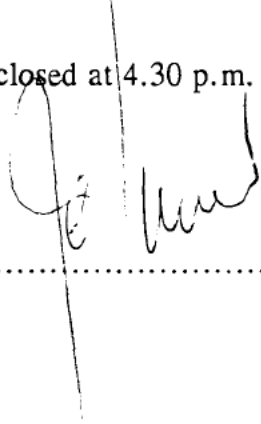
Mr Michael Williams
former community worker
Summer Hill

Mr Brian Burdekin
Commissioner
Human Rights and Equal Opportunity Commission

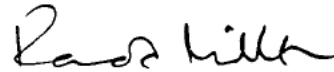
Prisoner's Action Group

Royal Commission into Aboriginal Deaths in Custody

The meeting closed at 4.30 p.m.



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Chairman



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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 29 June, 1993
Waratah Room, Parliament House, Sydney - 10.30 a.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman.

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr P. Scully, Mr K. Moss.

Ronda Miller (Clerk), Helen Minnican (Project Officer) and Peita Burgess (Assistant Committee Officer) were also in attendance.

Apologies

Mr M. Kerr, The Hon. S. Mutch, Mr A. Windsor, Mr B. Morris.

Professor Cheryl Saunders, Professor of Law, Melbourne University, took the oath and acknowledged receipt of summons.

Evidence concluded and the witness withdrew.

Mr Bernard Martin Shipp, Solicitor, Burnside Adolescent Legal Service, affirmed and acknowledged receipt of summons.

Evidence concluded and the witness withdrew.

Ms Margaret Colleen Hole, Councillor and Chair Aboriginal Justice Committee, NSW Law Society affirmed and acknowledge receipt of summons.

James Patrick Evans, Solicitor, Member of the Aboriginal Justice Committee, NSW Law Society affirmed and acknowledge receipt of summons.

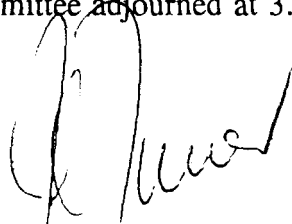
Ms Hole and Mr Evans answered questions put to them by the Committee. Evidence concluded and the witnesses withdrew.

Heather Ann Kepski, Manager Educational Counselling Unit, Adult Migrant English Service, affirmed and acknowledged receipt of summons.

Melva Joan Masters, Deputy Director, Adult Migrant English Service, affirmed and acknowledged receipt of summons.

Ms Kepski and Ms Masters answered questions put to them by the Committee. Evidence concluded and the witnesses withdrew.

Committee adjourned at 3.50 p.m..



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 20 July, 1993
Waratah Room, Parliament House, Sydney at 9.30 a.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann.

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr M. Kerr, Mr K. Moss, Mr P. Scully, Mr A. Windsor.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Grace Penrose (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

The Hon. L. Coleman, The Hon. S. Mutch, Mr B. Morris.

The Chairman opened the meeting and continued the colloquium with the Ombudsman from 25 March, 1993.

The Members questioned the Ombudsman, Mr D Landa, and the Deputy Ombudsman, Mr J Pinnock, who were on former oath.

The Ombudsman tabled a chronology of the investigation into the Turramurra Incident which was the subject of a recent report to Parliament by the Ombudsman.

The colloquium concluded at 10.10 a.m. and the Committee adjourned until 10.45 a.m.

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Chairman

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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 20 July, 1993
Waratah Room, Parliament House, Sydney at 11.00a.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann.

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr M. Kerr, Mr K. Moss, Mr P. Scully, Mr A. Windsor.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Grace Penrose (Assistant Committee Officer) and Bill Arkinstall (Consultant).

Apologies

The Hon. L. Coleman, The Hon. S. Mutch , Mr B. Morris.

The Chairman opened the joint meeting between the Committee, the Ombudsman and Deputy Ombudsman and members of the KPMG Peat Marwick consultancy team. The latter included: Richard Lumley (Partner), Paul McInerney (Manager), Elizabeth Scott (Consultant), Ellis Zilka(Consultant).

The Ombudsman presented a copy of a letter he had written to the Secretary of the Treasury dated 20 July, 1993 concerning the Office's 1993-4 Current and Capital Budget allocations plus his preliminary submission on the Final Report upon the Management Review.

Discussion took place upon KPMG Peat Marwick's Final Report upon the Management Review of the Office of the Ombudsman.

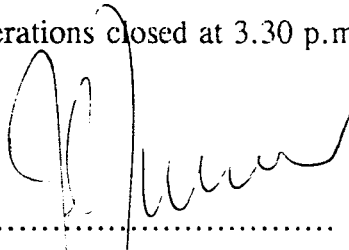
The Committee adjourned at 1.45 p.m. and resumed at 2.45 p.m.

The joint meeting closed at 3.21 p.m.

The Committee continued deliberations and noted the following correspondence:

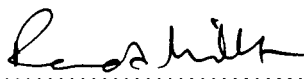
- a) Letter from the Ombudsman to the Chairman dated 13 July, 1993 outlining costs incurred by his Office during the ICAC inquiry into the Ombudsman-Ainsworth Investigation.
- b) Late submission from Alderman P Derwent, Mayor, Ku-ring-gai Municipal Council, dated 9 July, 1993 relating to an investigation by the Ombudsman of Council's handling of a dual occupancy development application.
- c) Letter from the Ombudsman to the Chairman, dated 9 July, 1993 concerning arrangements for discussion of the Management Review Report by KPMG Peat Marwick.

Deliberations closed at 3.30 p.m.



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Chairman



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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 3 August, 1993
Waratah Room, Parliament House, Sydney - 10.30 a.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon S Mutch MLC.

LEGISLATIVE ASSEMBLY

Mr J. Turner (Chairman), Mr M. Kerr, Mr K. Moss, Mr A. Windsor.

Ronda Miller (Clerk), Helen Minnican (Project Officer) and Grace Penrose (Assistant Committee Officer) were also in attendance.

Apologies

Mr B. Morris, Mr C. Scully.

Mr Stepan Kerkyasharian, Chairman, NSW Ethnic Affairs Commission, and Ms Lily Trimboli, Acting Principal Policy Officer, took the oath, acknowledged receipt of summons and spoke to the Commission's submission. The Committee questioned the witnesses. Questioning concluded, the witnesses withdrew.

Ms Jan Devos, Casework Supervisor, Burnside Khmer Program, and Mr Min Hauv Yorth, Welfare Worker, affirmed, acknowledged receipt of summons and spoke to the Commission's submission. Questioning concluded, the witnesses withdrew and members of the public were excluded.

The Committee deliberated on the schedule of witnesses. At 11.55 am the Committee adjourned until 12.15 pm.

The Chairman tabled the Final Report of KPMG Peat Marwick on the Management Review of the NSW Office of the Ombudsman by KPMG Peat Marwick and addendum to Final Report dated 23 July 1993.

Mr Geoffrey William Scott, State Management, Aboriginal and Torres Strait Islander Commission, made an affirmation and acknowledged receipt of summons. Mr Scott addressed the Committee and answered questions put to him by the Committee. Questioning concluded, the witness withdrew.

Meeting of the Committee on the Office of the Ombudsman
3 August 1993

The Committee adjourned for luncheon at 1.00 pm until 2.00 pm.

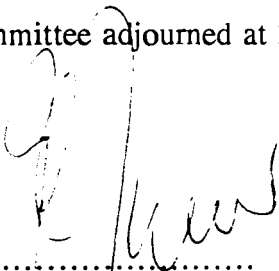
Mr Stephen Friend, Solicitor, Aboriginal Legal Service, made an affirmation. Acknowledged receipt of summons. Questioning concluded, the witness withdrew.

At 2.45 pm the Committee adjourned until 3.00 pm.

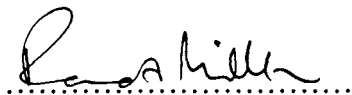
Theresa O'Sullivan, Youth Justice Coalition/Marrickville Legal Centre, made an affirmation. Acknowledged receipt of summons. Questioning concluded, the witness withdrew.

Committee resolved to consider any submissions put by Ms Jodi Sherrin and Mr Buckley who were unable to attend the hearing.

Committee adjourned at 3.40 p.m..



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CHAIRMAN



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CLERK



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Tuesday, 24 August, 1993
Parliament House, Sydney, 9.30 a.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr M. Kerr, Mr T. Windsor.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Grace Penrose (Assistant Committee Officer).

Apologies

Mr B. Morris and Bill Arkinstall (Financial Consultant).

COMMITTEE REPORT - FUNDS AND RESOURCES INQUIRY

The Committee discussed the Chairman's draft report, copies of which had been previously circulated to each member of the Committee. Final agreement on several recommendations was postponed until the Committee's next meeting.

Recommendations 1 and 2 inclusive read and agreed to.

Recommendation 3 amended and final agreement deferred until next meeting.

Recommendations 4 and 5 inclusive read and agreed to.

Recommendation 6 as amended read and agreed to.

Recommendations 7 and 8 inclusive read and agreed to.

Recommendation 9 deferred until next meeting.

Recommendation 10 read and agreed to.

Recommendation 11 deferred until next meeting.

Recommendation 12 as amended read and agreed to.

Recommendation 13 as amended read and agreed to.

Recommendation 14 read and agreed to.

Recommendation 15 deferred until next meeting.

Recommendation 16 final agreement deferred until next meeting.

Recommendation 17 as amended read and agreed to.

Recommendation 18 as amended read and agreed to.

Recommendations 19, 20, 21, 22 and 23 deferred until next meeting.

Recommendation 24 read and agreed to.

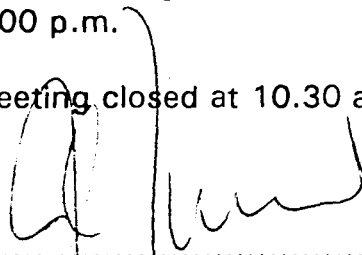
The Committee resolved that it should seek advice from the Crown Solicitor on the following questions:

- i) is the Committee able under section 31B(1)(a) of the Ombudsman Act to consider and report upon the appropriateness, or otherwise, of the criteria or policy interpretation given by the Ombudsman to the provisions of section 13(4) of the Act?
- ii) can the Committee consider and report upon the Ombudsman's statutory right to decline complaints under s.13(4)?

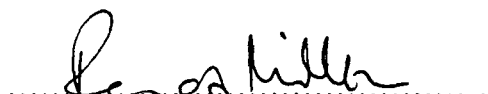
The Committee resolved to write to the Ombudsman requesting an explanation of certain amounts recorded in his Annual Reports for 1986-92 and most recent budget figures for 1992-3 being amounts by which the Office underspent its budget. Both advices requested for consideration at next Committee meeting.

Next meeting scheduled for Monday, 30 August, 1993 from 1.30 p.m. until 5.00 p.m.

Meeting closed at 10.30 a.m.



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Chairman



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Clerk



**MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN**

Monday, 30 August, 1993
Room 1108, Parliament House, Sydney, 1.30 p.m.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr John Turner (Chairman), Mr K. Moss, Mr P. Scully, Mr M. Kerr.

Apologies

The Hon. L. Coleman, Mr A Windsor and Mr B. Morris.

In attendance:

Ronda Miller (Clerk), Helen Minnican (Project Officer), Bill Arkinstall (Financial Consultant).

Apologies

Mr B. Morris and Bill Arkinstall (Financial Consultant).

CONFIRMATION OF MINUTES FROM PREVIOUS MINUTES

Minutes of previous meetings held on 19 May, 29 June, 3 August, 20 July and 24 August, confirmed on the motion of Dr M Burgmann, seconded by Mr Moss.

Correspondence received

The Committee noted correspondence received including:

- a) Letter from the Assistant Crown Solicitor to the Chairman dated 27 August, 1993 in response to a request for advice dated 14 August, 1993.
- b) Letter from the Ombudsman to the Chairman dated 27 August, 1993 concerning a request by the Committee for an explanation of certain amounts recorded in his Annual Reports for 1986-92 and most recent budget figures for 1992-3.

COMMITTEE REPORT - FUNDS AND RESOURCES INQUIRY

The Committee continued its discussion of the Chairman's draft report, copies of which had been previously circulated to each member of the Committee prior to the last meeting. Several recommendations deferred from the meeting on 24 August, 1993 were considered by the Committee.

Recommendation 3 as amended read and agreed to, and consequential amendment to the body of the draft report.

Recommendation 9 read and agreed to.

Recommendation 11 read and agreed to.

Recommendation 12 as amended read and agreed to.

Recommendation 15 read and agreed to.

Recommendation 16 read and agreed to.

Recommendation 18 as previously amended, read and agreed to.

Recommendation 19 read and agreed to.

Recommendation 20 as amended read and agreed to.

Recommendation 21 as amended read and agreed to.

Recommendation 22 read and agreed to.

Recommendation 23 read and agreed to.

Section 4.7 as amended read and agreed to.

Section 3.4.1 as amended read and agreed to.

Section 6.1.1 as amended read and agreed to.

Section 1.1.4 as amended read and agreed to.

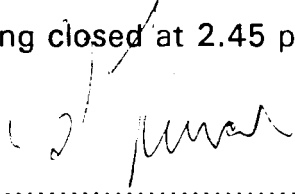
To facilitate the completion and printing of the Report the following resolution was made on the motion of Dr Burgmann, seconded by Mr Mutch:

That the Chairman, Project Officer and Committee Clerk be permitted to correct stylistic, typographical and grammatical errors.

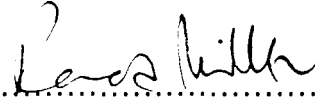
The Committee resolved on the motion of Mr Mutch, seconded Dr Burgmann:

That the draft report be the Report of the Committee and that it be signed by the Chairman and presented to the House, together with the minutes of evidence.

Meeting closed at 2.45 p.m.



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Chairman



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Clerk