

GENERAL MEETING REPORT

COLLATION OF EVIDENCE



Parliament
of New South Wales

Report of the
Joint Committee
on the Office
of the Ombudsman

DECEMBER 1993

PARLIAMENT OF NEW SOUTH WALES

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

**GENERAL MEETING
WITH THE
NEW SOUTH WALES OMBUDSMAN
MR DAVID LANDA
COLLATION OF EVIDENCE**

DECEMBER 1993

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COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY

Mr A. Fraser MP - Chairman (appointed to replace Mr J. Turner 12.10.93; elected Chairman 28.10.93)
Mr M.J. Kerr, MP
Mr K.J. Moss, MP
Mr P.C. Scully, MP
Mr A.H. Windsor, MP
Mr A. Humpherson MP (appointed to replace Mr B. Morris 13.10.93)
Mr B.J. Morris, MP (discharged 13.10.93)

Mr J.H. Turner, MP was Chairman at the time the General Meeting was held but was discharged from the Committee on 12 October, 1993 prior to the finalisation of this report.

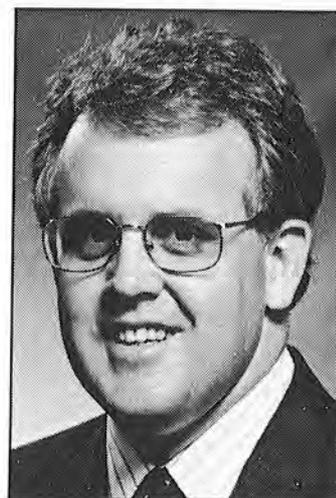
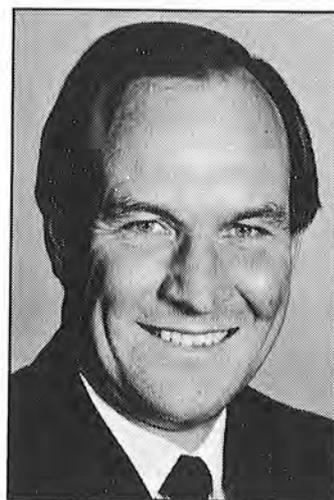
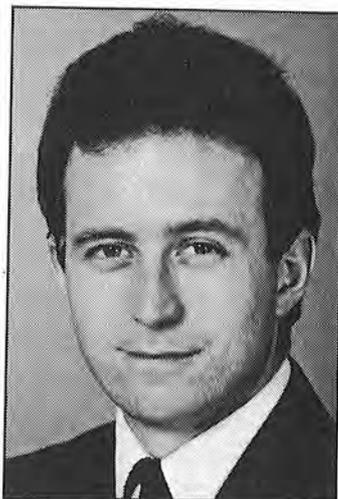
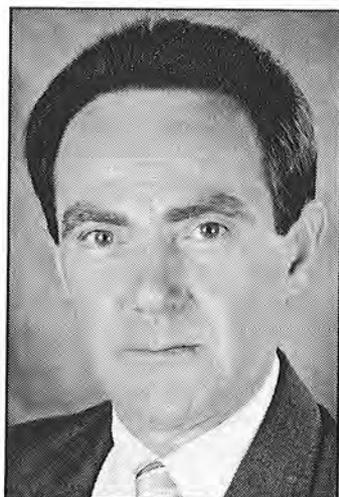
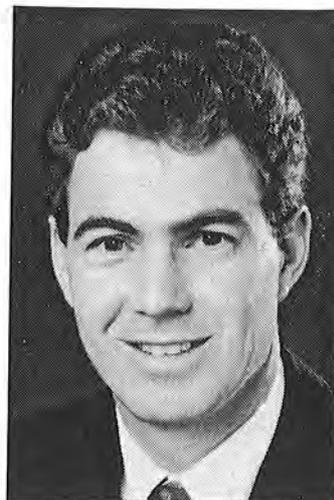
LEGISLATIVE COUNCIL

The Hon. Dr. M.A. Burgmann, MLC
The Hon. L. Coleman MLC
The Hon. S. Mutch MLC - Vice-Chairman

SECRETARIAT

| | |
|----------------|---|
| Ms H. Minnican | Project Officer |
| Ms P. Burgess | Assistant Committee Officer (resigned 2.8.93) |
| Ms V. Lovett | Assistant Committee Officer |
| Ms R. Miller | Clerk to the Committee |

COMMITTEE PHOTOGRAPHS



Committee on the Office of the Ombudsman (Left to Right)
Andrew Fraser MP (Chairman), Malcolm Kerr MP, Andrew Humpherson 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

As Chairman to the Joint Committee on the Office of the Ombudsman I am pleased to present, on the Committee's behalf, this collation of evidence from the first General Meeting held with the Ombudsman.

The General Meeting was an initiative begun by the Committee under its former Chairman, Mr John Turner, MP. My involvement has centred upon finalising the report in preparation for tabling in Parliament. Consequently, I wish to acknowledge the efforts of the members of the Joint Committee and its Chairman in convening the General Meeting and producing this collation of evidence. I also would like to thank the Ombudsman and the Deputy Ombudsman, on behalf of the Committee, for their participation and co-operation in making the General Meeting a valuable and instructive means of performing its review functions under the Ombudsman Act.

Modelled on the General Meetings held by the ICAC Committee with the Commissioner, Mr Ian Temby, the Meeting is intended to serve as an continuing forum for the discussion of matters of interest relating to the operation of the Ombudsman's Office but which fall outside the normal inquiry process.

This first General Meeting was held on 25 March, 1993 and concluded on 20 July of the same year. It covers a wide range of topics including the process of appointing the Ombudsman, the length of his term of office, the role of the Joint Committee, plus management and jurisdictional issues.

The General Meeting provides the opportunity to develop a better understanding of the work performed by the Office and the role of the Ombudsman. It also provides scope for forming an ongoing dialogue with the Office of the Ombudsman which would form an integral part of its relationship with the Committee. I hope that the General Meeting will be established as a regular feature of the Committee's activities and am honoured as Chairman to the Committee to have a part in this process.



Andrew Fraser MP
Chairman

FUNCTIONS OF THE COMMITTEE

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

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

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

The Committee is not authorised:

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

Functions of the Committee

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 Legislation (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."

Under section 6A of the Ombudsman Act:

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

Functions of the Committee

- (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)).

INTRODUCTION

The Joint Committee on the Office of the Ombudsman held a General Meeting with the Ombudsman, Mr Landa, and the Deputy Ombudsman, Mr Pinnock, on 25 March, 1993 with the aim of discussing matters relating to the functions of the Ombudsman, issues arising from reports by the Ombudsman and the general operation of his Office which were not the subject of the Committee's current inquiries or did not warrant a full inquiry.

In preparation for the General Meeting a series of "Questions on Notice" were forwarded to the Ombudsman who provided written answers which were distributed to the Committee prior to the General Meeting. The latter was held in public and the "Questions and Answers" were made available to members of the public.

Although the formal "Questions and Answers" were dealt with on 25 March, 1993 there was insufficient time for the Committee to ask the Ombudsman supplementary questions on other subjects in a less structured discussion. Consequently, it was agreed with the Ombudsman that the General Meeting should continue at a later date. Unfortunately, due to the Ombudsman's commitments and the Committee's other inquiries it was not possible to conclude the General Meeting until 20 July, 1993. On that occasion the Ombudsman and Deputy Ombudsman answered supplementary questions from Committee members given without notice. Both hearings were chaired by Mr John Turner, former Chairman of the Joint Committee (Mr Turner was discharged from the Committee on 12 October, 1993).

Similar meetings held by the Committee on the ICAC with the Commissioner, Mr Temby, provided a model for this Committee's General Meeting with the Ombudsman. Both Committees have a monitoring and review role in relation to the respective statutory officer with which they are concerned and such General Meetings serve as a mechanism by which they can partly perform this review function. It also is anticipated that the public nature of the General Meeting with the Ombudsman will assist in informing the public about the role and the functions of the Ombudsman.

This report is a collation of the evidence taken by the Committee during the General Meeting. It covers a wide range of issues, for example, the appointment of the Ombudsman, the length of his term of office, training for his Officers, and consultation regarding proposed legislation which could affect his jurisdiction. A commentary also accompanies certain sections of the evidence.

Introduction

It is intended that this General Meeting should be the first in a program of General Meetings between the Joint Committee and the Ombudsman to be conducted at regular six monthly intervals. Such a program would provide both the Joint Committee and the Ombudsman with the opportunity for an ongoing discourse on issues which would normally fall outside the inquiry process but which are significant and warrant discussion.

OPENING STATEMENT

CHAIRMAN: What I thought, Mr Landa, we would do is to invite you or Mr Pinnock to give us a submission on really anything you would like to discuss. We thought we would only confine or only restrict areas relating to the committee of inquiry we have going already on finance which we would be quite happy to work in if you feel it necessary.

The object of this discussion, as you know, is to try and have an open discussion about the Ombudsman and about this Committee and about any matters that might be of concern to either the Committee or yourselves and I thought after the submission, if you would like to make it, we would work through the questions and answers to see whether there are any supplementary matters either members or yourselves might want to refer to.

Mr LANDA: Thanks Chairman. I did not prepare a submission because I felt that the things that I wanted to say really flowed out of the questions I guess in response to those. Perhaps if you would take the Committee through the questions, I will just respond to any areas that I am able to. It is a little bit difficult. I think probably you have to have the questions next to the answers for reference. We could not work out a way to put the questions in a more concise way than we have.

CHAIRMAN: I think we will go through each question and invite any member to raise anything on that question or for yourself to raise anything you wanted to put on.

COMMITTEE ROLE AND FUNCTIONS

QUESTIONS ON NOTICE

Committee role and functions

Question (1)

In recent correspondence with the Committee, dated 8 February, 1993 you urged the Committee to examine its own role and functions. You suggest that the Committee should liaise with the Parliamentary Committee on the Ombudsman in New Zealand.

You stated that you were concerned about similarities and comparisons made between the function of the ICAC Committee and this Committee. The functions of this Committee are outlined in the Ombudsman Act and are identical in scope to those specified for the ICAC Committee under the ICAC Act.

- (a) Do you acknowledge that these statutory similarities would enable comparisons between the functions of both Committees?

Answer 1(a)

The statutory similarities between the Committee and the Committee on the Independent Commission Against Corruption would enable comparisons to be made between the functions of both Committees. However, the point which I sought to make in my letter of 8 February 1993, was that the role of the Joint Committee on the Ombudsman, having regard to the history of the concept of an Ombudsman, which is quite different in nature from the Independent Commission Against Corruption, would not necessarily be the same as the Committee on the ICAC. As noted later in answer to Question 30, there are substantial differences between the Office of the Ombudsman and the Independent Commission Against Corruption so far as their respective powers and functions are concerned.

Committee Role and Functions

- (b) Did you propose in your report upon your Independence and Accountability that the legislation establishing the Committee should be similar in form to the ICAC Committee provisions?(para 7.8, p25)

Answer 1(b)

In my report on the Independence and Accountability of the Ombudsman, I proposed that the legislation establishing the Committee on the Ombudsman should be similar in form to the ICAC Committee provisions (Appendices 1 & 2). Those provisions in turn were modelled on Part 3 (ss. 52-55) of the National Crime Authority Act 1984, (C'th) which established the Joint Committee on the NCA (Appendix 3). The starting point for a consideration of both the independence and accountability of the Ombudsman was the quite fundamental concept of the Ombudsman as an "Officer of Parliament".

Although this may be an elusive concept and, as noted by the Senate Standing Committee on Finance and Public Administration, there is "some lack of clarity" about the term¹, the basic aspects of the concept were set out in my report. It is this concept, as much as the provisions of Part 4A of the Ombudsman Act which I believe should influence the Committee in carrying out its role. I also recommended in my report that the Committee should be responsible for recommending to the Parliament the appointment of the Ombudsman and his statutory officers (9.2) and that the Joint Committee should also be responsible for recommending to Parliament the appropriation of funds from Consolidated Revenue for the Office of the Ombudsman (9.3). Of course, neither of those recommendations was adopted by the Government as you have noted in Question 2.

¹ Review of the Office of the Commonwealth Ombudsman, December 1991 p.101, 8.3.

Committee Role and Functions

QUESTIONS WITHOUT NOTICE

CHAIRMAN: *Do any members of the Committee have any matters they want to raise on Question 1?*

Mr KERR: *Committee's role and functions - yes, just on that Mr Landa, I think you say you were concerned about similarities and comparisons made between the function of the ICAC Committee and this Committee but my recollection was that when you came before us, particularly to brief members of the Legislative Assembly, that you thought that the Parliamentary Committee should be similar to the ICAC Parliamentary Committee.*

Mr LANDA: *I do not have a recollection of it in those terms. My recollection certainly is talking with the Premier at the time, Mr Greiner; I asked that there be a fair representation of members of the ICAC Committee who would have experience of dealing with an oversight body. I think that is what I had in mind. I do not see a great deal of similarity in terms of the function or even the public perception of ICAC as opposed to the Ombudsman.*

Mr KERR: *No but it was the Parliamentary Committee. I mean, do you see similarities between the Parliamentary Committee from ICAC and the Parliamentary Committee from the Ombudsman?*

Mr LANDA: *Certainly.*

Mr KERR: *We are probably at cross purposes, I would accept that there is no similarity between the actual bodies.*

Mr LANDA: *No.*

Mr KERR: *But in terms of the accounting mechanism of Parliamentary Committees I see considerable similarities.*

Mr LANDA: *There are certainly - yes there is no doubt that there is.*

CHAIRMAN: *Any supplementary questions on Question 1? Question No. 2.*

Mr LANDA: *Perhaps I can expand a little bit on that because I suppose ---.*

CHAIRMAN: *Is that Question 2?*

Committee Role and Functions

Mr LANDA: No, on the first issue. Because I think it has caused some concern in terms of the correspondence. I just really want to enlarge a little bit, why really I am anxious to canvass the issue, because I really need a beacon or some protocol or some guideline as to how you see our interaction. There are matters, for instance, which concern the mechanism to bring our reports to Parliament and subsequent recommendation. Take, for example, the recent report. I mean, not every report would be of concern but take the one that recently went up on the Electoral Commission. That is really, more than any other report I can put my finger on, a Parliamentary issue. It seemed to me that this Committee may want to involve itself. It may not. But it is an issue that the Parliament may say yes we have read that, we are aware of that issue. We do not think it is a big problem or it is something we want to do. I really need some guidelines. Do you want me to take special action in relation to issues like that?

Take again, and more importantly, my current process for reform. If I want to put something at the moment that I think the Ombudsman's Office ought to be drawn to the attention of the Government for reforming, changing, such as we have been doing over the years - Section 34, Secrecy Provisions. What I do is I write to the Premier or the Minister - my Minister is the Premier and Cabinet Office and I put the suggestions forward. It goes therefore to the Executive and it may get a run or it may not. It depends on whether it is an issue that the Executive considers is one for consideration.

What I am asking is, does the Committee feel that it ought to be involved in the process? Should I come to the Committee and say, look I think the Ombudsman Act would be enhanced by taking these steps. For instance CHIPS - I would have preferred to have come to this Committee and sold CHIPS to the Committee as I am selling it now throughout the whole of the Public Sector. If I had been able to enthuse this Committee, this Committee may well have said, well look we recognise it needs some funding, some seed funding at least; I would have been a year further down the track if I had had some seed funding. As it is, CHIPS is up and running, it is getting a high degree of acceptance where we have run our - in the Public Sector - second series. No, the first has been done. The second series is sold out in terms of mediation in the Public Sector. It looks like being very acceptable. But the process was one I felt that this Committee - it could have been involved with.

I need some guidelines in relation to that type of issue. That is why I have been raising it. Perhaps it needs further fleshing out and discussion in those areas. But really I am asking for some directions, what you want me to do in those terms.

Committee Role and Functions

CHAIRMAN: I think one of the things is the nature of this meeting we are having today, probably the first of this nature, where I think you can canvass those matters if you want them on the record. Any proposal you come up with we would certainly be prepared to meet with you. I see this as an important vehicle of dialogue, this General Meeting, if we can call it that, of you being able to outline what you are concerned about or which way you want to go.

Mr LANDA: So do I and I appreciate the opportunity.

Committee Role and Functions

QUESTIONS ON NOTICE

Question (2)

Your recommendations for the jurisdiction of the Committee in that report included:

- (i) annual reports, section 27 and 31 reports under the Ombudsman Act and section 32 of the PRAM Act;**
- (ii) recommending to Parliament the appointment of the Ombudsman, Deputy Ombudsman and Assistant Ombudsman (NB Under the Ombudsman (Amendment) Act 1991 authority to appoint the Deputy and Assistant Ombudsmen was given to the Ombudsman); and**
- (iii) recommending to Parliament the appropriation of funds for your Office.**
 - (a) Do you concede that it is consistent to exclude section 27 reports (i.e. department non-compliance reports) from the Committee's jurisdiction if the Committee is also excluded from reviewing or enforcing the Ombudsman's decisions?**

Answer 2(a)

In my report on the Independence and Accountability of the Ombudsman I recommended that any Committee to be established should have the function of examining and reporting upon reports under Section 27 of the Ombudsman Act (9.1.3). In a subsequent discussion between the Deputy Ombudsman and an officer of the Cabinet Office, the point was made that it would be inconsistent to bring Section 27 reports within the Committee's jurisdiction while excluding the review of decisions by the Ombudsman from that jurisdiction. I accepted that point of view. In any event, the issue has been addressed in the Ombudsman (Amendment) Bill 1992, Schedule 1 Clause (5)(b) of which provides (in respect of Section 27 reports):

Committee Role and Functions

"the responsible Minister must make a statement to the House of Parliament in which the Minister sits in response to the report not more than 12 sitting days after the report is made to the Presiding Officer".²

² This provision was included as an amendment to the Ombudsman Act 1974 by the Ombudsman Amendment Act 1993 No.37 which took effect on 12 July 1993. (See section 27 (2) of the Ombudsman Act).

Committee Role and Functions

QUESTIONS WITHOUT NOTICE

CHAIRMAN: Just in relation to Question 2, in view of the fact the Committee is excluded from reviewing or enforcing your decisions, is it consistent to exclude the Section 27 reports from the Committee's jurisdiction?

Mr LANDA: Yes, that has been - I think the answer implies that.

QUESTIONS ON NOTICE

Question (3)

Recommendation (iii) accords with the functions of the New Zealand Committee (Appendix 4). I note that in your report entitled "The Independence and Accountability of the Ombudsman" you referred to the Government's proposal for a Committee in NSW as limited and preferred a more "fundamental" type of Committee such as that in New Zealand.

The function of the Officers of Parliament Committee as outlined in Standing Orders for the New Zealand Parliament reflects certain differences between the NSW and New Zealand situation. For example, one of the NZ Committee's responsibilities is to recommend a proposed budget for the Ombudsman to Parliament as a Vote in the Appropriation Bill. This function reflects the Ombudsman's statutory position as an Officer of Parliament and the fact that the Ombudsman and the Parliament are not subject to the same budgetary process as in New South Wales.

- (a) Do you recognise these significant differences between the NZ and NSW experiences and the resulting effect they would have upon the different functions between each Committee?**

Answer 3(a)

As I have already noted, I regard the power of any Committee established to monitor the Office of the Ombudsman to recommend to Parliament a proposed budget for the Ombudsman in Appropriation Bills, as fundamental to the concept of the Ombudsman as an Officer of Parliament, and to his independence from the Executive and his accountability to Parliament. It was for this reason that I made such a recommendation in my report on the Independence and Accountability of the Ombudsman, notwithstanding that this would be regarded as somewhat radical departure from the normal procedure in New South Wales. My report was made in July 1990. It is interesting to note that there is discussion of this issue in the December 1991 Report of the Senate Standing Committee in its Review of the Office of the Commonwealth Ombudsman (8.16 - 8.21). Indeed, it is noteworthy that in its 1989 Report, the Joint Committee of Public Accounts recommended that the appropriation for the Australian National Audit

Committee Role and Functions

Office be included in the Appropriation (Parliamentary Departments) Bill. Although that recommendation was rejected by the Commonwealth Government and although the New South Wales Government did not act on the recommendation in my report, I believe that there are arguments in favour of the proposal and that the issue is not closed. Indeed, the matter was considered in the wider context of the appropriation of funds for Parliament itself by the Joint Select Committee on the Management of Parliament (November 1992, pp24-27).

It would be obvious to any person who had read my report on the Independence and Accountability of the Ombudsman that I not only recognised the significant differences between the New South Wales and New Zealand experience, but that I had highlighted those differences and had suggested the adoption of New Zealand reforms. To the extent that there are differences, there would be differences in function between the respective Parliamentary Committees which monitor the New South Wales and New Zealand Ombudsman. On the other hand, there are significant similarities between the New South Wales and New Zealand experiences which could lead to a similarity of role between the respective committees.

QUESTIONS WITHOUT NOTICE

Question (3)

CHAIRMAN: *Any supplementaries on Question 3?*

Mr SCULLY: *I just detect that you are not sure what our role is or that you are not sure that we know what our role is; is that the essence of it?*

Mr LANDA: *Yes, I just do not think that there are guidelines, certainly I understand it, what you want from me in terms of what your priorities are and it is really why I am calling for dialogue.*

Mr SCULLY: *When I went on this Committee, which I have been on since its inauguration in November 1990; I certainly saw my role as a member of the Committee as participating in a body of a supervisory nature into your office and its performance. Not so much as an advocate which I note that you have acknowledged. But I just sense that you see us more as an advocate rather than in a - I do not mean a supervisory role in an interfering sense but more a - and not so much as a watch dog. I cannot quite encapsulate; it is somewhere in between. That is how I have seen the Committee but certainly not going into bat for you because that is our role but going into bat where it helps you achieve your Office.*

Mr LANDA: *It is one of your roles. Everything you have said is correct. I agree. Your role there is - I am a function of the Parliament and you are the body that is looking after Parliamentary interest. You are, I guess, the Board of Directors in terms of my function; looking after the interests of Parliament. I am also part of the Parliamentary process and, therefore, it has been the role of the Committee to further the Ombudsman's role.*

One of the cases in the British system, the Barlow Clowes³ case I think, really takes that to an ultimate limit where the Committee was responsible for pushing the Ombudsman's recommendations and decisions that ultimately made the Government concede the recommendations of the Ombudsman's Report. It was a very significant case because there

³ See *Parliamentary Commissioner for Administration - 1st Report - Session 1989-90: The Barlow Clowes Affair 19/12/89, House of Commons Parliamentary Papers 1989-90.* (see also Appendix 5).

Committee Role and Functions

were hundreds of millions of dollars involved in pay-out. In fact, I do not know whether I have provided you with this document but it comes from the Commissioner for Local Administration in England. It is a document that perhaps is of value. I do not know whether you have seen that from Mr Adams (Appendix 5).

There are examples through all other Committees whereby certainly they oversight the performance. Certainly they are involved in administrative practices. It may, for instance, come to notice as a result of the Management Review. There may be an opinion that some of our methods of dealing with issues are outdated or there are better ways. The Committee would clearly be responsible for looking at things like that. So it covers both areas.

Mr SCULLY: I just felt there is a problem in an arm-in-arm approach to dealing with problems in the Public Sector. I mean, that is obviously your duty. You report to Parliament then it is our responsibility to go arm-in-arm with you to attack those problems. I just see that as potentially removing the independence that is between us, the Committee.

Mr LANDA: I do not agree that that is so, because really I am an extension of the Parliamentary process.

Mr SCULLY: I can see how it would be valuable in certain circumstances.

Mr KERR: There may be instances where there is a conflict between the Ombudsman and the public interest in the sense of a future Ombudsman perhaps misusing his power in terms of harassing a member of the public or members of the public. If that sort of complaint was made out you would expect the Committee to bring down a report against the Ombudsman?

Mr LANDA: Yes I would.

Mr KERR: In fact, if the Office was misusing taxation funds because it was inefficient, not because of any fraud or mensrea, you would expect a critical report from the Committee?

Mr LANDA: Yes I would, I certainly concede that.

Mr MOSS: You talk about the Committee or you quoted somewhere where a Committee pushes through the Ombudsman's own recommendations, is that right?

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Mr LANDA: Yes.

Mr MOSS: Say, for arguments sake, this Committee disagreed with one of your recommendations in one of your reports. What is the situation then? You would expect to hear from us to that effect?

Mr LANDA: No, because I do not think you have the statutory function in those terms.

Mr MOSS: That is just a possibility, that could happen. I see no problem with a Committee like this looking at your recommendations. I mean, in an age of technology all you have to do is press a button and have everything come up before you that the Ombudsman has recommended from the year dot and check it out to see whether or not it has been implemented by the Government and if not, write to the Minister responsible for the Government and say why hasn't this occurred; that is no problem and get a response back from them. It just may be that some of your recommendations are not supported by the Committee anyway in some of the reports.

Mr SCULLY: That was my initial thought. If there are things you have investigated and we do not agree with you, the way you did it, why should we push the line that you are pursuing.

Mr LANDA: I am not suggesting the Committee should push simply because the Ombudsman recommends. What I am suggesting is that the Committee's function and role in examining is to determine whether it ought to. In other words, whether it is in the Parliamentary interest.

Mr SCULLY: So you are saying we should.

Mr LANDA: What is contrary in that concept? The Office is doing a function, a Parliamentary function and what we are really doing in our reports is drawing attention to something that is wrong in administrative structure. That is what we are trying to bring to notice.

Mr MOSS: Yes, but you seem supportive of a Committee that supports the Ombudsman's recommendations to the letter, which you mentioned earlier somewhere. You mentioned some country. I forget where you said.

Mr LANDA: I did not say that. I gave an example. It is a reported case, the Barlow Clowes case. I do not know whether I have provided that again to Helen Minnican, but it

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is just an example; there are so many examples. This is one of the reasons of course that hopefully you will have contact with other Committees and see how other Committees do approach it. What I am saying is that that is how I see the Committees as far as I am aware approaching similar type of legislation.

Mr SCULLY: Isn't your problem that if we look at a report, as you suggest, and I think that is a reasonable suggestion, and we make a determination on it, if we say the Ombudsman has got an absolute right and we go in all guns blazing, obviously that will facilitate your job, you will be pleased with that. But would it not make it uncomfortable for you if we peruse the report and rejected your recommendation and basically found that you have got it all wrong? If we are going to assess a report and your recommendations, we have got the right to say you have it all wrong or you have got it all right or partly right or partly wrong.

Mr PINNOCK: To some extent we are talking about an issue that is no longer there in the sense that the problem that arose for the Office in effect was that it looked as though our non-compliance reports under Section 27 were going into a vacuum. That is to say, they were being made and having been made, the feedback ultimately just seemed to be not there at all. We got no response from the Minister. That is quite proper in a sense because the Minister is not accountable to the Ombudsman's Office. There was no feedback from members of Parliament either and it is only in fact prospective amendments that is now being addressed in the amendments to the Ombudsman Act that are proposed in the Ombudsman Amendment Bill where with the new procedure that also is embraced in that Legislation, that the Presiding Officer will table a report including a non-compliance report and then the relevant Minister just like the Minister responsible for the Public Authority will have to make a statement to the House within 12 days of tabling as to the circumstances of why the Department is not complying⁴. That satisfies, if you like, the accountability mechanism which we saw as being absent because of the restriction on the Committee's power to look at what is in the reports.

So to a certain extent it is not an issue any more in that sense. Subject to the legislation actually going through which we were assured it will.

Dr BURGMANN: I just want to make a point. I just think that you have a political problem if anyone expects the Committee of Parliament to be able to come to I think a legitimate decision about whether your reports should be supported or not. You are there

⁴ See s.27(2) of the Ombudsman Act 1974 as amended by the Ombudsman Amendment Act 1993 No.37.

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doing a job which is basically define problems with Government Departments. This Committee is made up of a majority of Government people and I would hate to see this Committee having to give your report legitimation in one way or another because the Government members will say that, "Oh no, the Department of Housing is fine and that is a silly report".

So I just think it is a political problem to expect a politically put together Committee to legitimate your reports. I actually see your reports as legitimate in a way that this Committee cannot be because we are in fact politicians.

The second point is we cannot get our own recommendations from our own Committee done. I mean, there is stuff here which I am just appalled that there has been no movement on for six months, so even our own recommendations cannot be carried out so to see us as being able to get the Government to actually support you on your recommendations is probably seeing us with a bit more power than we actually have.

CHAIRMAN: I think your reports do go to the Parliament. You do have the ability to have those debated on before the Parliament. That is the proper forum. The other aspect is I think this Committee is still relatively young and it has been landed with two significant inquiries - its first and second inquiry: the police inquiry and the funding one. I note since 1991 there have been 12 reports bought down by you plus your Annual Reports of these large inquiries and it is difficult for us as a Committee, of course, to thoroughly examine every one of your reports. Some of us may have various interests in various areas which we devote some time to. Dare I say it is the time factor we have. I think we are showing some good faith, you did the police matter; I think we have dealt with that very well as a Committee and your finance problems, we are endeavouring to look at that. I must say it should be faster but it has been beyond our control.

We, I think you can say, as a Committee are taking on board all of these that you can see on this table too; it is very hard for us to give an imprimatur to your reports because some of us may or may not agree with it and certainly the political complexities of this Committee almost precluded it in some areas. Quite a few of your reports might arise out of perceived inaction or omissions by the Committee.

Mr LANDA: I appreciate that and that probably clears one aspect of what I perceive. Notwithstanding that, it may well be that there would be issues that I would think would be appropriate and would perhaps raise with the Committee, that the Committee would see itself as wanting to be involved in.

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CHAIRMAN: I think there should be an invitation if you want to specifically raise matters. We would consider it and give you our advice. It may not be the advice you were seeking but it is the best we can do.

Mr LANDA: That goes without saying.

CHAIRMAN: Can I just raise one other matter in relation to the Officer of the Parliament concept? What actual practical benefits do you see if you were designated as an actual Officer of the Parliament?

Mr LANDA: I might be able to get a park in the building to come up here today. I think that the reality of that is more important than anything else. The Ombudsman truly is part of the Parliamentary process, whether it is a named Officer of the Parliament - whether we are talking about the New Zealand concept or not I do not think it really takes it a great deal further.

I suppose it goes hand in glove with another issue that was raised by me previously and even again at the current time. I have two years to go in my term. In determining a successor to my Office I would advocate this Committee as the appropriate place and I will be certainly putting forward recommendations to the Government that that is how the succession is dealt with.

Mr SCULLY: Rather than veto.

Mr LANDA: Rather than be a Government appointment.

Mr SCULLY: Which we can veto at the moment but we cannot select.

CHAIRMAN: Can I be perfectly blunt; the Government has a majority on this Committee.

Mr LANDA: That has always been the case.

Mr PINNOCK: That is true but we [could] always have a minority report which would be a very significant matter if it came to the appointment of an Ombudsman.

Mr SCULLY: We would still have to advertise, interview, process applicants.

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Mr LANDA: Yes but I see the Committee as having an important role in selecting; if not selecting, in putting forward names. It should be involved. The Ombudsman's Committee should be considered a bi-partisan Committee no matter what its composition. I think in fact that is what it will become.

Mr PINNOCK: The other factor is simply the budget. I am not suggesting by that that there is an expectation that if for instance the Committee was empowered to make a recommendation on the appropriation of the Ombudsman, the Ombudsman would automatically get more, it might get less. But at the moment the whole of the negotiations, if you like, the whole of the arguments that go on about the funding of the Ombudsman which after all people say is an independent institution, in effect go on behind closed doors with Treasury Officers. And the only time it emerges into the open and the only way it can emerge into the open is if the Ombudsman makes a report to Parliament. Some people say that it is not politically realistic to expect that you can have a Committee of the Parliament making a recommendation for the appropriation of funds from Consolidated Funds or for an organisation that it is charged with monitoring. They have done it in New Zealand. It is as simple as that. It is a novel idea but nevertheless it has been adopted in New Zealand.

CHAIRMAN: New Zealand has GST too.

Mr PINNOCK: In, for instance, Canada the equivalent of our Federal Electoral Commissioner does not have a vote; he has got a blank cheque. The Canadian Parliament meets whatever expenditure the Electoral Commissioner sees fit to make. So that there are variations, if you like. I do not see it as such a radical departure from what we have come to expect to actually suggest that a Committee might have that power to make such a recommendation and at least it would have the benefit of whatever the appropriation actually was of being something that was conducted in the public domain. So that everything relating to the Ombudsman and his independence was seen to be dealt with openly.

Mr SCULLY: I do not see how it is any different from Judges or ICAC, these sort of institutions. Judge Barwick was saying we should have a separate appropriation and I really cannot say you can allege the High court is not independent of the Executive. That would be a very long, long bow to draw. I cannot see anything different from your organisation.

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Mr PINNOCK: I suppose it is a matter of perhaps looking at what we believe the proper level of funding would be as the former Chief Justice did and what you actually end up with.

Mr SCULLY: Is it more to raise your status? It would raise your status by going through this process.

Mr LANDA: It hasn't much to do with the status; it gives more independence.

Mr PINNOCK: This sort of issue has been addressed by the Committee that looked at the Management of Parliament Bill. Admittedly it did not come down with recommendations which would go as far as the sort of recommendations the Ombudsman made but nevertheless it is an issue.

Mr SCULLY: There was suggestion the Ombudsman should have separate appropriation. But up to now we go through the same problems you go through. I mean, just the office relocation for instance, I think it was 1.6 million was sought and Treasury said no you only get \$600,000. A lot of members are going to be upset.

Mr PINNOCK: But does that always have to be the case?

Mr SCULLY: It does not mean the Parliament is not independent of Treasury because we have to satisfy Treasury about our budget. I just do not think there is a nexus. I know it can be argued there is but I do not accept it.

Mr LANDA: It may be an unrealistic aspiration, I accept that.

Dr BURGMANN: The fact you might be undertaking investigations which will impinge upon politically - you really do have - you and ICAC have the most delicate area of having to carry out your responsibilities. It is unlikely that things that High Court Judges do are going to significantly affect the political fortunes of a Government or not.

Mr SCULLY: I reject that totally.

Dr BURGMANN: I do see the Ombudsman and ICAC as being very different and I would support the idea of a greater independence simply because of the fact that as I see, I mean, we are the Committee that is meant to be overseeing your role. Although I think often we do not act as party political the whole problem is if it ever came down to a party political problem there is a majority of Government here.

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Mr LANDA: Really, wherever the bi-partisan committees do exist and have these extra powers - in some of the European States it exists where the appropriation issue and selection issue is totally in the hands of the committee. It is still the case obviously that the Government of the day has the majority.

Mr SCULLY: Where is that - Scandinavia?

Mr LANDA: In Scandinavia. I think in some of the central European countries - Australia and Netherlands I am pretty sure.

CHAIRMAN: I think we might move along. You desire the Committee to attempt to appropriate for you but I think I have to remind you of the Premier's speech in the Assembly on the 17 November, 1992 where he spelt it out very clearly that that is not appropriate. It may yet form something in our final report in relation to financial assessment.

Mr LANDA: As I say, in relation to appointment which is imminent and in the life of this Committee this will be an issue that is coming forward, I will be making a recommendation on two things; the Ombudsman should not be re-appointed. I certainly will not be applying to be re-appointed, and that the Committee should have input. I will be going through the process I outlined in the initial part of my answer to another question.

Mr SCULLY: Should not be re-appointed - I find that interesting. Why?

Dr BURGMANN: Limited tenure of office - the Communist Party.

Mr SCULLY: I want him to say it, I don't want you to say it.

Dr BURGMANN: Well you interrupted my question.

Mr SCULLY: Has Dr Burgmann answered the question for you Mr Landa?

Mr LANDA: I see it as being totally against the concept of independence that an Ombudsman would have to particularly in the climate where he has to go to a Government to be re-appointed at the end of his appointment. I have made it clear from day one and also I have to say that a five or seven year term is a long term and that quite clearly a fresh approach can only be of benefit or ought to be of benefit.

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Mr SCULLY: Has any Ombudsman been re-appointed?

Mr LANDA: Yes, in Queensland we had a great record of re-appointments.

Mr SCULLY: Need we say more. They called it an Ombudsman there did they?

Mr LANDA: Victoria also has had a re-appointment.

Mr KERR: Just on the term; it is at present seven years, is there an argument for it to be five years?

Mr LANDA: I do not think there is. I think personally seven years but again that is something that is going to be put to the Committee. I think the Committee should have involvement in that. I have a personal view about it. If you look at the appointments in this State there have been three appointments that have come from the private sector who have given up a career. I think frankly under five years you are not going to get that.

Mr KERR: Under five years or seven years? You would be happy if it was restricted to five years?

Mr LANDA: No I think seven years is a good and appropriate term but the Committee may have a view on that. Certainly I think beyond seven years a change is needed. My predecessor, I think, achieved extraordinary changes to the good but having - he did it at the cost of enormous conflict and that conflict was only resolved, and I think he saw that, by a change. I think that goes hand in glove with the position. I think that if you have too long an appointment the problems just get worse, they do not get better.

Mr SCULLY: When does your seven years run out?

Mr LANDA: In February year after next. 1995.

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FURTHER DISCUSSION 20/7/93 - OMBUDSMAN'S APPOINTMENT & TERM OF OFFICE

Dr BURGMANN: I agree with your view that the Ombudsman's position should not be renewable. When we discussed this before, you were not too sure what you felt was the optimum term. Have you had further thoughts about that?

Mr LANDA: Yes. I suppose circumstances can make the term seem longer, and certainly some of the circumstances since our last meeting made me feel that the term was getting longer. Yes, I have. It depends on the approach that the Committee has in terms of input. The Committee has been to New Zealand to see an example there perhaps of running it differently to the way this Office is run. People in the central agencies have been critical when we have discussions of the public way in which the Ombudsman reports wrong conduct. I think the expression was nailing hides to the barn door. I have had cause to take that on board and consider whether that is an appropriate way or not. I am raising this because the members of the Committee, when they think about an appropriate type of person to succeed in this job, have got to look in terms of this type of issue, and I think it demonstrates my point and I want to demonstrate it.

My answer to that is accountability is one answer as to why I go public rather than go to the head of the department and say, "Look, let's massage this thing through and resolve it", because that only resolves that one problem, and the accountability process I think requires to go much further than just that. The Turrumurra report might demonstrate most of all the point I am making of why [some issues should be public]. You have probably read the Turrumurra report. If not, you have read about the press. It says what happened at the time. That is a very small part, really, of what Turrumurra was about. I have actually brought copies up of something that was not in the report which I think will interest the Committee. I will hand out those copies; it is a chronology of what happened from the time of the complaint. This is the racial issue that happened at Turrumurra where —

CHAIRMAN: May we table this document as forming part of your evidence?

Mr LANDA: Yes, Mr Chairman, I think so (Appendix 6). It is relevant and there is nothing in there that is not part of public record that I have not distributed, and I talk about it because I think it is important. What it says there is that a complaint came to the Police Commissioner on 16th January, 1992. I personally wrote—and the letter is there—to the Police Commissioner and said, "Look, hey, come on, this is a big problem, let's deal with it because there is a whole community out there who are intimidated and if there

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has been a mistake it is only a matter of dealing with it, confronting it and then issuing reassurances". I wrote to him and I rang personally Col Cole to say, "Look, this is very important to the Police, let's do something". I then wrote the letter to the Parliamentary Committee, to Andrew Tink, the Chairman at the time, and set out the very reason why on 11th February it was really critical—this is a very good issue to show why the Ombudsman should have the power to investigate immediately important issues.

The Chairman at the time thought that was an important thing and he sent my letter off to the Police Commissioner, saying, "It is important, do something about it, let's get the thing under way". So the Police Commissioner is totally aware of what is happening. You will then see the next letter is dated 15th July, 1992, where I have to write to the Police Commissioner to say, "Hey, come on, you have done nothing about it. The statutory period has expired. Now it's time for me to go in. I am clearly disappointed that the thing has not been dealt with. I have made public statements about my disappointment because all it has done is send out the wrong messages to the community; nothing has happened". The Police Commissioner has said, "Oh, there is nothing wrong with that, we have done a terrific job".

You will see I then finalise my report. The Police Commissioner says nothing, does nothing. I go to the Minister and say, "Do you want to consult?" No reply. I write again; no response. Nothing happens, so I send the final report to the Minister on 31st May. The point I am making here is that nothing happened in relation to that report. No-one cared, no-one did anything. The report did not mean anything. What did mean something was when the report became public on 25th June, and only when it became public was there any response from anybody. The Police Commissioner made a response and the Minister made a response. The point I am making is that making an issue public is, in my view, the only way an Ombudsman's message will be received anywhere. The reports do not mean very much. The publicity, the media, means everything.

Mr KERR: I understood the question to be simply in relation to the length of tenure.

Dr BURGMANN: I think he is answering the question.

Mr KERR: I took the question to ask whether he wanted five or seven years as the optimum term.

Dr BURGMANN: That is what the discussion is about.

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Mr LANDA: I took the question to be a comparison of the approaches that ombudsmen make, and term of office is part of it, as well as the public approach to the more massaged approach. What I am saying, I guess, is that there are ombudsmen who come from the bureaucracy who are made ombudsmen who have a less public approach. There are those who come from other points of view and I am explaining simply the point of view. In terms of length of tenure, I believe that you would not attract someone who has a career path that would have to disturb that career—from the private sector, for example—certainly with less than a five-year term. I cannot imagine why anyone—

Mr KERR: I think we have agreed that it would not be less than a five-year term. The problem with a seven-year term may be in terms of the answer you have given, that if you have a passive Ombudsman you are stuck with him for an additional time. People do undergo sea changes when they take office.

Mr LANDA: I think that is true.

CHAIRMAN: This philosophical discussion is important in terms of making a decision and perhaps could be kept for the deliberative hearing, but questions should be directed to Mr Landa.

Mr KERR: Up to five years I think is the answer.

Mr LANDA: I could not imagine it being less than five years. The effective years of an Ombudsman start probably from the third year. You adopt your predecessor's machinery basically and some of his philosophies for a period of time, depending on the individual. But certainly five years would be an absolute minimum. The Commonwealth had two Ombudsmen, one of whom only had a term of three years, and the other did not last a term of three years without moving on. I think both those men would say that a three-year term was inadequate.

Mr KERR: The Commonwealth has a three-year term?

Mr LANDA: No, I think the Commonwealth has a seven-year term, but the incumbents only accepted the position for that period of time. I think also it should be beyond a three-year term.

Mr KERR: Should a person have an option of saying, "I will do it for three years with an extension of two years"? Some people, due to their commitments, might be happy to do it for three years.

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Mr LANDA: That was the case with Dennis Pearce, in the Commonwealth.

Mr KERR: It may well be that, with a minimum of five years, some people might say, "I would have been interested if I had had the option of being able to do it for three years"?

Mr LANDA: Yes, I think that is perfectly valid. There could be people like that who could enhance the position as well.

Mr KERR: So probably there should a provision in exceptional circumstances.

Mr LANDA: Yes; I do not think that Parliament should lock itself out.

Mr KERR: There should be a degree of flexibility?

Mr LANDA: Yes.

Mr MOSS: By the same token it could be five years with an option of seven, subject to the Committee re-appointing—

Dr BURGMANN: No. My question to the Ombudsman was, given that I also believe the Ombudsman's term should not be renewable, what does he believe is the optimum? Once you talk about a renewable term or even an option for extension, that is a completely different question. Mr Landa, if for some reason the Government decided that the Ombudsman's position should be renewable, do you have views about the term?

Mr LANDA: Yes, I have always felt that renewable it was dangerous. The Auditor-General, I think, in a similar position would express a similar view. Renewal of term implies that the incumbent wants to renew and therefore a certain degree of having to be beholden to the appointer. I do not think that is compatible with an independent position such as that of the Auditor-General or Ombudsman. There are always exceptions but I believe that to be the case.

Mr MOSS: I think the Ombudsman has answered my question. My concern was that it be subject to the Ombudsman applying and not just be an option to renew and stay on for a couple more years.

Mr KERR: I think you are saying basically there has to be a maximum term and that people should not have two terms of office. The maximum might be five years, but an exceptional person might want to provide public service for only three years. However,

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circumstances could change and that person might be willing to do two more years, but would not be renewed after five years, no matter how good he is.

Mr LANDA: I think so. The point is that a change in direction is a healthy thing. To be in a complaints and grievance area too long could colour a situation. Greater benefits could come from fresher views.

Mr MOSS: Bearing in mind you are agreeing with Mr Kerr, what is the ideal time, if there is to be an option? Is it five years, that is three and two?

Mr LANDA: Five years; I see three years creating difficulties, with lack of certainty and direction.

Mr MOSS: You would say five years as an appointment and two more as an option?

Mr LANDA: Yes.

Mr KERR: You would be prepared to go to a seven-year term?

Mr LANDA: Five, and up to seven, with an option, if you are talking options. That is not to say I am in favour of options. I think the Committee, if it is going to be advising on this issue, would look at it and ask, "Five years or seven years—what are the virtues of those terms?" I would not criticise an option.

Mr KERR: An option only provides flexibility within a maximum.

Mr LANDA: Yes. For instance, there is a necessity at times for an extension for an Ombudsman whose term had expired at a time of an election. There may be a necessity to extend for a period while the election takes place.

Mr KERR: What if he is in the middle of a major project?

Mr LANDA: That, too; in fact, exactly that came up in the Ainsworth issue, where two statutory offices had to get powers and we could have faced that problem.

Mr WINDSOR: Would you be in favour of what Mr Kerr was saying in relation to a three-year term, or do you think that is too short, except in very special circumstances?

**COMPARATIVE TABLE OF STATUTORY PROVISIONS & APPOINTMENT PROCEDURES FOR OMBUDSMEN
IN AUSTRALIA & NEW ZEALAND**

| | Appointment Procedure | Term | Re-appointment |
|--|---|------------------------|----------------|
| Commonwealth Ombudsman | Recommendation by Prime Minister. Governor-General appoints. | 7 yrs max. | Eligible |
| N.S.W. Ombudsman | Recommendation by Premier. Appointed by the Governor. | 7 yrs max. | Eligible |
| Victorian Ombudsman | Position advertised and considered by Ministerial Committee (incl. Premier). Cabinet recommends. Governor-in-Council appoints. | 10 yrs | Not eligible |
| Northern Territory Ombudsman | Positions advertised. Chief Minister short lists. Interviews by bi-partisan committee of Parliament which recommends to Parliament. Parliament votes. Administrator appoints on recommendation of Legislative Assembly. | 5 yrs max. | Eligible |
| Western Australia Parliamentary Commissioner for Administrative Investigations | Position advertised. Selection panel recommends to Cabinet. Cabinet approves. Governor appoints. | 5 yrs | Eligible |
| Queensland Parliamentary Commissioner for Administrative Investigations | Position advertised. Parliamentary Committee (incl. Speaker) considers shortlist and recommends to Cabinet. Cabinet approves. Governor-in-Council appoints. | 5 yrs max. | Eligible |
| South Australian Ombudsman | Cabinet decides. Executive Council recommends and Governor appoints. | term expires at 65 yrs | --- |
| Tasmanian Ombudsman | Position advertised. Committee of 3 Heads of Department selects nomination to Cabinet and Premier. Governor appoints. | 5 yrs max. | Eligible |
| New Zealand Ombudsman - Officer of Parliament & Commissioners for Investigations | Nominations made to House of Representatives via Leader of the House. Nominees considered by all caucuses and Whips discuss. Suitable nominee acceptable to all is selected and a resolution put in the House of Representatives. Traditionally no recommendation is made to the Governor-General unless it is carried unanimously. Governor General appoints on recommendation of House of Reps. | 5 yrs | Eligible |

Committee Role and Functions

Mr LANDA: No, I think I said that three years, in my experience, created problems. People who come with a commitment only for three years I think perhaps are not able to give the position what it needs.

COMMENTARY

Term of Office - Under section 6(2) of the Ombudsman Act 1974 the Ombudsman is appointed for a period of seven years and is eligible for re-appointment. At present the Premier recommends an appointment to the Governor.

A comparative table of the statutory provisions governing length of tenure of office for various Ombudsmen appointed within Australia and New Zealand is provided.

The Committee agrees with the Ombudsman that the length of the term of office for the Ombudsman in New South Wales and the opportunity for re-appointment are two issues requiring further consideration. In this regard, it notes the Ombudsman's intention to submit to the Committee, closer to the end of his term in 1995, a recommendation that Ombudsmen in New South Wales should not be able to be re-appointed and that the appropriateness of the current seven year term should be examined.

Issues to be considered at that time will include the desirability of establishing a minimum term with the provision for a further option, or a set maximum term possibly less than seven years. These issues were partly traversed by the Joint Committee during this General Meeting but in the Committee's opinion warrant further discussion with the Ombudsman, during future public hearings.

| |
|---|
| <p>Conclusion: The Committee intends to hold further discussions with the Ombudsman on the issue of the length of the Ombudsman's term of office, and the option for re-appointment, with a view to reporting to Parliament on both of these issues.</p> |
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FURTHER DISCUSSIONS 20/7/93 - STATUTORY APPOINTMENTS LEGISLATION (PARLIAMENTARY VETO) AMENDMENT ACT 1992 - (SAPVA ACT).

CHAIRMAN: You are aware of the veto provisions that are now in place.

Mr LANDA: I am now aware of that. [The Ombudsman was not aware of the provisions of this Act during discussions on 25 March, 1993.]

Committee Role and Functions

CHAIRMAN: Do you wish to make any comments on that piece of legislation?

Mr LANDA: I think it is a good piece of legislation. It brings the Committee into the equation, which is, I have been saying, essential for the Office of the Ombudsman. All I am saying is that hopefully the Committee would have greater involvement in the selection process. If it does not select, it is seen as an advisory body. From the information it has gathered, it has an enormous resource that no one else will have. I would hope, if it stays as an appointment of government—and realistically I see that is what is going to happen—the Government should call upon the Committee to advise it on terms of office, length of office and the type of applicant they should be seeking.

Mr SCULLY: In substance the legislation changes nothing.

Mr LANDA: Doesn't it? I think it does.

Mr SCULLY: It is a rubber stamp. The Executive controls the party which has a majority on the Committee, which then would rubber stamp the decision of the Executive.

Mr LANDA: I think it would be a serious issue. It would still be a serious issue if the Committee divided on the question of veto. I think it would put a very unfortunate shadow over the incumbent who was appointed, notwithstanding the fact that a veto did not receive a majority vote.

Mr SCULLY: That would be no different from an Executive appointment, prior to the legislation, where the opposition party expressed disquiet about the appointment.

Mr LANDA: That is probably true.

Mr SCULLY: That would be quite unusual, and I dare say that would probably be the same at committee level, unless you feel it is more likely to occur.

Mr LANDA: I think there would be more value coming from a committee than an Opposition party.

Mr SCULLY: Structured for that purpose.

Mr LANDA: Yes.

Committee Role and Functions

CHAIRMAN: *The legislation that gives veto power has been used only once so far, in looking at the appointment of the Auditor-General, by the Public Accounts Committee. That Committee said it had certain problems associated with the legislation, including lack of access to the selection panel's interview reports, held by the Premier's Department, and a failure to obtain the criteria list for the selection process. Do you have any comments on that?*

Mr LANDA: *I do not think I can assist on that and would like to take it on notice.*

CHAIRMAN: *The Premier's Office may be saying that the Committee should not be a second interviewing body, that it is a veto procedure only, and therefore the Committee should not have access to the interviewing notes or application.*

Mr LANDA: *A committee's hands would be awfully tied without access. My immediate reaction to that is that a committee would need to debate it with full information, to debate the issue and the appointment, armed with the same information as the selection panel, and could forward the suggestion it had before it.*

CHAIRMAN: *You would be aware of the confidentiality procedures associated with the veto, including penal servitude for any member of this Committee who may breach confidentiality? Do you think that is an appropriate measure?*

Mr LANDA: *It is pretty harsh.*

CHAIRMAN: *Perhaps I should not ask you that question, which is more an observation than anything else. The Ombudsman has also raised the questions of premises, location and the rental problem. If that is of a commercial nature he might wish to give that information in camera?*

Mr LANDA: *Yes, I would prefer to give that in camera.*

Mr SCULLY: *In relation to tenure, in New Zealand a deputy Ombudsman or one of the Ombudsmen—a woman, I think a Maori—was not re-appointed. That seemed to create ill-feeling in some quarters in that it may have been because some of her reports were not favourable to the Government. I think you are familiar with that?*

Mr LANDA: *Yes, I am.*

Committee Role and Functions

Mr SCULLY: Not having the right to be re-appointed might have caused ill-feeling. She sought re-appointment and was upset at not being re-appointed.

Mr LANDA: That is my understanding.

COMMENTARY

Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992 (commenced on date of assent 19/5/92) - This act amended the Ombudsman Act in relation to the appointment of the Ombudsman. Accordingly, section 6A of the Ombudsman Act 1974 provides that a person cannot be appointed, or re-appointed, as Ombudsman until such a proposal has been referred to the Joint Committee on the Office of the Ombudsman. Section 31BA of the Act explains the Committee's powers in exercising this function.

The Executive Government initially selects a proposed candidate but the Committee may veto the appointment before it is submitted to the Governor-in-Council for confirmation.

The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and a further 30 days after this period has elapsed to veto the proposal if it notifies the Minister in the initial two week period that it requires more time to consider the referred appointment.

Various other sections of the Act place requirements upon the Committee when exercising this power. For example, any evidence taken by the Committee which relates to the proposed appointment of a person as Ombudsman must be taken in private and any document treated as confidential(s.31H(1A)). Nor can the Joint Committee, any person assisting the Committee or any person present during deliberations disclose whether or not the Committee, or one of its members, has vetoed or intends to veto the proposed appointment of a person as Ombudsman (s.31H(1C)).

As the transcript of the General Meeting indicates, there are several procedural issues arising from the Committee's exercise of this power which require further clarification and consideration. For example, a Committee's powers to send for persons, papers and records are fairly wide-ranging and if fully exercised would obviously result in the consideration of a referral becoming a fairly involved exercise.

Committee Role and Functions

In performing this function the Committee believes that it should be fully appraised of the criteria used to select the referred applicant and of the material supporting his or her selection.

It also is not clear under what circumstances a Minister may withdraw a referral and whether or not the Committee may comment on this if it had no objection to the applicant involved.

Additionally the Committee is concerned that if it chose to exercise its veto power it would not have the capacity to justify its decision because of the confidentiality provisions of the Act should this become necessary.

Accordingly, it has resolved to seek advice from the Crown Solicitor as to whether the phrase "proposal to appoint" in s. 31BA of the Act means that the Committee is entitled to review the supporting documentation for that proposal.

ISSUES ARISING FROM FIRST INQUIRY

QUESTIONS ON NOTICE

Issues arising from the Joint Committee's first inquiry

Question (4)

Recommendations not requiring amendments in order to be implemented included Nos. 10, 11, 14(b) & (c), 15, 26(a) & 29.

- (a) What is the current position in relation to these recommendations?

Answer 4(a)

Recommendation No.:

10 - conciliation training for police conciliators -

I am not aware whether any comprehensive training for police conciliators is in place. Conciliations are still handled by untrained police at the local patrol level. There has been some interest by the Police Service in attending mediation courses run under the auspices of the Ombudsman but this has yet to translate into a widespread training program.

11 - Recognition by the Police Service of merit for police seconded to the Ombudsman's Office - Police Board to advise.

This question would be better addressed to the Ministry and the Police Service. The Police Board is undergoing significant structural change at present and may not have been in a position to provide such advice.

My perception is that the system of police secondment to the Ombudsman's Office is now dead. Serving police are not applying for advertised positions and the last seconded police officer left the Office on 19 March, 1993. The principal bar to secondment is, as noted by the Committee, lack of recognition of service in the Ombudsman's Office and police perceptions that they will be persecuted on their return to the Police Service. As far as the Ombudsman is aware, no efforts have been made by the Police Service to address these issues.

Issues Arising From First Inquiry

14(b)&(c)- data to be kept on conciliation and presentation of same in the Police Service Annual report.

Again this question would be better directed to the Police Service. The Ombudsman maintains data which is published in his Annual Report. There is currently no capacity to record data by Police District and consequently to examine trends on a District basis. The Ombudsman's Office is currently reviewing its database capacity in anticipation of the new legislation.

Complaint levels on a District basis should be able to be produced by the Police Service which records its data in this form. In most respects, the complaint spread across different sectors of the Police Service involves questions of management of the Service which are fundamentally the responsibility of the Police Service.

What the Commissioner proposes to publish in his Annual Report should be addressed to him.

15 - A new disciplinary procedure of admonishment to be introduced.

This measure depends on legislation for its introduction. Current amendments to the Police Service Act propose that the Commissioner may "admonish" an officer for misconduct not considered serious enough to warrant Departmental charges. (Section 97 (2) Police Service (Amendment) Bill, 1993)

26(a) - Complaints of sexual harassment not to be categorised as solely to be dealt with by Internal Affairs.

Complaints of sexual harassment are dealt with at a variety of levels of investigation depending on the seriousness of the complaint and the capacity of the proposed investigative section of the police to exercise impartiality.

29 - A "class or kind" agreement to be reached regarding internal complaints which are management issues and, therefore, not notifiable to the Ombudsman.

This recommendation also requires legislative amendment to be implemented. Section 96 C of the Police Service (Amendment) Bill 1993 provides for such an agreement and work in defining the nature of the agreement is continuing. At

Issues Arising From First Inquiry

present, the law still requires that any "allegation of misconduct" which is committed to writing must be notified to the Ombudsman.

QUESTIONS WITHOUT NOTICE

Question (4)

CHAIRMAN: Moving on to Question 4 - any supplementaries on Question 4?

Dr BURGSMANN: I have got one. I do not really know whether it is a question or a statement of horror. It is about the serving police not applying for advertised positions and your view that they feel they will be persecuted and so presumably there are no police now seconded into the Ombudsman's Office?

Mr PINNOCK: That is correct, there are none.

Dr BURGSMANN: And you feel that from your end there's nothing you can do about that?

Mr LANDA: No, I think it has run its course. I mean, we are getting people with police experience. I saw the virtue of having seconded police. The main virtue, apart from their skills and talents and their knowledge, the main virtue was to put the human face of the policeman into the Office which is a grievance office and to keep that human face there so that investigators did not get callous.

Dr BURGSMANN: Do you see a role for us - is that the sort of thing that we as a Committee can do?

Mr LANDA: That may have been but I think the time has elapsed where it can happen. In any event the secondments not just to my Office but in the police generally are coming to an end it would seem and for a variety of reasons. Some of them similar to mine but others due to many considerations.

Mr PINNOCK: We understand, if it is not already the case, that there is a move to require police officers seeking secondments to other institutions such as the ICAC or the NCA, to in effect take formal leave of absence from the Police Service. That would have, as I understand it, implications for career. Certainly in terms of seniority. The seniority is still in issue in the police force, notwithstanding questions of merit so far as promotion is concerned. Our view is that basically the secondment of police to our Office is a dead issue in the sense that there is almost nothing that can be done effectively to encourage officers to come to us any more.

Issues Arising From First Inquiry

CHAIRMAN: *Has it got an effect on the performance of your Office?*

Mr LANDA: *I do not think so because we recognised the difficulty some time ago and we basically have been bringing in people to do those jobs that had the skills but they just do not have the current connection, that is the only difference.*

Mr PINNOCK: *There are people who are former police, either from the NSW Police Service, the AFP or other States. In fact we get a fair number of applications who are in that position. The thing you lose is that sort of feeling for the difficulties that serving officers have.*

Mr LANDA: *There was one very real thing that we have lost. There was a terrific gap between the Office and the Police and that gap was breached by face to face addresses and confrontations.*

I had on the day I went up to Tuncurry - I had come from a meeting with the Police. If I could refer to it as facing the firing squad as it used to be when I first started. It was very difficult. I was able to do it because I had serving Police who were able to get on to the Region Command and say look this is what he is about, this is what he wants to tell you and you have got nothing to lose. He was able to smooth the way and get me in and then we were able to interact. Now without that, that would have been very difficult. That is established and in place now and it's ongoing. So I don't have the problem but that is an example of one of the things that the Office ---.

Mr SCULLY: *Could the same sort of thing be done by a unit within the Police Service so that it reports to an Assistant Commissioner?*

Mr LANDA: *The whole essence of the secondment of course was that the Police became totally independent of the Commission.*

Mr SCULLY: *I accept that. It just seems a shame you have lost that. Maybe as a second best alternative.*

Mr LANDA: *I do not understand the process. I think that it is a two-way thing - the Police lost as well.*

Mr SCULLY: *Have you raised this with the Commissioner?*

Mr LANDA: *Yes, personally on many occasions.*

Issues Arising From First Inquiry

Mr SCULLY: And he is not prepared to ---?

Mr LANDA: It was not a matter of not being prepared. It is simply the practical implications. We ceased to get applications because what happened in terms of career prospects became very obvious.

Mr MOSS: Did we not make a recommendation on that? Did we not recommend that there be formal recognition of their service. That means the Police simply are not acting on our recommendation and that is our job to approach the Minister.

Mr PINNOCK: The recommendation was to the Police Board that the Police Board take some action in relation to it. The difficulty there of course is that the Board is in the process of being completely reconstituted. We have had no feed-back at all from the Board in relation to that recommendation. None whatsoever.

CHAIRMAN: In view of that raised in our inquiry, we will certainly follow that up. . . You refer to the amendments from specifically sections of the Police Service (Amendment) Bill 1993⁵. Do you happen to have a copy of that? As far as we know it has not even come out of Cabinet yet. We don't believe it has even been introduced as a Bill.

Mr PINNOCK: What we have, it is headed Preliminary Draft for Discussion Only. I cannot see that there is any difficulty in us providing it to the Committee.

CHAIRMAN: Not even Government or Opposition have come across it.

Mr PINNOCK: That is astounding, that is absolutely astounding. I will make that available for copying - I will find a clean copy and send it up. This one has my comments on it.

Mr LANDA: Better still, I will ask the Minister to get you a copy.

Dr BURGMANN: There was another one you mentioned earlier.

⁵ Enacted as the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.

Issues Arising From First Inquiry

Mr PINNOCK: The Ombudsman Amendment Bill 1992⁶. That has not been introduced either I do not think. It's basically been held up at the moment because there are arguments between, as I understand it, officers of the Cabinet Office who were advising the Government or the Premier on it and Independent Members of Parliament. Most of the amendments in that Bill arise out of the Memorandum of Understanding between the Government and the Independents. So effectively I think it has stalled at the moment.

⁶

Ombudsman Amendment Act 1993 No. 37.

ANONYMOUS COMPLAINTS

QUESTIONS ON NOTICE

Anonymous Complaints

Question (5)

Does your Office record statistics about the number of anonymous complaints received?

Answer (5)

The Ombudsman receives anonymous complaints and registers these complaints on databases in the same way that any other complaint is registered and managed in the office. Statistical information is available about these complaints.

In 1990-91, 101 anonymous complaints were registered in the year and in 1991-92, anonymous complaints totalled 95.

Question (6)

6(a) What percentage of anonymous complaints result in investigations?

Answer 6(a)

In 1990/91 41% of anonymous complaints were investigated. In 1991/92 23% were investigated.

6(b) What percentage are declined at the outset?

Answer 6(b)

In 1990/91 43% of anonymous complaints were declined at the outset. In 1991/92 45% were declined at the outset.

6(c) What percentage are declined after preliminary enquiries?

Anonymous Complaints

Answer 6(c)

In 1990/91 12% of anonymous complaints were declined after preliminary inquiry. In 1991/92 28% were declined after preliminary inquiry.

Anonymous Complaints

QUESTIONS ON NOTICE

Question (7)

Are statistics kept on the number of anonymous complaints relating to a particular department and the number of substantiated complaints?

Answer (7)

All complaints are registered identifying the public authority subject of complaint. In 1990/91, of those anonymous matters fully investigated, six were substantiated. In 1991/92 four were substantiated. All of these were complaints about Police.

Note 1 Complaints about Police account for the bulk of anonymous complaints registered. In 1990/91 for instance, anonymous complaints about Police represented 97% of the total received against all public authorities. In 1991/92 anonymous complaints about Police were 85% of the total received.

Note 2 Section 18 (1A) Police Regulation (Allegations of Misconduct) Act, 1978 provides that several prerequisites must be met before the Ombudsman can direct the investigation of an anonymous complaint.

REPORTS TO PARLIAMENT

QUESTIONS ON NOTICE

Financial Statements

Question (8)

Is comparative data from the previous fiscal year a regular feature of the financial statements provided by the Ombudsman to Parliament?

Answer (8)

The Ombudsman's Office, as with other New South Wales public sector organisations, provides details of its annual financial statements to the Parliament via its Annual Report. The financial statements are required to comply with s.45E of the Public Finance and Audit Act. The Auditor-General considers the financial statements and provides an "Auditor-General's Opinion" as to whether or not the statements comply with statutory obligations, applicable Accounting Standards and Statements of Accounting Concepts.

In previous years, the Ombudsman's Office published comparative data from the previous fiscal year in accordance with the relevant Australian accounting standards, Treasurers Directions and Financial Reporting directives as set out in the Financial Reporting Code for Inner Budget Sector Entities. In 1991-92, however, as a result of the move from cash accounting to accrual accounting, the Office, like other inner budget agencies, was exempted from providing comparative data by paragraph 1.11 of the Financial Reporting Code. See Note 3 to the Financial Statements - 1991-92 Annual Report p.247.

QUESTIONS WITHOUT NOTICE

Question (8)

CHAIRMAN: *The financial data comparisons - once you make your move from cash across to accrual accounting are you going to go back to ---?*

Mr PINNOCK: *I don't see any reason why not. The provision under the Public Finance and Audit Act, Section 45EA, I think it is, was designed simply, and the change in the reporting code was designed simply, to take account of that one year when there was a switch from cash accounting or cash reporting to accrual accounting. Because it might have been regarded as misleading to have comparisons with the previous year. I have not actually discussed it with our Accountant. I am not even certain at this stage just precisely what the Treasury's requirements are.*

I would envisage that this year we will report on the basis that we have reported previously. That is to say, we will have the Financial Statement for this year with a comparison with 1991/92. 1991/92 being the first year of reporting.

QUESTIONS ON NOTICE

Question (9) - Outstanding Recommendations

Does the Ombudsman provide information to Parliament on the status of any recommendations outstanding from previous years?

Answer (9)

The Ombudsman does not provide information in tabular form to Parliament in its Annual Report on the status of any recommendations outstanding from previous years. Annual Reports frequently provide information about recommendations either complied with or outstanding in the current financial year, but, again, it is not done in tabular form. The principal mechanism by which the Ombudsman advises Parliament of outstanding recommendations is by non-compliance reports under s.27 Ombudsman Act. The decision to make a report under s.27 is a discretionary matter and such reports are usually made when either a public authority has entirely failed to comply with recommendations in a report under s.26 or where, notwithstanding some degree of compliance, a major recommendation remains outstanding.

QUESTIONS WITHOUT NOTICE

Question (9)

CHAIRMAN: In relation to your answer to Question 9 Mr Landa, you state you do not provide information in tabular form to Parliament in its Annual Report on the status of any recommendations outstanding from previous years. Is it thought you might look at providing that information?

Mr PINNOCK: We think it is a reasonable suggestion. For instance it could be regarded as a performance indicator. We have had what were called performance indicators in the past as to recommendations made and adhered to in terms of percentages but I think it is a very primitive way of doing it.

In fact I think probably one of the best measures of performance is to look at the number of recommendations that are made. The nature of them. How many there are in fact taken up. It is something that we have been giving consideration to. You would have to put a limit on it, otherwise you are going to be reporting year in, year out on some matters that might be for instance 10 years old. So probably I suppose you could say you could choose to report over a three year period and reports over those years and review each year as you go through.

QUESTIONS ON NOTICE

Question (10)

Rigg Report - I understand a complete costing has been prepared on the Rigg Report.

How many staff were devoted to this investigation and report, at what level and was this a full-time project for those involved?

Answer (10)

As Ombudsman, I had overall control of the investigation, presided at the formal hearings of evidence and gave directions as to the conduct of particular operational matters.

The Assistant Ombudsman (Police), Mr K Pehm, was responsible for the operational aspects of the investigation and the organisation of staff to assist. He also organised and conducted the bulk of questioning in formal hearings. The report was drafted by the Assistant Ombudsman and considered and approved by me.

An Executive Assistant (Police) - Grade 7/8 - Ms Christmann, worked closely with the Assistant Ombudsman and conducted questioning during some of the hearings. She and the Assistant Ombudsman travelled to Victoria where Angus Rigg's family and associates, as well as Victorian Police were interviewed.

Two investigation officers (Grade 7/8) were also involved in the investigation, especially in the early stages doing the "groundwork". They attended inspections of Milton Police station, regional and central headquarters and travelled to the scene and to other parts of the state to interview relevant witnesses.

Both the Assistant Ombudsman and the Executive Assistant were involved on a full-time basis until the report writing stage which was done by the Assistant Ombudsman. The two investigation officers were heavily involved in the early stages but, following the initial gathering of evidence went back to other duties.

Office costings of the investigation, are Annexure A. (see Appendix 7)

Reports to Parliament

It should also be noted that there were significant related costs which are not recorded on the attached sheet. During the inquiry, other complaints involving attempts at suicide were carefully scrutinised, papers and exhibits called for and inspections of cells carried out in the metropolitan and country areas.

Further, the attached document only accounts for costs up to the publication of the report. Obviously, there was a great deal of follow-up, media inquiries, requests for further information from persons involved in the inquiry and inquiries from the public. Other costs such as briefing subsequent police investigations and task-forces and return of papers and exhibits to the Police Service for production in the court proceedings are still ongoing.

QUESTIONS WITHOUT NOTICE

Question (10)

CHAIRMAN: *Question 10. You have been kind enough to provide us with Annexure A (see Appendix 7).*

Mr LANDA: *I put that forward to the Premier in my last meeting with him, again as an example of an inexpensive alternative method of carrying out inquiries perhaps the Government may wish to explore further.*

CHAIRMAN: *You say it is?*

Mr LANDA: *An inexpensive form of inquiry. It certainly stands comparison with any other form of inquiry the State has ever produced.*

CHAIRMAN: *Do you see that as indicative of the cost of other inquiries such as that one?*

Mr LANDA: *I do not know of any - I mean, a Royal Commission clearly would far exceed - I just do not know of any other form of inquiry - I think it is open to the Ombudsman's Office in certain inquiries and this is an example of why. In other words what I am saying is the Office has possibly been under-utilised. The other example being, of course, the Prisoners Inquiry which the Government was directly involved in by asking us to deal with the Inquiry. That was to do with the riot.*

CHAIRMAN: *That attracted an enormous amount of public pressure. I mean, did you investigate the matter [Rigg case] as a result of public pressure syndrome or because suicides in gaols is one which you should look at?*

Mr LANDA: *It was certainly a public interest issue. There is no doubt about that. The decision to make the investigations was long before the real public issue came out in terms of the conflicts that existed between the Commissioner and the Minister and it was an example really of what does go wrong when there is suppression of information. That is something that the current Ministry is taking very much on board.*

Mr PINNOCK: *Mr Chairman, I was actually in the hot seat when that decision was made. I made the decision, the Ombudsman being overseas. The matters that influenced me were primarily that Angus Rigg was a juvenile and there was a suggestion that he*

Reports to Parliament

ought not to have been in the cells in the first place. Secondly, that had he actually died there would have been a Coronial Inquiry which would have gone into just about everything that happened and that because of the state in which he was now in there could be no Inquiry which could be as in-depth as a Coronial Inquiry. Rigg himself could give no evidence to anyone. When I looked at the number of or the statistics on hangings or attempted hangings in cells, I regarded it as a public interest matter. There was also an issue that it was very similar in that sense to an instance where there had been an attempted hanging in custody some years ago which had resulted in a series of complaints, both about the conduct of police and conduct of medical staff at a hospital to which the prisoner had been removed and they were quite exhaustively investigated.

Nevertheless, it left the situation where, in the complainant's mother's view, there were still outstanding issues. We decided not to take that matter any further. That was a matter that had been in the back of my mind for a number of years. It always seemed to me that where you have got that situation where someone dies there is a tremendous inquiry, an independent inquiry; when someone is left in the state that Angus Rigg was in one has always got question marks. The final thing that determined me was the clear evidence that I had at that stage that there was a suggestion within the Police Service that the engagement of a forensic expert whose charges were a matter of a few thousand dollars was a matter that was suggested had to be approved by a Minister and that in fact had lead to a delay just on the papers that I have seen of over 8 months in actually getting the consultant approved to examine the blankets. I just could not believe that that could happen. Those were the factors that influenced me to exercise the discretion to take it over.

CHAIRMAN: *The inquiry was really the Police handling of the matter not the hanging aspect.*

Mr LANDA: *Not the hanging, but that was an important aspect in the sense that there was clear evidence that the Police were not involved - there was public suggestion that they were actively involved in that.*

CHAIRMAN: *For my mind, can you clarify Mr Landa the recommendation - I cannot word it because I do not have it in front of me - there was some talk about compensation?*

Mr LANDA: *Yes, the recommendation wasn't compensation to be paid on that issue. The recommendation was that the claim for compensation be dealt with speedily and by settlement if possible to spare the parties yet again a further process. We had the Police in mind as much as anyone.*

Reports to Parliament

CHAIRMAN: Is that not an unfair recommendation in the sense that a normal litigant would not have had the benefit of the intervention of the Ombudsman and such a recommendation may well, if he is in the Supreme Court, be delayed for four to six years which would be the way I imagine this case would have ended up.

Mr PINNOCK: No because the Court already had an application before it in the Victoria Supreme Court for expedition which was granted and indeed even before it was granted there were indications from the comments by the Judge who was hearing the initial application that it was most likely that expedition would be granted.

CHAIRMAN: Was it right and proper for you to then, in application before the court for expedition, to bring down such a recommendation? Is that not seen as interfering perhaps with the role of the Court?

Mr LANDA: No, it was a recommendation to the Government to consider either expediting or resolving the matter expeditiously and the reasons being those that were given.

QUESTIONS ON NOTICE

Question (11)

Report on the Local Government and Community Housing Program - The Ombudsman's report was issued on 25 February, 1993 and the Mant report was released in November, 1992.

How many of the Recommendations contained in the report have been superseded by the Mant Report or recent initiatives by the Housing Department?

Answer (11)

No recommendations in the Report were superseded by the Mant Inquiry.

The Mant Inquiry was established in July 1992 as a result of criticisms made of the Department of Housing during the Building Industry Royal Commission, particularly concerning the way in which it had procured various properties and of its failure to respond to criticism by the Auditor General and the Independent Commission Against Corruption.

Mr Mant himself advised that he was addressing the broad picture and had not provided a detailed prescription for reforming internal management practices and policies. Rather he had attempted to provide a framework within which efficiency and effectiveness could be improved by those responsible for implementing reforms.

Mr Mant did not address the specifics of any community housing program, let alone the Local Government and Community Housing Program (LGACHP). He made general statements about the need for "a complete reappraisal of the role and structure of the Commonwealth/State Housing Agreement", but oriented his remarks to policy issues rather than program administration.

The only recommendation which might have any bearing on the issues addressed by Mant is 14.8, "that the Director of Housing review the practice of the department bearing the cost of failed projects without at least assessing the liability of consultants". This point was not addressed specifically by the Mant Inquiry but

Reports to Parliament

supports its aim of providing guidance as to future policy, structural and operational issues for the department.

The only other cross-over point related to observations about the lack of specific performance agreements for Senior Executive Service officers. Mr Mant simply commented on this, but made no recommendations for action - unlike this Office.

Mr Mant was consulted during the investigation into the LGACHP in his role as Chairperson of the NSW Community Housing Trust. He fully supported the need for a detailed and precise examination of the administration of the Local Government and Community Housing Program.

Department of Housing initiatives

It has been made clear to this Office that the new administration of the Department of Housing, appointed in June/July 1992, was glad of the support provided by this Office's investigation for its own internal reorganisation and review. The problems identified by this Office had been denied by the previous administration, some of whose members still had responsibilities for the program.

Advice from the Director of Housing to the Ombudsman on recent initiatives taken by the Department of Housing was received on 26 October 1992 - in response to the statement of provisional findings and recommendations issued by this office. Her comment was that she had "read with interest the detailed comments made in the statement and [had] noted the full extent of the findings."

In the same letter, Ms Kibble outlined recent initiatives to address the significant problems which had become apparent, primarily through the investigation by this Office. Such initiatives included a special task force to report fortnightly to Executive Management, the forging of closer links with the commonwealth department, and a concerted effort to speed up the department's pre-funding administrative and assessment procedures.

This Office's recommendations spell out in much greater detail areas of administration which demand specific attention, whilst also proposing positive and concrete steps which would lead to an improved performance of this program. Far from being superseded, the findings and recommendations of this report provided a detailed and timely critique of administrative failures within the department and led to the current initiatives within the department.

Reports to Parliament

It should be noted, for example, that notwithstanding recent initiatives by the department, the Commonwealth Government still decided in December 1992 to withhold \$5.8 million funding to LGACHP for the 1992/3 financial year, because of the significant levels of underspending in previous years.

The Minister and the Director accepted without question the Report's recommendations.

The Committee will be aware that investigations conducted under the Ombudsman Act require significant disclosure and that the very process alerts public authorities to areas of criticism. Further, given the extensive requirements of procedural fairness, it is not uncommon for a public authority to have implemented, or removed the need to implement, recommendations which flow from an investigation.

Initiatives implemented before final publication of a report cannot be practically said to 'supersede' the reports recommendations. It is common and understandable practice for public authorities to scramble towards implementation so that, by the time a report is published, they can announce that all concerns have been addressed and nothing further needs to be done.

QUESTIONS WITHOUT NOTICE

Question (11)

CHAIRMAN: You said in answer 11 that the Housing Department started to get some of the initiatives into place before you even got that report out. Are you finding that sort of response from Government Departments now that they are trying to actually pre-empt you?

Mr PINNOCK: Many of our complaints are discontinued because of the action of the Department that has been taken during the course of the investigation. We are not in the business of giving a serve to the Department just because we feel like it. If the Department has addressed a particular issue - in some cases there is no point in reporting just for reporting sake.

Mr LANDA: If I may add to that. Three years ago I got the statistics out on the Housing Department and found we had not done an inquiry for a number of years on them. I then looked at the complaints that we had and they were considerable. When I went into it I found that whenever the Ombudsman's Office raised the complaint immediately it was dealt with.

We then determined well, that is not really the way we want to treat Housing - it is too sensitive a department. If they are going to fix cases, ones that we discover through complaints, the systemic problems are not being attended to at all and we are now looking at the system. That is in fact what we did target. There was never a complaint for three years before it got to investigation because they were all resolved.

QUESTIONS ON NOTICE

Annual Report 1991-2

Question (12)

Complaint levels - At page 5 of the Report it is stated that while police complaints increased by seven percent all other areas experienced a small decrease. In the Report it is assumed that this is the result of an increase in the awareness of the Office's decline policy and the lack of public awareness visits to country regions, prisons and juvenile detention centres.

- (a) Are there other factors which could have contributed to the decrease in complaints?

Answer 12(a)

There may be other reasons for the slight decrease in non-police complaints. For example, while the number of prisoners involved in making complaints was approximately the same as in 1990/91, the number of written complaints in the prisons area dropped by 25%. That fall was most likely the result of reduced tensions in NSW gaols compared with the disturbances that characterised the 1990/91 period, as well as the reduced visibility of the Ombudsman in correctional centres and the greater visibility of Official Visitors.

It is not always possible to fully explain complaint fluctuations. Projections for the 1992/93 year indicate that the complaint level is similar to that in 1991/92.

Reports to Parliament

12(b) Would the introduction of the CHIPS initiative have had any impact on complaints so quickly after its introduction?

Answer 12(b)

It is not considered that the CHIPS initiative would have had a significant impact on complaint levels so quickly after its introduction. Any direct benefits that will come from public authorities establishing effective internal grievance mechanisms is not likely to register until after a settling-in period, probably sometime in the 1994/95 financial year. It is our understanding that the Government's Guarantee of Service initiative (of which better complaint reporting is one facet) has been slow to get off the ground. Many authorities have not as yet published their Guarantee of Service statements which had an initial deadline of 1 October 1992. The number which have set up formal internal complaints mechanisms is not yet known. The Office will re-survey government departments in October/November this year to identify how many have put internal complaints systems into place.

QUESTIONS ON NOTICE

Question (13)

CHIPS - Reference is made at page 17 of your report about draft reporting standards circulated to departments as part of the CHIPS initiative.

Have these been generally adopted and if so do they enable the Office to draw statistics about complaint handling in the New South Wales public administration system?

Answer (13)

Draft reporting standards on complaints were initially suggested to a representative sample of Chief Executive Officers in letters issued by my Office in May 1992. Feedback was sought and resulted in some revision of the draft standards. I then wrote to the Treasury, the Auditor General and the Office of Public Management in July 1992, suggesting that it was sensible to adopt some common reporting standards for complaints across all public authorities.

The suggested draft standards were incorporated into the CHIPS publication Guidelines for Effective Complaint Management which was first distributed in August 1992. Reference to those draft standards was also incorporated into the Office of Public Management's Guidelines: Guarantee of Service which was distributed at about the same time. That document contemplated amendments to Regulations under the Annual Reports Act to give details of the standards, but endorsed the draft standards prepared by my Office in the meantime.

In September 1992, I was informed by the Secretary of the Treasury, Mr Allan, that the issue of annual reporting of complaints in the context of the guarantee of service was discussed by the Government's Management Council which decided that the existing annual reports regulations were sufficiently flexible to accommodate our proposal. The Council did, however, request that the proposal be further examined and a working party was established for that purpose comprising representatives from the Ombudsman's Office, the Treasury, the Office of Public Management, and the Auditor General's Office.

Reports to Parliament

The working group met in November 1992 under the chairmanship of Philip Wheeler from the Office of Public Management.

A draft summary of the discussion at that meeting was only provided to my Office on 5 March 1993. It was our representative's understanding, however, that consensus was reached at the November meeting that the draft standards developed by my Office were appropriate and that their implementation would be by a direction from the Office of Public Management and/or the Treasury. No such direction has as yet been made. Responsibility for further implementation rests with Mr Wheeler as Director of the Customer Service Project. At this stage no statistical information is available.

QUESTIONS WITHOUT NOTICE

Question (13)

CHAIRMAN: *Question 13. After the draft report developed and formulated by your Office and implemented by the Premier's Department what type of conclusions do you hope to be able to draw about complaint handling and NSW Public Administration System?*

Mr LANDA: *It is ongoing of course. I do not know whether we have provided a copy of a letter.*

Mr PINNOCK: *Mr Chairman, that is actually in the answer that refers to a draft summary of the discussion of November 1992 provided on the 5 March. In fact the representatives of all the parties I believe have actually now seen that draft summary and it has been settled. I might hand up a copy of that just for the information of the Committee.*

QUESTIONS ON NOTICE

Question (14)

Mediation - The report states that the Ombudsman and another officer have undergone training for accreditation as mediators.(p.18)

How many qualified mediators does the Office employ and in what positions?

Answer (14)

I and my Senior Executive Assistant undertook different mediation training courses in the early part of 1992, as indicated in the 1991/92 Annual Report.

More recently, the Assistant Ombudsman responsible for the CHIPS and mediation projects (Greg Andrews) undertook a training course organised by my Office to train public sector staff in mediation skills, together with a Senior Investigation Officer, an Investigation Officer and an Assistant Investigation Officer.

A further mediation training course organised by my Office for June will provide an opportunity for other staff to acquire mediation skills.

QUESTIONS WITHOUT NOTICE

Question (14)

CHAIRMAN: *You mention, Mr Landa, that you have undertaken a mediation training course. Can you give us some idea what is involved in those courses?*

Mr LANDA: *Yes but further than that, we have started a project now of training the people in the Public Sector so that not only are they able to mediate and conciliate complaints if the necessity arises but they are more able to identify the type of issue and complaint that ought to be dealt with that way. We have had enormous response from the Public Sector wanting to have members trained at I think it is \$850 a piece. We organised the group "LEADR" and it has arranged two courses.*

Mr SCULLY: *This is entrepreneurial by the Ombudsman is it?*

Mr LANDA: *Yes. We are hoping to have a Public Sector fully aware and ready to go and not only that ready to function. The next stage I hope will be we will be able to assist the Public Sector being able to interchange the facilities in the same way as, for instance, when you have a job applicant and you need a panel from elsewhere, you draw on other departments. But when you have an issue that needs to be mediated but outside their department there it has access also to a cheap alternative of exchanging assistance.*

CHAIRMAN: *And that activity that you are going to run, are bringing in outsiders to run that or are you running it with your own in-house people?*

Mr LANDA: *No, we are doing it with outsiders. We are facilitating it basically. They are being done with accredited agencies. So far LEADR has done the first two. ACDC would be doing the third and I think we will probably have four or five this year. They are training on average 23 - 25 people at a time.*

Mr MOSS: *And the response has been good from all department people?*

Mr LANDA: *Absolutely and it looks like we are getting inundated. We are looking, at the moment, to see if we can bring it into Local Government.*

Mr MOSS: *Local Government worries me. If the mediator happens to be from the very Council that the person was complaining, it is quite often too close to home. I think there can be a real bias there towards the Council. I know that can happen in departments too,*

Reports to Parliament

but departments are bigger. Somebody complaining about the Timbuktu Council and the Town Clerk of Timbuktu is the mediator, it just worries me.

CHAIRMAN: We might discuss that at another time.

QUESTIONS ON NOTICE

Question (15)

Telecommunications Interception Unit - Although this area of your operations falls outside the Committee's jurisdiction it would be appreciated if you could clarify that the investigating staff dedicated to this unit do not investigate any complaints relating to other areas of your jurisdiction.

Answer (15)

The Unit is normally staffed by four officers - Officer-in-Charge Grade 9, Investigation Officer, (I.O) Grade 7-8, Assistant Investigation Officer, (A.I.O) Grade 4-5 and Receptionist/ Investigative Assistant, (I.A). The Investigation Officer Grade 7-8 is currently on maternity leave and her position has been filled in an acting capacity by the Assistant Investigation Officer. It is not correct that officers of the Unit do not carry out other functions under the Ombudsman Act and Police Regulation (Allegations of Misconduct) Act and indeed, there is no statutory bar to them doing so. For this purpose, these officers are currently members of one or other of the four investigative teams. It is difficult to estimate the amount of time which officers of the Unit spend on complaints under the Ombudsman Act and Police Regulation (Allegations of Misconduct) Act.

In order to ensure more efficient and effective use of office resources, the position of the TIIU was considered in the context of the proposed restructuring of the Office so far as the audit function for conciliation of police complaints was concerned. The proposed restructure would abolish the need for the Grade 9 supervisory position and would integrate the TIIU functions into the Office mainstream. This was outlined in my memorandum of 17 February 1993 (p 7 and 8) which has been furnished to the Committee.

QUESTIONS ON NOTICE

Question (16)

Training and Development - Internal and external training courses for staff in your office are outlined on page 210.

Do these training courses include any training for investigators?

Answer (16)

Training for investigators is through a mixture of internal courses, external (paid) courses and on the job training. A training committee oversees such training and approves major expenditure, with the Principal Investigation Officer taking daily responsibility for coordination. A yearly round of internal courses is conducted, some concentrating on particular subject matter areas (eg "Complaints about the RTA") and some focussing on generic skills ("Conducting a section 19 hearing"). Investigation staff are sent to external courses where appropriate, again with a mix of subject matter courses (eg "Investigating Child Sexual Assault - a Koori Perspective") and skills courses (computer training, time management and supervision courses are examples).

Investigation training is also conducted by Senior Investigation Officers (SIOs) through discussion of cases in weekly team meetings, and through one on one discussion of cases with IOs by the SIO's, the Principal Investigation Officer, (PIO) and statutory officers.

New staff in the investigation area are given individual or small group training on particular areas. A copy of the checklist used for this is Annexure B. (see Appendix 7).

A list of some of the training courses conducted in the past twelve months is part of Annexure B.

Due to the major changes to police procedure in the proposed amendments to the Police Service Act, one of the police executive assistants is working on a total overhaul of investigation training in the police system, including research into externally available courses. Other training needs for the coming year will be

Reports to Parliament

identified through a training needs survey to be issued shortly by the Human Resources Manager. The results of the Skills Audit undertaken as part of the Structural Efficiency (SEP) process will also identify skills and training needs.

Following discussions on 25 March, 1993 additional information was provided in correspondence dated 19 April, 1993. This letter explained:

"The commercial course available on general investigation skills is called "Investigation Methods (Law Enforcement and Compliance)." It is a three day course run by the University of Canberra at a cost of \$690 per head. Although the course is billed as being suitable for a range of investigative environments, staff from our office in the past who have attended the course have described it as having too narrow a focus on establishing the elements of an offence for a prosecution, which makes it less relevant to our work, particularly in the general area.

However, we have now arranged for Robert Marr, the course convenor, to run a two or three day course in-house during July (the earliest available date) for up to 20 staff at a cost of approximately \$2500 per day. Mr Marr is coming to Sydney in the next week or so to discuss ways that we can make the course specific to our needs.

In addition, we have written to a number of training consultants seeking expressions of interest in a two or three month project. The project would involve an analysis of the skills required, a study of our existing in-house packages and resources, and the development of a coherent training curriculum, with modules designed so that they can be run repeatedly in-house by our own staff. The modules could then be used as one tool in performance assessment of staff i.e. incremental progress might depend, among other things, on successful completion of certain modules.

We are also hoping to have the course accredited so that we can train participants from other agencies if the demand exists."

QUESTIONS WITHOUT NOTICE

Question (16)

CHAIRMAN: You refer I think in Annexure B to the Training Checklist for Investigation Staff. A matter that concerns me in all those matters - under that annexure there appears to be only one training course that actually is on investigative procedures, and that is under Internal Training "Nuts and Bolts" one hour basic course on investigative procedures. The others look to me what I will call housekeeping or management procedures. Do you have any other purely investigative training programs that can assist your officers doing their investigative work?

Mr PINNOCK: We do not have a program of annual training on an external basis but from time to time when we can afford it we have in fact put people through an externally run training course, although it is actually done in-house, we bring the external consultant in. The last time we did that I think would have been 1991 or 1990. I cannot recall it to mind now Mr Chairman.

Perhaps if I can also take that question on notice and I will undertake to get more details on that. But there is no external course which we run on an annual basis. It is all done in-house at the moment. The rest of the training is simply on the job through the supervisors of the investigation teams.

CHAIRMAN: Bearing in mind I think you supplied to me a list of qualifications of your officers and the fact that you do not have any seconded police at the moment who would be trained investigators I would have thought. Should you really be looking at a bit more investigative training down there?

Mr LANDA: Certainly in respect of the Police; that is one of the main points we are investigating in New Zealand is the Police Complaints Authority there because direct investigations that will be coming, we have to uplift that skill considerably. We have at the moment many trained I think almost as many - certainly I think there is close to 8 or 9 anyway, fully trained Police Investigators. They are just not seconded. They have been actually used to complement the secondment system so I mean that is there but we recognise the new Act is going to require a different skill and a greater in-depth skill.

CHAIRMAN: Have you thought about speaking to the Commissioner of Police about a special course on investigation through the Police Department or would you think that not desirable?

Reports to Parliament

Mr PINNOCK: We actually prefer to go somewhere else.

Mr LANDA: That would not rest comfortably.

Mr PINNOCK: Mr Chairman, one thing about training is that I think most of us in the Office think that we can make better attempts at more detailed training courses. We can always improve in that area.

The one thing that I would say, after being in the Ombudsman's Office for nine years now, is that the comparison even with four or five years ago is quite remarkable. Five years ago there was virtually no training in the Ombudsman's Office. The program we have at the moment, I mean, it is a program that we have put together as we have been going, as it were, and as we have got funds available and, just as important, as you have time available. Every time you take people out from their other work to do training you have a problem with resources. The change over that period of time is in my view amazing. It is the one thing I have noticed in this Office that has changed quite dramatically in five years.

Again, you are quite right there are holes in the training program. Again, it gets down to some of the better courses are run externally but they are quite expensive. They are quite expensive.

CHAIRMAN: That is the profit you make out of your mediation.

Mr KERR: The point is if people do not do investigations properly that is quite expensive.

Mr PINNOCK: Yes, there is a down side on it. It is a matter of finding ready cash. For instance, under the Training Guarantee Levy Act we are actually meeting I think somewhere around about 60 percent of our requirements under that Act which at the moment runs at 1 1/2 percent of your employee related payments. We are meeting at least 60 percent of that requirement by our in-house courses. In other words, courses that do not have direct financial costs. Because we just cannot find the money to actually spend on external courses.

There is a big demand in the Office for lots of different external courses and the training budget is absolutely stretched to the limit. We do have money available probably now to increase external courses for the balance of this financial year. It is very episodic.

Reports to Parliament

Mr LANDA: How does that compare with ICAC?

Mr KERR: Training investigations.

Mr PINNOCK: I honestly do not know because they get a lot of seconded police of course.

CHAIRMAN: I asked that very question of Mr Temby and I got a less than satisfactory answer as well.

Mr LANDA: In some areas to get external training it is not so hard but it is very difficult to get external training in police areas and Ombudsmen will all tell you that that is one of the difficulties to get satisfactory external training. Most of them will say that.

Mr KERR: You indicated you would be uncomfortable if the Police were to conduct those investigation courses. Why is that?

Mr LANDA: We investigate the Police and it just does not; it is a little bit like the Gundy Inquiry; you know, one of the flaws in the Gundy Inquiry to this day was that the only expert evidence ever called in Gundy came from people who were trained by the Special Weapons Squad here in New South Wales. All the experts were trained by them. Very unsatisfactory. If I had done that inquiry I think I would have been bringing in experts from overseas.

CHAIRMAN: I know it is a matter of funding which you have not thought of - have you thought of approaching Hong Kong in bringing some of their investigative team over?

Mr LANDA: No we have not specifically, we have not thought of that. Certainly there is expertise there. I take that on board though.

CHAIRMAN: When will the Office obtain the results of the skills audit relating to the structural efficiency program?

Mr PINNOCK: Mr Chairman, if I had my crystal ball with me I could answer it. Although I am actually meant to be Chairman or at least a member of the Joint Consultative Committee arising out of the SEP I have never come across a process that has taken so long to bring to fruition. That is not a criticism of people in my Office, nor I hope, would it be a criticism of me personally because I have some responsibility in the

Reports to Parliament

Office. It is just the nature of the beast. I just do not know. I think we would hope to have it finished within the next couple of months.

But again if I can take that on notice and give you a perhaps more detailed response when I have spoken to our Executive Officers. But as I say, it is one of the most drawn out processes I have ever come across. Even though we have a consultant involved, most of the actual work is being done by our own people in-house.

FURTHER DISCUSSION - 20/7/93

Mr PINNOCK: So far as the first part of question 16 is concerned, about training, again in detail I would seek to take that on notice but I can give the Committee some information which I was proposing, arising out of the previous evidence of the Ombudsman. You will recall that a question was raised by the Committee about whether the Ombudsman thought it appropriate so far as external training was concerned, particularly in relation to police complaints, that it ought or ought not be supplied by, for instance, the New South Wales Police. The Ombudsman indicated that he would be reluctant to involve the Police in training our officers in any aspect of complaint handling whether it be in relation to police matters or otherwise.

Since that time we have sought expressions of interest in relation to training courses for investigators generally. There was a course that had been run externally by the ANU for some time and which we have used in the past. We have reassessed that and found it was not sufficient for our purposes, particularly in relation to some of the more technical aspects of the evidence gathering for the purposes of police complaints. Subsequently, we have entered into negotiations with the Australian Federal Police which actually maintains its own internal training courses. As a result of those discussions they have produced a modified version of their investigators training course. In other words, they basically produced a course to meet our specific requirements, which incorporates a large part of their own course. We will be sending all of our investigators to that course. We will in fact have two courses running with 12 investigation officers at each course. They will be two weeks full-time and will be held outside the Office because it is simply impossible to run these sorts of courses physically in the Office. The total cost of the two courses together including the instructors and hire of venue will be approximately \$29,000. They will commence some time in August, I do not have the specific dates. That course will cover all of our investigative officers. As to the other details of other courses, I take that on notice.

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SUBSEQUENT CORRESPONDENCE

In a letter dated 2 August, 1993 the Ombudsman provided the following information in relation to further questions on notice arising from the Meeting on 20 July, 1993:

- i) **"the occasions on which the Office has put personnel through an external training course by bringing the external consultant into the Office to provide the training"**

The following are recent and forecast examples of this practice:

- * A consultant Robert Watt, was brought in to conduct a "Practical Legal Research Skills" course on 12 May 1993 and 19 May 1993, for 9 investigation staff.
- * Consultants came in to conduct the Job Evaluation two day course for eight staff.
- * Consultants were brought in for the stress management course conducted for eight staff in October and November 1992. This was a free course as the consultants were piloting the course.
- * Consultants have come in for non investigation staff e.g. to give the media officer additional training on the Pagemaker Desktop Publishing system.
- * We have had a number of guest speakers address sessions such as Local Government and Corrective Services information days. These have been at no cost. Future sessions are in the planning stage with speakers from other complaint handling and investigative bodies such as the Trade Practices Commission.
- * From August 30 until 10 September trainers from the AFP will be running an in-house investigation skills course for 12 staff at a cost of \$11000 (plus venue). A further course is planned for later in the year.

ii) **the results of the skills audit relating to the Structural Efficiency Program following consultation with the Executive Officers.**

The Skills Audit has been conducted by the Human Resource Manager and an Investigation Officer, who are both members of the Structural Efficiency Principle, Joint Consultative Committee (SEP JCC). (The Investigation Officer is currently on maternity leave but is working on the Skills Audit as a special project).

The first step in the process was to conduct a "DACUM" panel using "expert" position holders to develop broad classification of duties and then develop a detailed task list for each duty. The next step sought verification from each staff member that the duty and task list were accurate, as well as seeking additional advice about the complexity, frequency and required competence for each task.

Because of the time-consuming nature and complexity of this next step in analysing each task to identify skills (for some positions there are hundreds of tasks) the SEP JCC decided to change its approach on the Skills Audit to streamline the process. It is interesting to note that other public sector organisations have also changed their approach to conducting the Skills Audit because of the time consuming nature of the DACUM method.

This new approach utilises all the information gathered to date and involved the Human Resource Manager meeting with Senior Administrative and Investigative staff to identify the key skills in each position they supervise. The documentation already produced has been used as the basis for the discussions.

The benefit of this new approach is that the key skills and levels of competence required for each position will be identified. The results can be used for the Performance Management System and also referred to the Training Committee for Training needs planning.

The skills identified will be classified according to "draft areas of competency" currently being developed for competency based training in the public sector.

Reports to Parliament

We are now at a stage where a Questionnaire is being drafted to identify the skills and competencies of current staff. It is anticipated that the Questionnaire will be distributed by end August 1993 and data collated in September. At this point training needs will be analysed and appropriate action taken."

QUESTIONS ON NOTICE

Question (17)

Stores Expenditure - During both 1990-91 and 1991-92 your Office's expenditure on stores increased dramatically in the last month of each financial year as compared to previous months (see p.219) The expenditure level arose from below \$10,000 to above \$50,000 and \$60,000 respectively.

What factors contributed to the sudden increase and what stores items were purchased during June of both years?

Answer (17)

During 1990/91 the Office of the Ombudsman had been exercising financial restraint because the then Treasurer had not made a decision about repeated requests for supplementation for funds in relation to litigation expenses and costs associated with the prisons inquiry. No decision was made until 31 May 1991, and the Ombudsman was not formally notified until 5 June 1991 that funding of \$143,000 had been approved. This delay led to uncertainty about the Office's financial situation, and whether we would need to fund non-recurrent expenditure out of the Office's original budget allocation. In particular, the Office could not responsibly engage staff on a temporary basis to replace staff engaged on the prisons inquiry. Further, replacement capital items could not be purchased when the need arose. Then the late advice of supplementation was received, the Office was then in the position of having to purchase stores and equipment items that in fact had been needed throughout the year. As a result, most of the Office's stores and equipment expenditure took place in June 1991. This matter was reported in the 1990/91 Annual Report (p.181), and also on 2 August 1991 to Mr Allan, Secretary of the Treasury, in relation to information he requested for Budget Paper No.2.

During 1991/92 the Office's funding situation was again extremely tight. As in the previous financial year, very strict budget controls were exercised and expenditure monitored. In my letter of 21 February 1991 to the Secretary of the Treasury detailing the Office's Forward Estimates 1991/92 to 1993/94, I lodged a Maintenance Dispute stating that the Office was no longer able to operate within

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the proposed budget allocation for 1991/92. The Maintenance Dispute sought an additional sum of \$190,000 to the proposed allocation of \$4,132,000.

On 18 February 1992, I sought supplementation from the Premier and met with the Secretary of the Treasury on 19 March to discuss this and other matters. The Deputy Ombudsman received a letter on 12 May 1992 advising that no supplementation would be available.

In this situation, I directed that maximum restraint be exercised in relation to all non-salary related expenditure. Towards the end of the financial year, as additional savings had been made, I directed expenditure on essential and outstanding projects.

Details of expenditure in the month of June for the respective years are set out below:

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**OFFICE OF THE OMBUDSMAN BREAKDOWN OF STORES ACCOUNT
FOR THE MONTH OF JUNE 1991**

| DESCRIPTION | COST |
|--|------------------|
| Staff Training | 595.00 |
| Office Supplies & Stationery | 17.85 |
| Office Supplies & Stationery | 20.36 |
| Office Supplies & Stationery | 37.70 |
| Computer Maintenance - Client & Hardware Support | 1,365.00 |
| Computer Software - Wordperfect | 8,770.00 |
| Office Supplies & Stationery | 78.26 |
| Office Supplies & Stationery | 80.00 |
| Equipment - Photocopier | 8,698.00 |
| Equipment - Photocopier | 7,526.00 |
| Office Equipment - Vacuum Cleaner | 109.00 |
| Office Supplies & Stationery | 44.95 |
| Office Supplies & Stationery | 6.67 |
| Office Supplies & Stationery | 698.75 |
| Computer Equipment - Compaq Expansion Board | 139.00 |
| Computer Equipment - Dot Matrix Printer | 723.68 |
| Office Equipment - Calculator | 59.50 |
| Computer Software - CHRIS HR and Payroll Modules | 16,950.00 |
| Disk Drive Upgrade | 5,411.00 |
| TOTAL | 51,330.72 |

Reports to Parliament

**OFFICE OF THE OMBUDSMAN BREAKDOWN OF STORES ACCOUNT
FOR THE MONTH OF JUNE 1992**

| DESCRIPTION | COST |
|---|-----------|
| Office Supplies & Stationery | 6.50 |
| Office Supplies & Stationery | 1,335.00 |
| Office Supplies & Stationery | 272.30 |
| Office Supplies & Stationery | 1344.00 |
| Office Supplies & Stationery | 452.00 |
| Office Supplies & Stationery | 6.00 |
| Office Supplies & Stationery | 1320.00 |
| Office Supplies & Stationery | 67.00 |
| Office Supplies & Stationery | 1,671.00 |
| Office Supplies & Stationery | 39.30 |
| Office Supplies & Stationery | 70.00 |
| Computer Equipment - Part of Microvax | 2,775.00 |
| Computer Equipment - Microvax | 20,440.00 |
| Computer Equipment - Part of Microvax | 2,000.00 |
| Computer Equipment - Part of Microvax | 1,000.00 |
| Computer Equipment - Wyse terminals | 3,815.00 |
| Computer Equipment - Wyse terminals | 2,520.00 |
| Computer Equipment - File Server | 4,118.00 |
| Computer Equipment - Personal Computer | 3,151.00 |
| Computer Equipment - Colour Monitor for Desk Top Pub. | 3,345.00 |
| Computer Equipment - Hardware for Desk Top Pub. | 4,945.00 |

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| | |
|--|------------------|
| Computer Equipment - Printer for Desk Top Pub. | 2,050.00 |
| Office Furniture & Fitting - Whiteboards | 234.62 |
| Office Equipment - Fax Machine | 2,595.00 |
| Office Equipment - Ergonomic Computer Arms | 1,500.00 |
| TOTAL | 61,071.72 |

In "Australian Public Sector Management" (1992 Allen and Unwin pp 113-114), David Corbett, of the Public Sector Management Institute, Monash University argues that there is a perfectly logical explanation for greater end of year spending that is consistent with self-insurance principles.

QUESTIONS WITHOUT NOTICE

Question (17)

CHAIRMAN: *Although I note your answer in 17, I presume all that computer equipment was either upgrading or new stuff - was it to replace old stuff?*

Mr PINNOCK: *There was some replacement of old terminals but mainly it was upgrading. There has been a problem with the Vax system in terms of its simple capacity. There is so much information on it at the moment it is slowing down in terms of being able to bring up information quickly so it was basically a proposal or a fulfilment of what was in the end of the information processing strategic plan to increase the memory of the Vax system but basically it was to update the area there, not just to replace old stuff.*

CHAIRMAN: *Is that to include bringing some stuff on to your accrual accounting as well?*

Mr PINNOCK: *Yes, that was separately funded by Treasury. I cannot remember the amount they gave us. I think they provided the software package of about \$13,000 to run accrual accounting. I think we ended up paying for some extra hardware but it was basically just a terminal. The only thing we spent a considerable amount on as an additional matter was the Computerised Human Resources Information System which is the CHRIS package. That came out at about \$17,000. That, in fact, runs all of our old records which would otherwise be manually collated in relation to leave, pay, all of those sorts of things. That is in the table in June 1991. Second last item on that table, Page 14.*

QUESTIONS ON NOTICE

Question (18)

Code of Conduct - The Office's Code of Conduct is given at pp. 256-260 of the Report.

When was the Code introduced and how was it formulated?

Answer (18)

On 17 December, 1991 the Director General of Premier's Department advised my Office of the gazettal of the Annual Reports (Statutory Bodies) Act 1984 Regulation requiring all statutory authorities to publish a copy of their Code of Conduct in their 1991/92 Annual Report. Subsequently, a number of codes from other organisations were collected and perused. A draft code was then developed and circulated to senior officers for comment in June 1992.

A fresh draft was circulated to all staff for comment and suggestions. These were then considered and a revised draft prepared by Mr Andrews which I then adopted.

The Code was published in the Ombudsman's Annual Report for 1991/92 as required and was produced by the target date laid down in the Corporate Strategy for 1992. The final version was also distributed to all staff members.

In the last month, the Management Committee decided that the Code should be re-issued and that staff should be asked to formally acknowledge their understanding of it by signing it. Greg Andrews undertook a further review of the Code and some further amendments were accepted at the Management Committee meeting on 15 March 1993. The revised Code is in the process of being re-issued to staff and will be published in the 1992/93 Annual Report of the Ombudsman. A copy is attached as Annexure C (Appendix 7).

QUESTIONS WITHOUT NOTICE

Question (18)

Mr KERR: The Code of Conduct - do you know when it was introduced, how it was formulated?

Mr PINNOCK: The date is not on the document.

Mr KERR: I could ask that on notice.

Mr PINNOCK: The document that is actually attached to the answers on notice has been - was actually published earlier this month but it is a very minor variation of a document in substantially the same form but as to the original date of the document, I just cannot recall Mr Kerr. Again, I will take that on notice if I may and give you an answer on that.

Mr KERR: Just how it was formulated, whether there were outside bodies, like ICAC or something like that?

Mr PINNOCK: No. In relation to that what we did was that some of our people attended a conference in relation to codes of conduct which I think in fact was conducted by ICAC itself. They produce a number of model codes. In fact, if you look at the Code of Conduct you can see it has much in common with what ICAC has. It also has much in common with what other Public Sector organisations have. Because there are actually requirements as to what you should have in the code. There is a great deal in common with those and it is based in great part with variations depending on the particular circumstances of our office. We did not want to recreate the work.

Dr BURGMANN: Presumably the staff were all happy about signing it?

Mr LANDA: No-one has signed it yet.

Mr PINNOCK: No-one has signed it yet but on the other hand no-one has said they won't.

Mr LANDA: In fact, I signed the memo sending it out today for signing.

Mr KERR: Have you signed it?

Mr LANDA: I signed the memo - I signed the code too.

Reports to Parliament

Mr KERR: Was there any provision for the staff to have input into it?

Mr PINNOCK: Yes they were consulted all the way through. If you notice in the actual answer itself there is referral to seeking comments and suggestions from staff. That is in June 1992.

SUBSEQUENT CORRESPONDENCE

Further information about the Code of Conduct was given in correspondence dated 19 April, 1993:

"The original Code of Conduct was published as an Appendix in the 1991-92 Annual Report (P.256).

In July 1991 a draft NSW Public Sector Code of Conduct was released by Premier's Department and an announcement made in the Public Sector Notices that all Departments would be required to prepare their own statements of standards as Codes to meet specific needs. Certain areas in the Public Sector Code were designated as mandatory areas to be covered by all Departmental Codes. It was also announced that Codes were to be included in organisations's Annual Reports for 1991/92.

In September 1991, the then Principal Investigation Officer, Mr Wilmshurst, and the Executive Officer attended a workshop on developing codes of conduct in the public sector organised by the Premier's Department in conjunction with the Independent Commission Against Corruption.

By letter of 17 December 1991 the Director General of Premier's Department advised the Ombudsman of the gazettal of the Annual Reports (Statutory Bodies) Act 1984 Regulation requiring all statutory authorities to publish in their 1991/92 Annual Report a copy of their Code of Conduct.

The Senior Executive Assistant was then given the task of drafting a code for the Office. A number of codes from other organisations were collected and perused. A draft code was then developed and circulated to senior officers for comment in June 1992. The initial draft was considered not to meet the necessary requirements. Greg Andrews, one of the Assistant Ombudsman, then took responsibility for developing a fresh draft. This was produced and after satisfying the Management Committee, was circulated to all staff for comment and suggestions.

Reports to Parliament

The Code was published in the Ombudsman's Annual Report for 1991/92 as required and was produced by the target date laid down in the Corporate Strategy for 1992. The final version was also distributed to all staff members.

In the last month, it was decided by the Management Committee that the Code should be re-issued to all staff and staff be asked to formally acknowledge their undertaking of it by signing it. Mr Andrews undertook a further review of the Code in preparation for that and some further amendments were accepted at the Management Committee meeting on 15 March 1993. The revised Code has been reissued to staff and will be published in the 1992/93 Annual Report of the Ombudsman."

In a letter dated 2 August, 1993 the Ombudsman advised that the Code of Conduct was issued on 16 October, 1992.

FOI COMPLAINTS

QUESTIONS ON NOTICE

Question (19)

Section 52(6) FOI Act

Amendments to FOI legislation during 1992 provide the Ombudsman with the discretion to recommend that the release of a document would be in the public interest despite a refusal of access on the grounds that the document is exempt.

Has the Ombudsman had cause to exercise this discretion and if so under what circumstances?

Answer (19)

The Office of the Ombudsman has not as yet had cause to exercise its discretion to recommend release of documents in the public interest under s.52(6) of the FOI Act where those documents have been determined to be exempt by an agency. Consideration is presently being given to such a recommendation in respect of complaints currently being investigated.

FOI Complaints

QUESTIONS ON NOTICE

Question (20) - Problem Areas

In your Annual Report for 1991-2 reference is made to several problem areas experienced in relation to FOI. These include:

- (i) the decrease in commitment of departments and agencies to FOI principles;
- (ii) lack of expertise of many officials assigned the task of managing FOI in their agency;
- (iii) the complexity of the FOI Act;
- (iv) the number of exemption clauses in the Act;
- (v) the problem with defining the public interest.

To what extent have amendments to the FOI Act, for instance, the decrease in time limit for determining applications from 45 to 21 days, and the reduction in the number of exempt bodies and offices, impacted on the problem areas outlined above?

Answer (20)

The amendments to the FOI Act referred to in the Ombudsman's 1991-92 Annual Report have had only a limited impact on the problem areas mentioned in the Committee's question. In general, the amendments had virtually no effect on the number and nature of exemption clauses and, if anything, only served to add to the complexity of the Act.

The problem of defining the "public interest" was addressed in only a limited fashion by the insertion of s.59A. That provision does not define the "public interest" as such, but rather, what it is not.

The problem of lack of commitment and expertise cannot be addressed by legislative amendments.

FOI Complaints

Up-to-date statistics are not available to make any judgement about whether agencies are adhering to the reduced time limit of 21 days in which to make an initial determination. Evidence from the United States, however, suggests that relatively tight time frames for determination are more honoured in the breach than in the observance.

The reduction in the number of exempt bodies and offices or, rather, the reduction in exempt functions of such agencies, was very limited and has had virtually no impact on the problems identified.

QUESTIONS WITHOUT NOTICE

Question (20)

CHAIRMAN: *In relation to 20 you say in your answer that 21 days time frame - you say tight time frames for determination are more honoured in the breach than in the observance. Is there any mechanism you have got for keeping statistics on whether agencies adhere to 21 days?*

Mr PINNOCK: *We have no mechanism, no, and there is no centralised collation.*

CHAIRMAN: *Is there any one legislative measure you could recommend to initiate or to assist to overcome this problem?*

Mr PINNOCK: *The reporting requirements under Clause 9 that we refer to of the regulations I do not think addresses the time frame which is required - no it does not. I am just trying to look at the definition of FOI requirements and see how it works out in the actual details of the clause but my interpretation of it is that it is not required to be kept.*

More importantly though, the problem is there is no centralised collation. One might have a hundred different Public Authorities, Departments, Statutory Authorities, whatever, reporting in their Annual Reports and they may have certification from Treasury or Auditor-General that they have each done what they are required to do but there is still no-one that goes around and actually collects all the statistics and puts them together. That is the problem.

CHAIRMAN: *Should you be doing it? Physically collecting the stats?*

Mr PINNOCK: *We could fill that role.*

Mr LANDA: *I do not doubt that we could. Again it would need to be funded which would probably be the most likely [solution] other than reinstating the Department of Office Management Sector that had it.*

CHAIRMAN: *Should it be with you?*

Mr PINNOCK: *My feeling is that it should but of course there is a problem there and that is the only way you can actually get it done is to put an actual requirement on the Public Authority that they have got to report to the Ombudsman on their compliance with the FOI.*

FOI Complaints

Of course you immediately run into the question well, you are giving the Ombudsman sort of an enforcement power there which he does not have in relation to say his recommendations.

Certainly there has to be a centralised body. I have no doubt about that. I am responsible for FOI in the Office and I am in the dark in terms of degrees of compliance by the department now that the FOI Unit has gone from Premiers.

There is just as important a problem Mr Chairman and that is the FOI Practitioner's Manual. That is in effect never going to be formally updated as far as I can see. There are regular meetings of FOI practitioners but again I would say for at least the next three years you are going to need that manual and it should be in an up to date fashion. We certainly have not got the resources to be able to do that. I am not sure that we would need a great deal of money to collate statistics centrally. One way of doing it may be simply we would have to get hold of a list of all the Annual Reports of each agency and just double check them ourselves. Actually getting hold of them would be the trouble. There is quite a bit of work in that. I would prefer to do it that way rather than have the Department's various agencies required to report to the Ombudsman. I think it just does not sit well with our traditional function.

CHAIRMAN: *Are you saying in your answer that 21 days is not sufficient time in realistic terms to comply?*

Mr PINNOCK: *I made that comment to Mr Hatton when these reforms were being discussed. My personal feeling is that 21 days in the majority of cases is all right but of course it is the bigger cases and the ones that always create the difficulties where 21 days just is not adequate. It depends also on the nature of the department. Some departments experience large numbers of applications.*

What has happened in the States is that the department which receives the largest number - the Federal Department which receives the largest number of applications - is the State Department. Even more than the Security Services because the very Security Services are so protected under the Act that only a limited number of applications are made to them.

I know from having spoken to the person who is a retired diplomat who actually has the function of dealing with FOI matters in the State Department - they rarely meet their 21 days. He is constantly in the equivalent of our District Court, as it were, plea bargaining if you like with the Judge to say well give us an extra 14 days and we will finish this particular application. It is a subjective matter though Mr Chairman. What do you turn around and say, 28 days, do you say 35 days. I think 21 days in many cases is not adequate.

FOI Complaints

Dr BURGMANN: You are given no information at central level about things?

Mr PINNOCK: No-one is.

Dr BURGMANN: Not just about compliance within the 21 days but about the result of appeals against ---?

Mr PINNOCK: No.

Dr BURGMANN: So really you have no idea, if there is a department out there refusing every one and getting taken in on appeal and even having it then found?

Mr PINNOCK: We would know about it anecdotally.

Dr BURGMANN: But only anecdotally?

Mr PINNOCK: Yes, if there were lots of appeals suddenly coming out in relation to a particular department we would know about it very quickly. But yes there is no mechanism to keep anyone up to date. It is not just us. No-one knows. See, Margaret Allars is conducting a survey at the moment but that happens to be on the basis of a one-off grant which she has got and next year that information is not going to be there.

CHAIRMAN: Virtually you know when you get an appeal?

Mr PINNOCK: Yes.

Dr BURGMANN: What about appeals not to you?

Mr LANDA: To the District Court.

Dr BURGMANN: Yes. Do you get to hear about those?

Mr LANDA: Not formally. I have liaised with the Chief Judge and the Registrar now has in place a mechanism whereby we are sent the judgements. We think we are getting them all. There are not many incidentally. Not many appeals to the District Court.

Mr PINNOCK: More important than those are simply for instance the most basic statistics; how many FOI applications are made in a given year; how many are dealt with and access

FOI Complaints

given; how many are refused partly; how many are refused totally; they are the most fundamental statistics. They are not centrally collated at all.

FOI Complaints

QUESTIONS ON NOTICE

Question (21) - FOI Statistics

Your 1992 Annual Report also states that amendments making each agency responsible for recording its own FOI statistics, plus the absence of regulations governing the information to be provided by agencies, have had the following two results:

- (i) there is no provision for compilation of FOI statistics from each agency which would describe the operation of FOI in New South Wales; and
- (ii) there is no standard for FOI statistical information or the form in which it is to be reported by agencies.

You state in the report that one of the effects of this is that external review decisions made by the Ombudsman will be done without an up-to-date context.

- (a) To what extent do you feel you have had to make external review decisions in this context?

Answer 21(a)

The context described in the Annual Report has changed to some extent. On 2 December 1992, the Director-General of the Premier's Department wrote to this Office at the Premier's request, to respond to comments in the Ombudsman's 1991-92 Annual Report about the operation of FOI in New South Wales, in particular, the absence of statewide statistics or reporting. The Director-General enclosed a paper which had been prepared, presumably within his Department, and which generally sought to downplay the extent of criticism in the Ombudsman's Annual Report. However, in late January of this year in Memorandum No.93-4, the Premier advised all agencies of new annual reporting requirements established by an amended Clause 9 issued under the FOI (General) Regulation 1989. A copy of the new Clause 9 is Annexure D. Nevertheless, the problem of centralised collation of statistics required by Clause 9 remains. (see Annexure D, Appendix 7).

As far as this Office is aware, the only centralised collation currently underway is in a one-off research project co-ordinated by Professor Allars of

FOI Complaints

the University of New South Wales for the years 1990-91 and 1991-92. I understand this project does not extend to future years.

21(b) In what way does the FOI statistics provided in your report supplement the statistical information available from departments?

Answer 21(b)

The FOI statistics provided in the Ombudsman Annual Report supplement statistical information available from agencies only in the sense that they disclose the number of complaints made to this Office by way of external review. The external review function is an entirely different function from the functions of initial determination and internal review which agencies are required to carry out under the Act.

QUESTIONS ON NOTICE

Question (22) - Procedures Manual

Is there any guidelines or an FOI procedures manual which includes the 1992 amendments to the Act?

Answer (22)

As far as I am aware, no guidelines or procedures in respect of the 1992 amendments to the FOI Act have been included in the FOI Procedures Manual. The responsibility for the publication of the FOI Procedures Manual rested with the FOI Unit in the Premier's Department. That Unit has been disbanded and the most recent Edition (2nd) of the Manual was published on 30 June 1991. The Office is not aware of any supplement to that edition.

SENATE REVIEW OF COMMONWEALTH OMBUDSMAN

QUESTIONS ON NOTICE

Question (23) - Complaint Trends and Feedback

Recommendation 15 of the Commonwealth Government's Review of the Office of the Commonwealth Ombudsman by the Senate Standing Committee on Finance and Public Administration says that the Ombudsman should increase the Office's activities in providing feedback to departments and authorities on complaint trends and in publicising its activities.

Does the NSW Ombudsman do this at the present time and if not does he plan to do so in future?

Answer (23)

Strict comparisons with the Commonwealth Ombudsman are apt to mislead. Some 85% of oral complaints to the Commonwealth Ombudsman and some 54.1% of written complaints involve only 8 individual government departments. Not only is the Commonwealth Ombudsman able to benefit by economies of scale from dealing with repetitive complaints and well established liaison procedures, the sheer numbers of complaints would allow him to more easily monitor complaint trends and feed that information back to those Departments.

In 1991/92 citizens made complaints to the NSW Ombudsman against 237 separate public authorities whereas the Commonwealth Ombudsman received written complaints against only 74 public authorities (Annual Report 1991/92). Apart from complaints against members of the police force and against the Department of Corrective Services, the NSW Ombudsman considers that the sample of complaints against most other public authorities is too small to draw accurate conclusions about trends.

In the case of police complaints and complaints about the Department of Corrective Services, trends are discussed to some extent in the Ombudsman's Annual Report, particularly in the selection of significant cases.

Where trends are apparent, it is the usual practice to devote resources to those issues by selecting particular cases for formal investigation as a means of analysing the relevant procedures and practices. In 1991 for example, there appeared to be an

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upsurge in complaints from prisoners about unreasonable segregation and the particular program established for prisoners held on segregation in the High Security Unit at Goulburn Gaol. Formal investigations were commenced on complaints by a number of prisoners that examined the Department's procedures, and the particular program and conditions at the High Security Unit. Finalisation of the those investigations was delayed until sometime in 1992 as the Department as a result of a statement of provisional findings and recommendations undertook a review of its segregation procedures. The Department subsequently changed those procedures and all the recommendations made by the Assistant Ombudsman were included. The then Minister for Corrective Services also undertook to revise the Prisons (Segregation) Amendment Bill 1992 as a result of a special report to Parliament that arose from those investigations. The High Security Unit was also closed.

In the police area, the Annual Report for 1991/92 highlighted the emerging trends for that year and investigations were undertaken in the same manner.

Apart from the reporting mechanism and informal feedback given to senior officers at various liaison meetings, there is no other mechanism for advising departments and authorities on complaint trends and none are planned.

The CHIPS project however is continually emphasising to public authorities that they must analyse their own internal complaint trends. This would provide a far greater sample of complaints to draw accurate inferences from.

QUESTIONS WITHOUT NOTICE

Question (23)

CHAIRMAN: *In 23 you said, "In 1991 for example there appeared to be an upsurge in complaints from prisoners about unreasonable segregation and the particular program established for prisoners held on segregation in the High Security Unit at Goulburn Gaol" which prompted a special inquiry by you. How many complaints would you have received to justify that special inquiry and would you take for instance in that case something less than what would be normally a great deal of complaints as being sufficient complaints?*

Mr PINNOCK: *I cannot tell you straight off the number of complaints. Perhaps I can take that on notice Mr Chairman.*

The High Security Unit is a thing that sort of recreates itself every few years. Physically it is extraordinarily spartan and it has been used for various purposes by the Department of Corrective Services over the years. Always to house prisoners that the Department would regard as difficult, whether they are formally on segregation or not.

It has been, if you like, a matter of continuing interest to the Office ever since I started in the Office. I first saw the HSU - whether it was called it then I cannot remember - in 1984; then it was being used I think there was only one prisoner at one stage, that was Peter Schneidas then it was closed down for a while. Then it was re-opened, physically much the same but with a different program. Now we are told that as a result of our inquiry they are going to I think close it again and institute a new program. You get these variations on a theme and physically the unit is - I cannot see anyway it will ever be pulled to pieces - it will always be there. It has the potential to be, I use the word spartan - that would be the minimum word I would use. The conditions in that unit can indeed be extremely harsh and it was the nature of the complaints as much as the number of them that we were getting as to the regimen that the prisoners were being subjected to and particularly as a segregation issue which lead us to carry out that investigation.

Again, sometimes it may not be the sheer volume of complaints you are getting but the particular type of complaint you are getting about a particular program and the historical interest in the use of that unit. It would be the same sort of thing, I guess, if Katingal was still an issue. Because the HSU has been around for quite a long while, and as I say it has been re-opened, then closed, and re-opened again.

Dr BURGMANN: I saw the HSU in November 1991 and I have never been so shocked. It was unbelievable.

Mr MOSS: Can I just ask - the 237 complaints, NSW Public Authorities as against only 74. It is just a query. Would that figure, 237, relate to individual Local Government Bodies?

Mr PINNOCK: Yes it would. That would include Local Government Bodies, that is quite right.

Mr MOSS: As a separate item each time?

Mr PINNOCK: Yes.

Mr MOSS: That would be the one major reason?

Mr PINNOCK: Yes, that is quite true.

CHAIRMAN: I notice in your report - the question - you say the Commonwealth Ombudsman had 8 individual Government Departments in relation to 85% of oral complainants and 54% of written complaints. In your report you show that 57% of your complaints are Police; 11% Local Government; 7% Corrective Services and 19% others. So if you really lump a lot of your Local Government together it is possible to say that you are something less than 237 individual Authorities.

Mr PINNOCK: Yes, it depends how you look at it. The point is when you are dealing with the Local Government Authority you deal with that individual authority as opposed to dealing with the Department of Local Governments, because the Department does not really have responsibility for the individual agency.

Mr LANDA: But issues that come and go across the board sometimes do emerge. The failure to give reasons.

Mr PINNOCK: You are quite right Mr Moss, that is one of the reasons for the larger number.

Mr MOSS: I realise you have to deal with them individually. I am not disputing that. I was just wondering why such a difference.

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CHAIRMAN: *In the second last paragraph of answer 23 you say - "Apart from the reporting mechanism and informal feedback given to senior officers at various liaison meetings, there is no other mechanism for advising departments and authorities on complaint trends and none are planned." Is that desirable? Is there an answer to make it better? It seems we have got all these things in place but we do not have any way of checking to see whether the system is working. Similarly, I suppose it goes into the last paragraph that: "The CHIPS project however is continually emphasising to public authorities that they must analyse their own internal complaint trends." Do you have any feedback on that as to whether they are, what amount of complaints are being handled in-house?*

Mr LANDA: *The only feedback we have is that there is a willingness to bring about the objects of CHIPS, having those programs in place and we are hopeful that in fact a computer software program is almost imminent which we have been negotiating and there is some fact too on the Board, both of which could be adopted and are aimed at the Public Sector.*

Mr PINNOCK: *It is a worthy object but it actually can take a lot of work to achieve. There are departments that have a significant complaint load or generate a significant complaint load as far as we are concerned which, if they do not already have a formed mechanism, have a pretty good idea of the sorts of issues that are coming up to our Office from their conduct because they have liaison officers through whom it is all funnelled. What their response is, is entirely another matter. I think it works reasonably well and I think that actually having a formal reporting mechanism back is probably an awful lot of work for very little achievement. On the other hand it may be the sort of thing that could be better addressed in the Annual Report on perhaps a more formalised basis than it is done at the moment.*

Again, there are lots of things we would like to do and there is a limit of how many can be done.

CHAIRMAN: *I am only thinking of trying to get a profile. I would like to see a costing - even if it is only a matter of each department officer who looks after the CHIPS program keeping some form of unofficial audit, tally of what he is doing that can be looked at some stage later on.*

Dr BURGMANN: *Isn't this in fact what Philip Wheeler has been called in to do? That he has in fact taken control of all that and he will get the centralised reporting.*

Mr LANDA: *I am not too sure that he has gone quite that far but certainly --.*

Dr BURGMANN: It has been set up.

Mr LANDA: So that the information is there. I do not think they have gone to the stage of saying who is going to collate it, it may well be us in the end.

SUPPLEMENTARY QUESTION TAKEN ON NOTICE

Complaint Trends - Own Motion Power

How many complaints would you have received to justify that special inquiry [into the High Security Unit at Goulburn Gaol and the use of segregation] and would you take for instance in that case something less than what would be normally a great deal of complaints as being sufficient complaints?

In a letter to the Committee dated 19 April, 1993 the Ombudsman explained:

"In the 1989-90 financial year 6 complaints about prison segregation were received by the Office. This constituted 1.9% of the total prison complaints. In the 1990-91 financial year, 40 complaints were received. This represented 7.7% of total prison complaints. In the 1991 Annual Report I commented:

The rise in the number of complaints about segregation reflects the increased use of that provision of the Prisons Act and the general cautiousness exercised about security matters since the major round of disturbances in the gaols that began last September.

The decision to devote some investigative resources to the issue of segregation was promoted by two factors:

- (i) the notable increase in the numbers of formal complaints received about segregation issues; and
- (ii) observations and feedback gathered on various prison visits during the year by the Assistant Ombudsman responsible for prison complaints, which suggested that the number of prisoners in segregation has escalated and that the reasons cited for segregation in many cases were inadequate."

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In a later letter dated 2 August, 1993 the Ombudsman stated:

In the case of segregation there was a jump in complaints from 6 to 40 (566% increase). While the numbers were not high, the trend was confirmed through observations made on prison visits during the period and the number of oral complaints received following those visits. Those first hand observations, rather than the actual rise in written complaints prompted the special investigations. In that sense, had we received fewer written complaints about the issue, we most probably would still have pursued the matter as we had other means of identifying trends of satisfaction.

QUESTIONS ON NOTICE

Question (24) - Computer based records system

Recommendation 16 of the Senate Committee's Report states that the Ombudsman should have the complaints recording system in his Office reviewed and upgraded to increase its capacity to provide the information necessary to promote change in the administrative system.

What computer based records systems are available in the NSW Office and have these been subject to review?

Answer (24)

The Ombudsman's computer based recording systems were designed to provide a register of complaints and as a management tool to assist with the handling of caseloads and investigations. Feedback to agencies was and is largely by way of the issue of draft and final reports and special reports to Parliament, by publishing the numbers and outcomes of complaints in the Ombudsman's Annual Report and through the opportunity for Ministers to consult with the Ombudsman on complaint issues.

Apart from the further development of database and related systems to handle written complaints, the Office is also implementing a system to capture and manage information from telephone complaints and interviews, to be commissioned in June 1993. This system will enable feedback to be provided to agencies on the focus of telephone complaints about their conduct. Together with information already available this will give a valuable insight into customer satisfaction with government services.

The original database systems were implemented in this office in the mid 1980s. Major reviews took place in 1988 (Police Complaints system) and 1989 (General Office system) to develop the current hardware and software platforms. There has been ongoing evaluation and development of systems since that time. These reviews resulted in the formulation of the Office's Information Processing Three Year Strategic Plan delivered in December 1989. This plan was approved by the Treasury's Capital Works Committee.

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The Police complaints database is currently being enhanced to take account of proposed legislative changes. Part of the Information Processing Strategic Plan requires a review in 1993/94 and with this objective the Office will be seeking tenders to develop the plan for the next five years.

The current review of systems came about because of a number of influences:

- the planned review of office systems in 1993 as an objective of the Information Processing Strategic Plan implemented in 1989.
- the identification of office priorities and resource issues emerging from development of a Corporate Plan.
- discussions with staff during the above processes that have identified necessary system enhancements to meet new requirements and to improve productivity and efficiency.
- the need to augment existing systems to provide more timely and complete statistics.

QUESTIONS WITHOUT NOTICE

Question (24)

CHAIRMAN: *In relation to the computer information management system. How does it compare with those employed in other Ombudsman Offices? Have you cross-referenced with them?*

Mr PINNOCK: *No we have not. My concern basically with our data bases is that they have tended to grow like topsy over the years. We have, in recent years, attempted to address that problem by having a proper integrated information process strategic plan. But one of the things you will find with Ombudsman Offices is that there are so many variants. I do not think there is anything in common that they have in terms of their computerised systems other than the most basic function, namely to actually record complaints and actually to produce very basic statistics.*

Mr LANDA: *I think the short answer Mr Chairman is that the data base that we have is not adequate and I think that the Management Review will assist us in that area but I think I can confidently say it should do much more than it does.*

Mr PINNOCK: *We have put in a bid for the Ford Capital Program for 1993/94 through to 1995/96 although it really only addresses 1993/94 - much of that is upgrading our office data bases including the software and the hardware. Our provisional estimates for the total package, most of which relate to those things, is \$197,000. I might hand up a copy of that Mr Chairman. Perhaps this matter might - I might ask that this be treated in confidence at this stage.*

QUESTIONS ON NOTICE

Question (25) - Specialist Investigation Unit

Recommendation 17 of the Commonwealth Government's Review recommends the establishment of a specialist unit to investigate major complaints.

Has this been considered by the NSW Ombudsman?

Answer (25)

The establishment of a specialised unit to investigate major complaints has been under consideration by this Office, in one form or another, since 1988. When the Office's investigative resources were restructured into four investigative teams in 1987/88, provision was made for the specialised police team to re-investigate complaints of police misconduct pursuant to Section 25A of the Police Regulation (Allegations of Misconduct) Act. Resources did not permit the establishment of this team. As noted in my memorandum of 17 February 1993 concerning the proposed restructure of the Office, concern about both delays in investigation and the need to make priority decisions about the use of resources in direct investigation of police complaints were significant factors pointing to the need for restructuring. The two specialised investigation teams proposed under the restructure would have sufficient resources, together with the time, of relevant statutory officers and executive assistants (in the police area) to handle major investigations. As noted in the Deputy Ombudsman's informal evidence to the Committee on 9 March, the restructure proposal will be put before any Management Review consultant ultimately appointed by the Committee.

CORPORATE STRATEGY

QUESTIONS ON NOTICE

Question (26)

Although the subject of discussion in relation to the Funding Inquiry the Corporate Strategy is also more generally relevant to the Office's operations.

- (a) Who was responsible for the preparation and drafting of this document?

Answer 26(a)

The development of the initial Corporate Strategy 1992 was outlined in the Ombudsman's second submission to the Committee dated 8 December 1992 on page 10. The initial draft was developed by the Office of Public Management consultants following a planning workshop held in September 1991. It was the bare outline of a strategy and a number of internal working parties met over the following months to develop the details. Most initiatives outlined in the final document were well in place prior to production of that document. Responsibility for completing and implementing the Corporate Strategy rested with the Deputy Ombudsman.

As stated in the original Corporate Strategy and as outlined at paragraph 3.4 of the Ombudsman's submission dated 8 December 1992, the Corporate Plan was set down for its first annual review in December 1992. That took place and subsequent redrafting and staff consultation has been co-ordinated by Greg Andrews. A copy of the revised Corporate Plan for 1993-95 was provided to the Committee on 9 March 1993. Responsibilities for implementation of its various strategies have been assigned and progress on its implementation will be reported in subsequent Annual Reports.

- 26(b) How much of the matters raised therein have been implemented particularly under the heading of performance indicators?

Answer 26(b)

Progress on the implementation of the Corporate Strategy for 1992 in terms of the performance indicators listed is as follows:

Corporate Strategy

| Performance criteria | Outcome |
|--|--|
| 1.1.1 implementation of performance management system | A number of elements of a performance management system were implemented during 1992. They included individual performance agreements for the Deputy and Assistant Ombudsman, the development of an induction course for new staff, and a Code of Conduct. The Principal Investigation Officer and Human Resources Manager attended a training course on the development of performance appraisal systems and undertook preliminary work on that for the non-statutory staff. Work on that is continuing and it is expected to be implemented by 30 June 1993. |
| 1.1.2 revision of corporate strategy | Review undertaken in December 1992 as planned and revised Corporate Plan for 1993-95 finalised and issued in March 1993 after consultation with staff. |
| 1.1.3 Distribution of management cycle timetable | This initiative has been carried over to revised plan. Revised implementation date 31 April 1993. |
| 1.1.4 Development of Code of Conduct | Code developed and distributed by target date. |
| 1.2.1 Planning of customer survey and engagement of consultant | Brief distributed for expressions of interest by target date. Consultant engaged January 1993. Survey underway. |
| 1.2.2 Visits to adult and juvenile correctional centres | Target to visit all centres twice a year not met. |
| 1.2.3 Outreach visits by Investigation Officer (Aboriginal Complaints) | Target met |

Corporate Strategy

| | |
|--|--|
| 1.2.4 Publication of updated multi-lingual pamphlets | Initiative carried over to revised plan. Revised implementation target 30 June 1993. |
| 1.2.5 Consultations with peak organisations representing disabled and developmentally delayed. | Meeting with representatives of Disability Council held 19 November 1992 and participation in DOCS community consultations on appeal and complaint mechanisms throughout NSW. |
| 1.2.6 Planning for rural outreach visits for 1993. | Schedule of visits for March-June 1993 developed in February 1993. Number of country centres visited as part of DOCS consultations (see above) in late 1992. |
| 1.3.1 Publishing of CHIPS guidelines | <u>Guidelines on Effective Complaint Management</u> published by target date. |
| 1.3.2 Seminars on complaint handling | Two seminars on complaint handling conducted by target date in conjunction with OPM. |
| 1.3.3 % increase in complaints investigated and complaints resolved or conciliated | In 1992 combined investigations increased by 29% and complaints resolved or conciliated rose by 67%. Target significantly exceeded. |
| 2.1.1 Publication of key issues and priorities to staff | Key issues and priorities for 1992 identified and distributed to staff by target date. |
| 2.1.2 Publication of complaint assessment/management policy | Policy completed by target date. |
| 2.1.3 % investigation staff with identified research area | Target % met by target date. |
| 2.2.1 % complaints assessed within 24 hours | No formal measurement. Absence of exception reports indicate near target achievement in non-police area. Registration system with police complaints means assessment usually done within 48 hours. |

Corporate Strategy

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| 2.2.2 % complaints acknowledged or actioned within 7 days allocation | No formal measurement. Directions to staff given. |
| 2.2.3 % preliminary enquiries of non-police complaints completed within 4 months. | 75.9% completed within four months during 1991/92. In third quarter 1992, rose to 86.1%. Further details on turnaround times given in submission 8 December 1992. |
| 2.2.4 % police preliminary enquiries actioned within one month of receipt of police report. | No formal measurement due to difficulties in capturing data in police computer records system. |
| 3.1.1 Implementation of recommendations for restructuring of enquiries section | Enquiries section restructured by target date. New staff subsequently appointed. |
| 3.1.2 % staff attending three internal or external training sessions per year | 100% target met. |
| 3.2.1 New delegations issued | All administrative and investigative delegations reviewed by target date and changes made. |
| 3.2.2 Issue of guidelines on decision making committees | Guidelines issued by target date. Since modified. |
| 3.3.3 Distribution of significant items schedules | No exception reports. Some meetings re-scheduled to meet administrative convenience of office. |
| 4.1.1 Review of monthly financial reports | Review completed by target date and report format revised. |
| 4.1.2 Substantial completion of costing exercise | Completion by target date. |
| 4.1.3 Costing of three major investigations | Only one "major" investigation conducted during 1992 -fully costed. (Rigg) |
| 5.1.1 Issue of new pamphlets | Initiative carried over to 1993. Series of pamphlets currently under development. |
| 5.1.2 Format and schedule for parliamentary newsletter designed | Issue of newsletter carried over to 1993. |

Corporate Strategy

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| 5.1.3 Publication of resource kit. | Legal studies curriculum resource kit developed and distributed to all NSW high schools by target date. |
| 5.1.4 Special reports to parliament | Three special reports made in 1992. Another three made since 1 January 1993. |

26(c) What evidence can be given of the implementation of the performance indicators under each target heading?

Answer 26(c)

See above table for details. In most cases statement of performance implementation is backed by physical evidence - copies of documents, file notes, memorandums, computer printouts.

QUESTIONS WITHOUT NOTICE

Question (26)

CHAIRMAN: *In relation to 2.2.2 on your table - you say, "No formal measurement. Directions to staff given." Can you just enlarge on that answer?*

Mr PINNOCK: *Yes, I can enlarge on that. I think it is probably a failure on our part to actually capture on a regular basis that sort of information. The last figures that I can make available to the Committee arise from a sampling that I did in 1991. I think it was in September or October of that year which showed at that stage the figure of complaints being actioned within seven days was 85%.*

I believe that it is probably a little better than that at the moment but I cannot prove that to the Committee because it is not something that we have actually continued to pick up on, on a formal basis. It can be done on a regular basis by actually going through the files but the way the statistics are produced by our computer, particularly in the non-Police area, it is very hard to actually capture that information. It is a defect. I would think it would run at around about 85-90% at the moment.

What the "Directions to staff given means" is that there is an internal rule that as soon as - a complaint must be actioned within seven days of its receipt in the Office. That can be by a telephone acknowledgment or a letter to the complainant or in fact it can actually be dealt within seven days. If there is no formal action on it, it has got to be acknowledged to the complainant within that time. . . .

CHAIRMAN: *You answered the question in 1992, you purchased some computers.*

Mr PINNOCK: *Yes, that is on the public record Mr Chairman.*

CHAIRMAN: *2.2.4 I think Mr Landa touched on the problems associated with the computer. Is there anything you want to add to that answer?*

Mr PINNOCK: *It was only actually when the Assistant Ombudsman was preparing some of this material and we double checked, that we realised that the computer will record a determination of a preliminary inquiry within one month of receipt because the determination will itself be recorded but there may be some other action that has taken place short of a formal determination and the computer won't capture that. Either it is a fault in the way we*

Corporate Strategy

have done the program or it is a fault in the performance. I think it is a fault in the way the program runs.

CHAIRMAN: Certainly a major fault.

Mr PINNOCK: Yes it is Mr Chairman.

CHAIRMAN: How long has this been going on?

Mr PINNOCK: That data base would have been in place since at least 1987/88. And again we have always been able to say when a matter is determined by. And that was initially the thing we thought we should be looking at.

In other words, how long does it take to actually formally make a determination on a preliminary inquiry. That is to say, whether there is to be no formal investigation or there is to be formal investigation. But when we actually came to do the performance measure, we used the word action. What is the best thing to measure. Is it something that you do. Whether it is on the file within one month or is it the determination of that complaint which is important. But if you say it is any action then there is a defect in the computer program because it will not record any action.

CHAIRMAN: Without going back into camera that is one reason why you have made your priority number one being priority number one?

Mr PINNOCK: That is right.

CHAIRMAN: That is probably one area, going back to the start of this discussion where this Committee might be able to assist you because obviously there is a big problem there.

Mr LANDA: It is an area the Management Consultant will focus on and we would look forward to any contribution there.

CHAIRMAN: To continue on in Question 26. You refer to 5.1.1 to pamphlets. Could you just explain what those pamphlets are going to be. Are they a new initiative? Are they going to relate to special areas of the Ombudsman's jurisdiction or target specific community groups?

Corporate Strategy

Mr LANDA: They are really an update. They are an update and a re-vamp. I do not think there is anything that isn't new. We are trying to simply improve on the information that we are putting out.

EMPLOYMENT OF OMBUDSMAN STAFF

QUESTIONS ON NOTICE

Question (27)

The Ombudsman notes vehemently that he should be free and independent of any Government agency organisation or Department.

It is noted that on information provided by a letter from the Ombudsman of the 8 December, 1992 there are five staff who have worked in ministerial or Premier's Department positions.

Does the Ombudsman believe that his staff are free of undue influence from pre-Ombudsman employment?

Answer (27)

All staff engaged in the Ombudsman's Office are recruited on merit in accordance with approved selection procedures. The independence of the Office of the Ombudsman from executive control is emphasised in all interviews and is a feature of the day to day working environment of all officers. There is no undue influence on any officer in this Office arising from his or her previous employment.

QUESTIONS WITHOUT NOTICE

Question (27)

CHAIRMAN: *In New Zealand the Ombudsman's staff are advised when they are applying for the position if they are successful they have to stay for at least two years, no more than five. The only reason for this arrangement is the Ombudsman feels, "it is desirable staff should not stay long enough to become institutionalised." Thus maintaining his officers capability by ensuring staff do not develop such an approach. That is a letter dated 9 March, 1993. Do you have any such limited service on your staff and how long do investigative staff then stay at the office and do you see any merits in New Zealand Ombudsman's procedure?*

Mr LANDA: *I certainly see it as a good thing to have a limit. Our contracts are normally two or three year contracts. Although when we renew them I doubt that we would want to perpetuate them of course. I think that circulation through a grievance process like an Ombudsman's office is pretty important. It is not the type of place - for a start, there is no great career path, number one. And number two I think that really the ideal is to have people come into the office that bring their experience and expertise; that they do their time and they go out and they actually spread the Ombudsman process and cut away the fear base that is there and help the Public Sector where they do go, back to the Public Sector to come to grips with it.*

Mr MOSS: *Wouldn't this be weighed against the experience by somebody working for a longer period of time being a more efficient employee of your organisation?*

Mr LANDA: *Yes you have to weigh that up. My predecessor had similar views but he saw a burn-out factor in a much shorter space of time. In fact people seldom, because there is no career or no great career path, they seldom stay beyond four or five years.*

Mr PINNOCK: *What we have done is to make use of the temporary employment provisions of the Public Sector Management Act which gives you much greater flexibility in how long you can have staff or not have them.*

When the burn-out argument campaign was going on some years ago it was in relation to staff who had come into the Office when it was administratively controlled by the Premier's Department. And they were permanent public servants. In effect what the former Ombudsman was saying was that their performance was not up to scratch. We have been able to get greater flexibility because of the way in which we hire them on a temporary basis. That is not to say maybe there should be a rule.

Employment of Ombudsman Staff

There used to be a statutory provision in the Police Regulations Allegations Misconduct Act which limited the service of police officers in Internal Affairs to a period of five years. The argument being the same sort of thing. In fact that provision has been repealed. Whether you do it on the basis of natural turnover of staff, which tends to happen in our place or whether you have a bar in the contractual sense is a matter for judgement.

CHAIRMAN: *Anything further Mr Moss?*

Mr MOSS: *No, except five years to me seems to be like an apprenticeship, when you are fully fledged you are out.*

Mr LANDA: *I have had five years, it seems like more than an apprenticeship to me.*

VISITS TO GAOLS AND JUVENILE INSTITUTIONS

QUESTIONS ON NOTICE

Question (28)

In the Ombudsman's letter to the Chairman of the 8 December, 1992 he notes that the optimum number of visits for gaols would be 93 to 97 per annum and the optimum number of visits for juvenile institutions would be 32 per annum which would be a cost of \$70,000 per annum.

- (a) How is this cost of \$70,000 arrived at?
- (b) Could a breakdown be provided to the Committee?

Answer 28(a) & (b)

The figures referred to in the Office's second submission to the Committee on 8 December 1992 (7.12) are based on costings originally prepared by the former PIO, Mr Wilmshurst, for the purpose of the special report to Parliament on the Effective Functioning of the Office of the Ombudsman, 21 June 1991 (6.2.8). Those costings are detailed in the attached copy of Mr Wilmshurst's memorandum of 5 June 1991 to the Deputy Ombudsman (pp 2-5) - Annexure E. (see Appendix 7).

Costs of visits to the recently opened prisons at Tamworth and Junee are not, of course, included. Otherwise, however, the costings are still applicable, having regard to the small movements in salaries and CPI since June 1991.

As noted in my special report of June 1991, the figures were calculated on the basis of direct costs - travel, car hire, subsistence and meal allowances - and opportunity costs - salaries. However, if the optimum level of correctional visits is to be carried out on a yearly basis, without affecting other work in the Office, then opportunity costs become direct costs - the salary costs of hiring officers on a temporary assistance basis to make up for the shortfall in resources.

QUESTIONS WITHOUT NOTICE

Question (28)

CHAIRMAN: 28 should be read in conjunction with Annexure E. Mr Wilmshurst is the author of Annexure E. I note that he extends wages for people going out into the field to visit and works the cost out on that.

Isn't it part of the Ombudsman's charter in any event to go into the field to carry out visits to institutions therefore it should not be seen as an additional fund as far as the wage component is concerned at least I will maybe argue the other component but it should be part of the - the wage component is part of the day to day activities of the Ombudsman anyway?

Mr LANDA: Yes it is.

CHAIRMAN: I won't argue the travelling component because it may not be that wage component is effectively where we mentioned \$70,000, at least \$70,000 has been mentioned as being a cost to go out into the field. That would be something less than that in fact because the wage component would be a normal Ombudsman's day to day cost whether you are in the field or in the office.

Mr PINNOCK: The point we make in the answer and also in our submission to the Committee of 8 December 1992 at 7.12 is that we are talking about there an opportunity cost. That is part of your function, most people would say it is not therefore an additional cost. But it certainly is an opportunity cost in the sense that if that is what it is going to cost you to do it. It means time not available and therefore money not available to do other things. If you are going to do it on a regular basis day in and day out, what we are saying is what, on my argument, is an opportunity cost can actually become a direct cost when your funds are not sufficient to do everything you want to do. Or everything the charter says you should do and that is where we have been at for 18 months.

We have not physically been able to get people out in the fields simply because every time they walk out of the Office they know when they come back there is going to be complaints files sitting on their desk they have not addressed.

Years ago in the Office, and you do not necessarily see this by looking at the very basic statistics, the Office had a budget of somewhere between \$40,000 to \$50,000 per annum for what was called temporary assistance. \$40,000 or \$50,000 does not sound a great deal but in fact what happened in the late 1970s and more particularly in the early 1980s was that

Visits to Gaols and Juvenile Institutions

whenever there was a need for people to be brought in to deal with matters quickly because other things were being done by office staff, three or four people would be hired on a temporary basis for maybe six months. We do not have that facility any longer because our temporary assistance budget has been used up and again it is just the same idea - how many things can you do with a given amount of money.

You are quite right, it is part of the Ombudsman's charter.

Dr BURGMANN: It is also a feeling that by actually sending people out to institutions you bring in more complaints and therefore that makes your work greater anyway. It seems to me that prisoners are in a situation where if the Ombudsman arrives at the prison, suddenly all these complaints will arise. Whereas putting them on paper and sending them off to the Ombudsman is a totally different thing and therefore you actually make more work by going out to the gaols anyway.

Mr LANDA: The expression is said, "What is the point of doing an outreach, we are not being able to keep up with the work we have got". In terms of balancing, frankly an outreach program may suffer as opposed to an institution visit which ought not to suffer because the institutions are captive to a system.

Dr BURGMANN: In a sense the prisons are outreach programs anyway because you are going out to get the complaint.

Mr LANDA: They are.

CHAIRMAN: The analogy of that is being a country member of Parliament - because of the workload in the office I try and do a three day tour of the electorate four times a year. It does generate more work, there is no question on that, because people might not otherwise complain about what is probably major to them but not major enough for them to come and see you as they will come and see you standing outside on the kerb of the general store. I can see where you are coming from and the fact that you are generating more work one wonders whether that is incorporated in your charter.

Mr LANDA: I certainly do not think it is incorporated in our charter in relation to juvenile institutions. We have to carry out that function.

COMPLAINTS ABOUT DECISIONS BY THE OMBUDSMAN

QUESTIONS ON NOTICE

Question (29)

I note that the Ontario Standing Committee has a Sub-Committee on Communications from the Public through which it reviews particular complaints. The Sub-Committee reviews the Ombudsman's handling of an investigation but not the correctness or reasonableness of the Ombudsman's decisions.

The Standing Committee's reports summarise the work of the Sub-Committee and includes recommendations which direct the Ontario Ombudsman to provide to complainants reasons for certain actions taken by her Office. These recommendations have included directions to the Ombudsman to provide explanations for delays and in one case to reconsider a complainant's request for an investigation to be reopened (1991 Report). In each recommendation by the Committee the Ombudsman is given a response time of 30 days.

The NSW Committee often receives correspondence from individuals or groups dissatisfied with decisions made by the Ombudsman in relation to complaints they have made to his Office. These complainants view the Committee as an appeal mechanism, however, the Ombudsman Act precludes the Committee from reviewing decisions by the Ombudsman or particulars of a specific complaint. In cases where the complaint raises general procedural issues these have been forwarded to the Ombudsman for advice.

- (a) What are your views on the role of the Ontario Sub-Committee?

Answer 29(a)

The functions of the Ontario Sub-Committee reflect the diversity of approaches to Parliamentary monitoring of the Ombudsman, a fact noted by the Committee in Question 3. It may be that the specific powers of the Ontario Sub-Committee which you have noted are appropriate to that Province, for instance, the power to direct the Ombudsman to provide complainants with reasons for actions taken by her Officers. In this state, the Ombudsman, of course, is obliged to provide complainants with reasons for his decisions - see Section 15(1) and (2) and Section 26(1) Ombudsman Act,

Complaints about Decisions by the Ombudsman

and relevant sections of the Police Regulation (Allegations of Misconduct) Act.

29(b) Do you see any merit in formalising the current procedure whereby your Office provides advice on procedures used in specific complaints, for example, by including significant examples in the Committee's Reports to Parliament?

Answer 29(b)

I consider it appropriate for any Parliamentary Committee monitoring an Ombudsman to have the power to inquire into and review procedures adopted by the Ombudsman and, of course, on several occasions the Committee has raised procedural issues with this Office. On the basis of the few occasions drawn to this Office's attention by the Committee it may be unnecessary to have a formalised system for reporting on procedures used in specific complaints, for inclusion in the Committee's Reports to Parliament. It may be sufficient to highlight any procedural issue which the Committee sees as significant on an individual basis. If, however, there is a greater number of complaints about the Office's procedures than have been drawn to my attention by the Committee, then I would certainly feel it appropriate to discuss with the Committee a more formalised procedure.

QUESTIONS WITHOUT NOTICE

Question (29)

CHAIRMAN: *On this one I think you ask a question or finish by saying you need a more formalised approach in that matter. It is something that vexes me.*

We get quite a lot from the rather aggro type people - we will not mention in this meeting - who are very concerned about their complaints, very obsessed about their complaints, it has not in their view been handled in the way they wanted. Genuine people who feel they want their "day in court".

The procedure is we simply send that down the line to you for comment. A similar procedure is adopted in the ICAC Committee. I do not know that we can do anything more. We probably would look to guidance from you as to how you want us to handle it.

Mr LANDA: *I have something briefly to say on it. I am looking at that issue, there can only be two categories. There is the dissatisfied complainant with no legitimate basis or there is the dissatisfied complainant who does have a reasonable basis. I am as much concerned about that second category as anyone would be.*

CHAIRMAN: *Can I interrupt there though, everybody that has come to me, in their view, did have a legitimate reason. It might not be after we have heard from you it is, but in their view it is.*

Mr LANDA: *Of course. In terms of dissatisfaction and to be realistic, the areas of greatest concern to me in any event would be dissatisfaction, for instance, and this is something that I give to the Committee, delay in carrying out an investigation or in a decision to decline an investigation is a very real concern to me and would be to the Committee and that is a clear cut issue that the Committee could and should look at if we are falling down in that area. In terms of declining cases, yes, you will have a constant flow.*

I actually signed a letter an hour before I came up here, it was an issue that was sent by a member of Parliament which is terribly typical of the matter we declined and the complainant just wrote back to his Member in very strong terms and to us and was terribly dissatisfied. It was an issue that was dealt with by the course. It was two years before we got it. These would be the typical type of complaint that we would expect would come to the Committee.

Complaints About Decisions by the Ombudsman

But what worries me is of course the Committee sits here receiving all these grievances and you probably very seldom get letters to the Committee that say thanks very much you did a pretty good job. I said Members of Parliament are Ombudsmen except in name. So its experiences are very familiar but it is obviously something that must concern the Committee.

CHAIRMAN: One of the problems we have got for instance you decline, we cannot under our section seek to look at why you decline because we are seeking to come into your investigative role. I have one person who was rather obsessed with your decision. He is quite obsessed to the extent of being psychotic. I tried to explain, I have written to the man we cannot investigate it. That happens to a lesser extent but other people are not quite as obsessed.

It is a matter we, as a Committee, and you as the Ombudsman, are going to have to address as to how to get over - we cannot say to people who feel aggrieved I am sorry we cannot do this because the Ombudsman has declined it. The procedure we have got at the moment is we send it back to you and you send it back we send it back - it is okay but not the best system.

Mr PINNOCK: We are talking about Question 29 and 29B as opposed to the 30 which is the question more about declining. 29 is directed at procedural aspects. And of course that is within the jurisdiction of the Committee. Are there any matters of procedural aspects that have been raised with the Committee that the Committee has not in turn raised with our Office?

CHAIRMAN: There is one on the way but apart from that, no.

Mr PINNOCK: If that is the case then there has only been four by my count since the Committee was first constituted. There was the complaint by Botany Council about our FOI procedures in releasing documents and since then there has been two matters, the names of which I will not mention, which have come down in recent times. A third one which is also an FOI related matter and then another one. So, four or five.

CHAIRMAN: It is fair to say to you though, I have taken a very hard line on these issues and virtually said we cannot investigate any further. I do not think that was right and proper in some instances because it was addressed to me as the Chairman, perhaps if it is addressed to the Committee I should go to the Committee on it. It is an ongoing problem. Can we put in on notice that we should talk about it?

Complaints About Decisions by the Ombudsman

Mr LANDA: Yes I think so. There has been two areas, not just the complainants, the other area perhaps the Committee may get involved with by virtue of its statutory function is, of course, the people from agencies and that is one such complaint, who complain of the process and they are two distinct areas.

Mr PINNOCK: We cop it both ways of course.

CHAIRMAN: I think you are getting one shortly if you have not already got one.

Mr LANDA: We have got one, it is an FOI one.

CHAIRMAN: I agree that is an area that needs to be expanded.

Dr BURGMANN: Yes, there needs to be a procedure so that it isn't just up to the Chairman to say get stuffed.

OPERATIONS REVIEW COMMITTEE

QUESTIONS ON NOTICE

Question (30)

The ICAC Act 1988 provides for an Operations Review Committee comprising eight members including the Commissioner as Chairperson, an Assistant Commissioner, the Commissioner of Police, an appointee of the Governor recommended by the Attorney General, and four community representatives appointed by the Governor upon the Minister's recommendation. The Committee's functions include advising the Commissioner on whether the Commission should investigate a complaint under the ICAC Act or discontinue an investigation, and also advising the Commissioner on any matter referred to it by the Commissioner. The Commissioner is required to consult with the Committee on a regular basis, at least once every 3 months.

As Mr Kerr has commented to you in our previous inquiry it is inappropriate given the statutory limitations placed upon the Committee for it to "second guess" the Ombudsman on a particular case and it would be more appropriate for an independent group to consider operational matters. At the time you foreshadowed some difficulties with such an "appellate body".

- (a) What mechanisms currently exist for you to refer operational matters for expert advice?

Answer 30(a)

Judgements about operational matters i.e. whether to decline to investigate, to make preliminary enquires, to investigate, or to discontinue an investigation of a complaint, are made on a daily basis by officers of the Ombudsman at various levels. Officers are guided in the exercise of their discretion by the relevant legislative provisions, directions from statutory officers and the complaints assessment policy. Otherwise, operational matters are not referred for "expert" advice. These judgements are made on the basis of experience, training and expertise developed over time in this Office.

Operations Review Committee

It is important to recognise that there are fundamental differences between the functions of the Office of the Ombudsman and of the ICAC. The Office of the Ombudsman is a complaints handling agency in the normal sense of that term. The Ombudsman is required by specific statutory provisions to advise the complainant of any decisions made by the Ombudsman in relation to a complaint and the reasons for those decisions. The Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act reflect the role of the Office of the Ombudsman in its relationship with complainants. The ICAC, while receiving many complaints from members of the public is not required under its Act to advise complainants of a decision not to investigate, much less of the reasons for that decision, although it may do so. Rather, s.20(4) requires the Commission to "consult" the Operations Review Committee before deciding whether to decline to commence an investigation or to discontinue an investigation. The nexus between the Commission and the complainant is therefore much more tenuous than between the Ombudsman and a complainant.

In the case of the National Crime Authority (NCA) there is no nexus between the Authority and complainants. s.8 of the NCA Act establishes an Inter-Governmental Committee whose functions are set out in s.9; those functions are quite different from the functions of an ORC. Yet all three authorities, the Office of the Ombudsman, the ICAC and the NCA are each monitored by a parliamentary committee whose statutory functions are remarkably similar. The point is that appropriate internal review mechanisms depend on the nature and functions of the relevant authority.

- 30(b) Given that letters from complainants seeking reviews of your decision have been an ongoing feature of the correspondence received by the Ombudsman Committee do you believe an Operations Review Committee has some merit?**

Answer 30(b)

I am not aware of the number of letters from complainants to the Committee seeking reviews of decisions by this Office. Nor am I aware of how many complainants may have asked for review of decisions by the ICAC about their

Operations Review Committee

complaints, that have been the subject of consultation with the ORC. The point is that whatever review mechanisms are adopted in any agency, there will always be complaints about those decisions from persons who feel that their original complaint has not been handled to their satisfaction.

The Office of the Ombudsman already has in place an internal review mechanism under which requests for review are dealt with personally by me. The most recently available statistics show that between 1 July 1992 and 17 March 1993:

- 1,541 general files completed
- 126 requests for review (8%)
- 2,499 police files completed
- 118 requests for review (5%)

Members of the Committee will be aware of recent information concerning the backlog of complaints within the Assessment Section of the ICAC. The question which arises is whether this delay is attributable, at least in part, to the requirement for the Commission to consult with the ORC as required under s.20(4). Further, a requirement to submit matters to an ORC for the purpose of consultation would divert resources currently devoted to productive investigations. For all these reasons, I do not believe that an ORC is an appropriate mechanism for the Office of the Ombudsman.

SECRECY PROVISIONS

QUESTIONS ON NOTICE

Question (31)

In your 1992 Annual Report you refer to the Secrecy Provisions of the Ombudsman Act, in particular section 34(1), as time consuming and cumbersome. In your previous annual report you argued that these provisions restrict your ability to make public statements about issues which affect your office and involve considerations of the public interest.

Would you please provide details of the number of occasions on which these provisions have effected your ability to perform your statutory functions and give examples.

Answer (31)

Criticism of the secrecy provisions contained in s.34(1) Ombudsman Act have been a regular feature of the Ombudsman's Annual Reports since the mid 1980's. From time to time proposals have been advanced both by this Office and by the Government for amendments to s.34. Although I consider the secrecy provision both cumbersome and time-consuming, I have despaired of achieving any significant reforms in this area. Details of the number of occasions of which s.34 has affected the Office's ability to perform its statutory functions are not available.

QUESTIONS WITHOUT NOTICE

Question (30)

CHAIRMAN: . . . 31, that is the secrecy provisions.

Mr LANDA: Can I just give you a couple of examples of that. I think I have told the Committee about the one involved in the member from the South Coast in terms of where I had to do a report to Parliament. Did I ever talk about that complaint? John Hatton.

Dr BURGMANN: Yes.

Mr LANDA: That was a good example. But there is currently for instance an issue to do with an event on Turrumurra Station involving some people from the Asian community. It is a racial issue. This is an issue that does not necessarily have to be reported to the Parliament. Because there is a wider spreading community involvement I will be gagged talking about it. So it goes to Parliament. I think it is unnecessary.

There are other cases. For instance, in Operation Sue, the raid in Redfern, I could not even provide the Police Board with a copy of the report until it had been tabled. The Police Board was considering the appointment of a Commissioner and somebody who was a contestant for that role was involved.

So, I mean, there are clear areas, and I can give many more examples to you, that there ought to be a discretion. Otherwise the report to Parliament - why should I have to load Parliament with paper that is not necessary.

SECTION 26(1) OF THE POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT

QUESTIONS ON NOTICE

Question (32)

How many complaints has your Office received about the operation of this section of the Act?

Answer (32)

The Office does not keep statistics on the number of complainants who respond to the invocation of section 26(1) because they feel it is unfair. There is no "right of appeal" in respect of the Police Service use of the section.

Complainants with legal representation are able to obtain the identical documents under subpoena if court process is involved. Those without legal representation are unlikely to understand the reasons for which the section is used.

Nevertheless, the Ombudsman has received letters and telephone calls complaining about the use of the section. These complaints are not readily accessible.

QUESTIONS ON NOTICE

Question (33)

Recommendation 27.9 of the Rigg Report(p.136) states that where the Police Service invokes section 26(1) of the PRAM Act to suppress documents, on the basis that their release may prejudice court proceedings, reasons should be given for the suppression and these should include the specific prejudice perceived to be a risk. It also recommends that the statutory formulation of this section should be referred to the Police Minister for consideration of legislative reform.

Has either part of this recommendation been adopted?

Answer (33)

The Commissioner of Police adopted the recommendation insofar as it relates to giving specific reasons for the use of the section. The Internal Affairs Branch is currently rewriting its education/training courses and investigation instructions to incorporate the recommendation.

The matter was also referred to the Minister for consideration of legislative reform together with the amendments proposed to the legislation arising out of the Committee's first inquiry. Subsequently, a meeting was held with the Director-General of the Ministry. Given the complexity of the relationship of the PRAM Act to concurrent legal proceedings, it was agreed that the Ministry would attempt to address the problem by administrative means before considering legislative amendment.

JUDY JOHNSTON REPORT

QUESTIONS ON NOTICE

Question (34)

- (a) What was the cost of this report?

Answer 34(a)

Cost

Judy Johnston, a strategic management consultant, undertook a management review of the structure, systems and cost cutting approaches for the Office of the Ombudsman. The review consisted of:

- Interviews (20 hours)
- Reading documentation and Presentation (5 hours)
- Preparation of Report (35 hours)

The total cost of the Review was \$4,200 charged at \$70 per hour.

- 34(b) How is it disclosed in the accounts of the Ombudsman?

Answer 34(b)

The Ombudsman is required under the Annual Reports Act and its Regulations to disclose information in relation to consultancies [Cl.3(j1)(ii)]. In respect of consultancies of less than \$30,000 disclosure must be made in terms of the total number of engagements costing less than \$30,000 and the total cost of such engagements. The Ombudsman reported on this in the 1991/92 Annual Report. There was no specific mention of Ms Johnston's fee, nor was there a requirement to do so.

The Committee might also note that NSW Public Sector organisations were required to provide a six monthly return to the Office of Public Management in relation to consultants engaged by the organisation. This requirement was revised in December 1992, requiring only annual returns.

Judy Johnston Report

In relation to Ms Johnston's consultancy, the Office of Public Management was advised by letter on 31 July 1992 of this and other consultancies. Details were very specific including cost, completion date, description of the project. Ms Johnston's fee is also reflected but not distinguished (or required to be distinguished) in the line item "Consultancies" in the Ombudsman's operating budget.

QUESTIONS ON NOTICE

Question (35)

Under Recommendation 6.2.17 of the Judy Johnston Report it suggests an implementation as a matter of urgency of a performance management system for the Office starting with the development of performance agreements for statutory officers.

What is the current status in relation to that recommendation?

Answer (35)

(a) SES Performance Management

A Performance Management System has been developed for the Office's Senior Executive Service staff. This Performance Management System was sent for comment to Ms P Rutledge, Director of the SES Unit of the Premier's Department. Ms Rutledge reported that the document "commendably addresses many of the critical issues associated with a system of this nature". There were some areas of the Performance Management System that required some refinement and Ms Rutledge's suggestions are currently being incorporated in the system. The system will be trialed during April/May and formally introduced by 30 June 1993.

(b) Non-SES Performance Management System

The non-SES and SES Performance Management Systems have been developed along similar lines. The non-SES system is in draft form. Pending feedback/possible amendments to the SES system's trial, the non-SES system will be trialed in May/June with implementation to occur before 30 June 1993. Part of the development of this system also requires consultation with the Public Service Association and this is planned for April 1993.

QUESTIONS ON NOTICE

Question (36)

Under Recommendation 6.2.21 it was recommended that the Ombudsman lobby vigorously in a positive way with all key individuals of groups who are likely to support the Office in obtaining additional funding.

36(a) How many persons were lobbied directly by the Ombudsman?

Answer 36(a)

The Ombudsman wrote to thirty-five (35) people in relation to the Joint Parliamentary Committee's inquiry into the Ombudsman's Office resources and budget. (Annexure F - see Appendix 7).

36(b) How many of those persons made submissions to the Inquiry?

Answer 36(b)

This Office does not know how many of those people made submissions to the inquiry.

36(c) What information did the Ombudsman give to those persons to prepare their submission?

Answer 36(c)

The Ombudsman attached to his letter a Background Paper (Annexure G - Appendix 7).

QUESTIONS WITHOUT NOTICE

Question (36)

CHAIRMAN: . . . I have one concern I guess in 36. I would have liked to have know that that was going out. I have no objection to you lobbying of course, it is your right to do it.

Mr LANDA: I think we have actually corresponded on it.

CHAIRMAN: It might be before my time as Chairman.

Mr LANDA: Yes. I did express concern that it be widened.

CHAIRMAN: For our purposes would it be possible to get the list of people you sent it to so we can cross reference with those who actually gave evidence. Not that their evidence will be devalued in any way.

Mr LANDA: No, it is not a problem.

Dr BURGMANN: I can remember that discussion.

Mr LANDA: It would be a resource for future inquiries.

Mr KERR: Any secrecy about what advice you gave those people?

Mr LANDA: It is there.

Mr PINNOCK: It is attached to the annexure. That was all that was sent.

Mr KERR: Nothing verbally at all?

Mr LANDA: No. Individuals who represented say the Law Society may have rung and wanted to discuss it and certainly discussions have taken place.

Mr KERR: This is with the Law Society?

Mr LANDA: Yes, the Law Society is on that list, Public Interest Advocacy Centre and people like that - Civil Liberties - there is a whole group.

PROPOSED LEGISLATION - CONSULTATION WITH THE OMBUDSMAN

DISCUSSION - 20 JULY 1993

CHAIRMAN: Mr Landa, would you like to enlarge on any other matters?

Mr LANDA: The consultation issue: a report will be issued from my Office in a few weeks highlighting the issue of consultation.⁷

CHAIRMAN: Arising out of the portfolio of the Minister for Community Services?

Mr LANDA: Yes.

Mr PINNOCK: The Community Services Appeals Tribunal.

Mr LANDA: That is the one. We were involved, and I think there is correspondence between the Committee and the Cabinet Office about that. We were involved in a process of consultation about the proposed amendments to that Act. There then came an end to the consultation process. The next thing that we knew was that the Act was amended [Community Services (Complaints Appeals and Monitoring) Act 1993]. We did not know anything in between. The effect of it we were concerned about was that our jurisdiction had been terminated—it transpired ultimately that it had not. But what this Committee will see when it reads the report is that it was a very significant investigation into administrative malfunctioning. It simply highlighted the fact that there being no consultation it may simply have been a pure accident that we did not totally lose all our jurisdiction. When this report comes to this Committee, I am sure the Committee will see why that would have been very adverse to the administration in the State. What I am saying is that where jurisdiction is added to the Ombudsman's Office or taken away I think it is imperative that the Ombudsman's Office becomes aware of the process so that the Ombudsman can have input.

In saying that, I have to say that when I was first an Ombudsman, in the first three months of office an issue arose whereby it was intended to change the police grievance procedures and that resulted ultimately in the Bignold Committee hearings. I think I expressed at that time the view that Cabinet minutes ought not necessarily be an issue for an Ombudsman—in

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"Investigation into the Conduct of the Department of Community Services and Certain Officers in Relation to Broughman Residential Unit", 12 August 1993.

Proposed Legislation - Consultation with the Ombudsman

other words, should not be involved in the administrative process. I think there are some people in the Cabinet Office that still relate to that period of time, and in fairness I just raise that issue. I do not believe any longer that the Ombudsman should be locked out of deliberations if they involve the function of the Office. I have certainly made that very clear over recent times. But if that is brought forward as a reason for changing legislation that affects the Office of the Ombudsman, then I think it is a reason that ought not be put forward. It is a detriment to all parties.

Mr SCULLY: When a Cabinet Minute is put up by a Minister, any impact is supposed to be included in that Cabinet Minute, including impact on the Ombudsman's Office?

Mr PINNOCK: That is correct.

Mr SCULLY: But that is only a discretion of the Minister, is it not? It is not a regulatory requirement?

Mr PINNOCK: That is correct.

Mr SCULLY: So what you are suggesting is that there should be some regulation or even an amendment to your Act requiring that any proposed legislation's impact on your Office be specifically traversed? Is that what you say?

Mr PINNOCK: My personal view is that you do not require it. All that is required is that the discretion be observed, as it is observed in every other case, namely, if an agency is affected by proposed legislation, that the Cabinet Minute include the views of that agency. I do not know how many other agencies are not consulted.

CHAIRMAN: I am not sure how the Labor administration would handle the Cabinet considerations but certainly with the conservatives there is a flow down from that Cabinet decision to the party rooms for discussion purposes which may alter the intent of the Cabinet Minute.

Mr PINNOCK: In my time in the Office there has only been one significant difference between administrations of different political persuasion. That occurred in relation to the Ombudsman (Amendment) Bill which was introduced in 1988 and subsequently was withdrawn. My recollection is that in relation to that we received a Cabinet Minute about it and were consulted about it. Apart from that instance, I can think of no other in which we have actually seen a Cabinet Minute in a sense of being formally consulted. We have had

Proposed Legislation - Consultation with the Ombudsman

consultations about legislation on some occasions but in terms of being involved or consulted in relation to the preparation of a Cabinet Minute, it is very much the exception.

Mr LANDA: However, the Police Minister, Mr Pickering, would discuss always any proposed changes.

Mr SCULLY: As you appreciate, 'often there is legislation, for example, the Health Care Complaints Commission, Whistleblowers, and Local Government - there is constantly a stream of legislation that adds to your jurisdiction. I would be concerned if you are not involved in commenting on whether or not there may be a better way or it may be appropriate or you may need more funds?

Mr LANDA: We often are. We are very involved in the Whistleblowers, for example, and we make submissions in many directions, but we have instanced a number of cases where significantly the changes have taken place without the consultation, without any knowledge.

Mr SCULLY: So how do we make sure you are consulted?

Mr LANDA: I do not know the answer to that. I think simply an expression that one ought to be.

Mr KERR: I take it you are not asking for a veto? If having been consulted a future Cabinet decides to act totally contrary to what you think is the best interests of a future Parliament, and a future Parliament enacts legislation totally contrary to what you think is in the Ombudsman's interest, that is democracy is it not?

Mr LANDA: Yes, and I have been confronted with that situation on a number of occasions. On some I have made public statements, on others it has occurred without comment.

CHAIRMAN: You would be aware that we have written to the Premier on that specific issue. We have not yet received a reply.

Mr LANDA: Yes.

CHAIRMAN: We have taken on board what you have said. It is a very fair observation.

COMMENTARY

The Ombudsman has complained to the Committee on several occasions about the lack of consultation he receives about proposed legislation affecting his jurisdiction and operations. A summary of examples is given in his second submission to the Committee's Funding Inquiry:

- i) amendment to the Aboriginal Land Rights Act making Aboriginal Land Councils public authorities
- ii) Telecommunications (Interception)(New South Wales) Act
- iii) Whistleblowers Protection Bill 1992
- iv) Government Publicity Control Bill 1992 (The Committee notes this is an Opposition Bill which would not have been processed through Cabinet).

He stated that "almost without exception, recent extensions of his functions have either been proposed or introduced without any consultation with or reference to, the Ombudsman".⁸ More recently, it has been reported that the Health Care Complaints Bill was introduced without consultation.

The Committee was concerned about the Ombudsman's criticism that little or no consultation occurs with him as to the financial implications of significant proposed legislation affecting his Office. As a result it made a recommendation in its recent report on the funds and resources available to the Ombudsman to perform his functions to the effect:

"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."

This recommendation is consistent with Federal and State handbooks on Cabinet processes and the drafting of legislation which indicate that consultation with affected departments should occur at a number of stages in the preparation of a bill.

Such consultation is supported by the Commonwealth Cabinet Handbook 1991 which specifies the following guidelines for evaluating the financial impact of a legislative proposal contained in a Cabinet Minute:

⁸ Submission No. 2, Funds and Resources Inquiry, p.11.

Proposed Legislation - Consultation with the Ombudsman

Cover Page - "6.17 Cost: Indicate costs (including for staff and administration and also including costs to other departments and agencies), which must be agreed with the Department of Finance except where Finance confirms that running costs can be subsequently settled by officials within running costs guidelines. Costs should generally be expressed as changes to the Budget and Forward Estimates of Outlays. Where this is not the case, they should be clearly flagged. Cross reference to costings attachment . . . ; and

Body of Submission - "6.21 Financial Considerations: This section should be used if it is necessary to expand on the Costings attachment. Matters that could be addressed include: the relationship between costs and Forward Estimates; details of offsettings savings; revenue effects".⁹

Similarly, in its review of the Commonwealth Ombudsman the Senate Committee on Finance and Public Administration recommended:

"The Committee recommends that the coordination comment on cabinet submissions in future include an estimate of likely effects of new initiatives on the Ombudsman's resource requirements where it appears that such effects might be significant".

There is no current official handbook for Cabinet in New South Wales - the only publicly available document being an outdated publication entitled "The Cabinet of New South Wales". However, this publication includes as Annexure 3 a standard format Financial Impact Statement which is apparently given particular attention under the item of "Resources required for Implementation." This statement, which is "to be included (where applicable) in Cabinet Minutes" and attached as an appendix, reiterates the Commonwealth's consultation procedures in relation to the financial impact of proposed legislation.

According to the booklet:

"The Statement is designed to permit improved assessment of projected financial and staffing implications. However, the approval of Cabinet to proposals incorporating a Financial Impact Statement should not imply that approval is given to the financial and staffing resources. These will continue to be determined under the Staff Numbers policy and through the normal budgetary process".¹⁰

⁹ Cabinet Handbook, Commonwealth of Australia, 1991 p.29.

¹⁰ Booklet, p.10.

The Committee also had received a letter from the Ombudsman dated 27 April, 1993 concerning lack of consultation with his Office prior to the introduction of the Community Services (Complaints, Appeals and Monitoring) Act 1993. The Ombudsman claimed that he was not aware of the proposal to remove the conduct of a welfare service provider from his jurisdiction until his Office received a copy of the bill once it had passed all reading stages and was awaiting assent. This issue was the subject of a report to Parliament by the Ombudsman entitled, "Investigation into the Conduct of the Department of Community Services and Certain Officers in Relation to Brougham Residential Unit", dated 12 August, 1993.

In that Report the Ombudsman presented the following course of events:

- i) late 1992 Department of Community Services requests the Office's assistance in consultations with interested parties and client groups on complaint and appeal mechanisms regarding the delivery of community services in NSW;
- ii) the Office provides officers to attend meetings and answer questions as required;
- iii) the Office hears informally that the consultations have led the Department to recommend to the Minister a Commissioner for Community Services and a Tribunal;
- iv) on 14 April, 1993 the Office is provided by the Department with a copy of the Community Services (Complaints, Appeals and Monitoring) Bill 1993.

By the time the Ombudsman's Office received a copy of the bill on 14 April it had been passed by both Houses of Parliament and received assent on 8 April, 1993. The Community Services (Complaints, Appeals and Monitoring) Act 1993 was proclaimed to commence on 1 October, 1993.

The Ombudsman claimed in his report that the Act "seriously diminished [his] jurisdiction conferred by the Ombudsman Act to investigate complaints about the Department and its officers."

Section 121 of the Community Services (Complaints, Appeals and Monitoring) Act excludes conduct subject to complaint to the Commission or appeal to the Tribunal from being the subject of a complaint under the Ombudsman Act 1974. In conjunction with sections 12 and 13 of the Community Services (Complaints, Appeals and Monitoring) Act the Ombudsman has interpreted the new legislation to mean that "the only conduct that can be the subject of complaint is in respect of unreasonable acts in respect of not providing, providing, or the

Proposed Legislation - Consultation with the Ombudsman

way of providing a community service to a particular person, or the administration of a community service in relation to a particular person".

The Ombudsman made two points relating to his jurisdiction as a result of this new legislation. Firstly, that systemic inquiries relating to the Department, such as the one in question on Brougham Residential Unit, do not relate to a particular person entitled to or receiving a community service and, therefore, are not subject to complaint to the Commission or Tribunal and remain within the Ombudsman's jurisdiction. Secondly, that conduct subject to complaint under section 12 of the Community Services (Complaints, Appeals and Monitoring) Act must relate to unreasonable actions by a service provider. The definition given in that Act does not include those categories specified in section 26 of the Ombudsman Act, for instance, conduct that is unlawful, unjust, oppressive, improperly discriminatory, or based on improper motives, and he concluded that such conduct remained outside the jurisdiction of the Community Services Commission. Without having had any input into the new Community Services legislation to suggest amendments for correcting this situation the Ombudsman stated that he intended to continue to exercise his jurisdiction where appropriate and in relation to systemic issues.¹¹

With regard to the general issue of consultation on proposed legislation the Committee sought advice from the Director-General of The Cabinet Office as to the exact consultation procedures used by Cabinet prior to consideration of Cabinet Minutes. The Director-General, Mr Wilkins, replied to the Committee that he considered "the Ombudsman's complaints about lack of consultation to be misconceived and invalid for a number of reasons." (letter to the Chairman dated 18 November, 1993)

The reasons cited were as follows:

"Firstly, the Ombudsman and his Office are treated as independent from Executive Government, and hence it is not regarded as mandatory to include them in the normal consultative arrangements relating to proposed Cabinet business which apply generally to Government departments and related agencies. There is certainly no legal obligation for consultation to take place with the Ombudsman over legislative proposals, even where these may affect the jurisdiction of his Office.

Secondly, the extent of the consultation which takes place on any policy proposal being considered by the Government is in the final analysis a matter to be determined by the Government rather than the Cabinet Office.

¹¹ See also the Ombudsman's Annual Report for 1992-1993, pp.100-102.

Proposed Legislation - Consultation with the Ombudsman

Thirdly, I am advised by my predecessor as Director-General of the Cabinet Office, Mr G. L. Sturgess, that at one stage Mr Landa expressed to him a preference for his Office not to receive official material of a confidential nature. Cabinet documents would obviously fall within this category.

Fourthly, I would point out that the particular matters referred to in your letter involved the implementation of Government decisions which affected the Ombudsman's Office in a consequential and secondary fashion, and often had similar implications for other agencies. In such circumstances, any dissenting views put forward by the Ombudsman would have needed to be balanced against the broader policy objectives which the Government was seeking to achieve.

Finally, despite all these considerations, where major changes to the Ombudsman's jurisdiction have been proposed, I have certainly regarded it as suitable and appropriate to arrange for consultation with the Ombudsman to occur."

With regard to the Ombudsman's claim of lack of consultation over the Community Services (Complaints, Appeals and Monitoring) Act 1993, Mr Wilkins advised the Committee that the Minister for Community services had been asked to ensure the Ombudsman was consulted and that he understood this had occurred. He also claimed that the Ombudsman's Office had been "party to the wider community consultation process" in relation to these proposals. Mr Wilkins stated that his recollection of events differed to Mr Landa's and that in his view "the Ombudsman had substantial knowledge of the relevant proposals and ample opportunity to make his views about them known." According to Mr Wilkins, the option of a dual complaints structure had not been considered and the position finally adopted to deal with such complaints "reflected the outcome of the community consultative process."

The final section of the advice explained that "prior to the receipt of Mr Turner's letter arrangements had been put in place for regular consultations to occur between me, the Director-General of the Premier's Department, Mr Humphrey, and the Ombudsman".

Mr Wilkins's advice reveals a clear difference of opinion with the Ombudsman regarding the way in which consultation over the Community Services (Complaints, Appeals and Monitoring) Bill was handled.

The Committee is not in a position to determine the respective validity of these different accounts but wishes to stress that it considers adherence to a full consultation process would enable the Ombudsman to formally comment on the operational, jurisdictional and financial implications of any proposed legislation affecting his Office. In this regard it is pleased to

Proposed Legislation - Consultation with the Ombudsman

note the assurances from the Director-General of the Cabinet Office that regular consultation is occurring with the Ombudsman. However, given the significant nature of the Ombudsman's claims regarding consultation, the Committee intends to monitor and examine this aspect of the Ombudsman's relations with the Executive.

APPENDIX 1
*Independence and Accountability Report
Recommendations for Joint Committee on
the Office of the Ombudsman*

7.10 The Ombudsman further recommends (see 5.6) that such a Joint Parliamentary Committee be responsible for recommending the appropriation of funds from Consolidated Revenue for the Office of the Ombudsman.

8. Conclusion

8.1 The need to firmly establish the independence from the executive of the Office of the Ombudsman is long overdue. The only way to guarantee true independence is by making the concept of the Ombudsman as an officer of Parliament a reality, and by making the Ombudsman, with suitable protections, accountable directly to Parliament.

8.2 The most appropriate mechanism to achieve the desired degree of independence and accountability is to establish a Joint Parliamentary Committee to oversight the Ombudsman and by repealing or amending anomalous provisions of the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act.

9. Recommendations

9.1 The Ombudsman recommends that:

9.1.1 a Joint Parliamentary Committee be established to oversight the operations of the Office of the Ombudsman and that the Ombudsman Act be amended accordingly.

9.1.2 subject to the matters listed below, the amendments to the Ombudsman Act necessary to establish the Joint Parliamentary Committee be in similar form to the provisions of Part 7 Independent Commission Against Corruption Act 1988.

9.1.3 any provision in like terms to S.64(1)(c) Independent Commission Against Corruption Act specifically include as a duty of the Joint Parliamentary Committee, the examination and reporting upon of reports under Ss.27 and 31 Ombudsman Act and S.32 Police Regulation (Allegations of Misconduct) Act.

9.1.4 the following paragraph be added to any provision in like terms

to S.64(2) Independent Commission Against Corruption Act:

(d) to investigate or consider an inspection or report by the Ombudsman under the Telecommunications (Interception)(New South Wales) Act 1987.

9.1.5 consideration be given to any possible conflict between a provision in like terms to S.69(1) Independent Commission Against Corruption Act and S.34 Ombudsman Act.

9.2 The Ombudsman also recommends that the Joint Parliamentary Committee be empowered to recommend to the Parliament appointment of the Ombudsman, Deputy Ombudsman and Assistant Ombudsman, that such appointments be made by the Governor upon the address of both Houses of Parliament and that Ss. 6(1), 8(1) and 8A(1) Ombudsman Act be amended accordingly.

9.3 The Ombudsman further recommends that the Joint Parliamentary Committee be specifically empowered to recommend to the Parliament the appropriation of funds from Consolidated Revenue for the Office of the Ombudsman.

9.4 The Ombudsman recommends that he be empowered to report directly to the Speaker of the Legislative Assembly and to the President of the Legislative Council, and, accordingly, that:

9.4.1 S.30(1) Ombudsman Act be amended by deleting the word "Minister" and substituting therefor the words "Speaker of the Legislative Assembly and the President of the Legislative Council".

S.30(2) Ombudsman Act be amended by deleting the words "Minister" and "him" and by substituting therefor the words, respectively, "Speaker of the Legislative Assembly and the President of the Legislative Council" and "either of them".

9.4.2 Ss.27 and 31(1) Ombudsman Act and S.32(1) Police Regulation (Allegations of Misconduct) Act be amended by deleting the word "Minister" and substituting the words "Speaker of the Legislative Assembly and the President of the Legislative Council".

Ss.31(3) Ombudsman Act and S.32(3) Police Regulation (Allegations of Misconduct) Act be amended by deleting the word "Minister" and by substituting therefor the words "Speaker of the Legislative Assembly and the President of the Legislative Council".

- 9.5 The Ombudsman recommends that such provisions of Schedule 2 Ombudsman (Amendment) Bill 1988, relating to the incorporation of the Office of the Ombudsman and the independence of the Ombudsman from the Public Sector Management Act, be re-introduced, together with those provisions relating to the preservation of rights of existing staff and that the right of appeal to the Government and Related Employees Appeal Tribunal be preserved.
- 9.6 The Ombudsman recommends that Ss.9, 10A and 23 Ombudsman Act be amended by deleting the words "with the concurrence of the Minister", "with the approval of the Minister" and "with the consent of the Minister" appearing respectively in those sections.
- 9.7 The Ombudsman recommends that this report be made public forthwith pursuant to S.31(3) Ombudsman Act.

David Landa
OMBUDSMAN

APPENDIX 2
Functions of the ICAC Committee

Independent Commission Against Corruption Act 1988 No. 35

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) After a member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Operations Review Committee or (with the concurrence of the Commissioner) the Minister otherwise determines:

- (a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter, or
- (b) exercise any function under this Act with respect to that thing.

(4) A contravention of this section does not invalidate any decision of the Operations Review Committee or the exercise of any function under this Act.

PART 7—PARLIAMENTARY JOINT COMMITTEE

Constitution of Joint Committee

63. As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Independent Commission Against Corruption, shall be appointed.

Functions

64. (1) The functions of the Joint Committee are as follows:

- (a) to monitor and to review the exercise by the Commission of its functions;
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;

Independent Commission Against Corruption Act 1988 No. 35

- (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee:
 - (a) to investigate a matter relating to particular conduct; or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
 - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

Power to veto proposed appointment of Commissioner

64A. (1) The Minister is to refer a proposal to appoint a person as Commissioner 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.

Membership

65. (1) The Joint Committee shall consist of 9 members, of whom:

- (a) 3 shall be members of, and appointed by, the Legislative Council; and
- (b) 6 shall be members of, and appointed by, the Legislative Assembly.

(2) The appointment of members of the Joint Committee shall, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

(3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

APPENDIX 3
*Functions of the Joint Committee on the NCA
(National Crime Authority)*

s. 54

(6) A member appointed by the House of Representatives may resign his office by writing signed by him and delivered to the Speaker of that House.

(7) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

Powers and proceedings of the Committee

54. All matters relating to the powers and proceedings of the Committee shall be determined by resolution of both Houses of the Parliament.

Duties of the Committee

55. (1) The duties of the Committee are:

- (a) to monitor and to review the performance by the Authority of its functions;
- (b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the Authority or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;
- (c) to examine each annual report of the Authority and report to the Parliament on any matter appearing in, or arising out of, any such annual report;
- (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the Authority; and
- (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.

(2) Nothing in this Part authorizes the Committee:

- (a) to investigate a matter relating to a relevant criminal activity; or
- (b) to reconsider the findings of the Authority in relation to a particular investigation.

APPENDIX 4
*New Zealand Officers of Parliament Committee
Standing Orders*



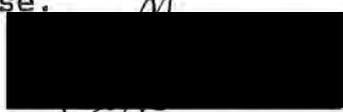
TO/OH/06

EXTRACT

From the Journals of the House of Representatives,
Thursday, the 22nd Day of October 1992

Government Notice of Motion No. 18 being called on, on motion of the Honourable Paul East, Resolved, That the resolution of the House of 29 November 1990 appointing the Officers of Parliament Committee be amended by substituting the following new terms of reference:

- (a) to recommend to the House in respect of each Office of Parliament an estimate of expenditure or costs to be incurred in respect of classes of outputs and an estimate of the capital contribution to be made for inclusion as a Vote in an Appropriation Bill, and also recommend to the House any alteration to such a Vote;
- (b) to consider such Estimates or review of an Office of Parliament's performance as may be referred to it by the Finance and Expenditure Committee;
- (c) to recommend to the House an auditor to be appointed by the House to audit the financial statements of each Office of Parliament;
- (d) to consider and report to the House on any annual report or other report of an Officer of Parliament referred by the House;
- (e) to consider any proposal referred to it by a Minister for the creation of an Officer of Parliament;
- (f) to develop a code of practice applicable to all Officers of Parliament;
- (g) to allocate to any select committee appointed pursuant to Standing Order 345 any annual report or other report of an Officer of Parliament for consideration and report to the House.


Deputy Clerk of the House of Representatives

28 October 1992

APPENDIX 5

*"The UK Ombudsmen and Government"
Paper by the Secretary to the Commission
for Local Administration in England,
Mr G. D. Adams, dated 30 November 1992*

Commission for Local Administration in England

G. D. Adams
Secretary

21 Queen Anne's Gate
London SW1H 9BU
Tel 071-222 5622
Fax 071-233 0396

DEL; jy

OMB.13/GDA/act

Mr David Landa
Ombudsman
Office of the Ombudsman
3rd Floor
580 George Street
Sydney 2000
Australia

30 November 1992

Dear Mr Landa,

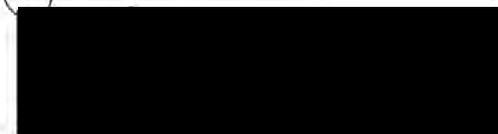
Thank you for your letter of 24 November.

I have put together a paper which I hope will be of help to you. In view of the tight timetable, I have not been able to do as much research as I would have liked, but this has probably meant a shorter paper which may be a virtue!

Please do not hesitate to let me know if there is any additional information you would like. If you would like to regard this as a draft which might be amended to suit your purpose, please do so and I will be happy to alter it and send you a revised version.

I am sending this letter and the paper by fax.

Yours sincerely



G D Adams
Secretary

Commission for Local Administration in England

G. D. Adams
Secretary

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THE UK OMBUDSMEN AND GOVERNMENT

1. The purpose of this paper is to demonstrate that the United Kingdom Government has consistently supported the institution of Ombudsman in the public sector and in particular to illustrate the various ways in which the Local Government Ombudsman service in England has received such support. The institution of Ombudsman has not been at any time a party political issue. Where reservations have been expressed, they have been by individual MPs, often because they have not been happy with the outcome of an investigation of which they have had knowledge or involvement.
2. The Parliamentary Commissioner for Administration was set up by the Parliamentary Commissioner Act in 1967. His jurisdiction is primarily over central government departments. In 1969 the offices of Parliamentary Commissioner for Administration and Commissioner for Complaints in Northern Ireland were established with jurisdiction over a wide range of public bodies: central government, local government and health authorities. The next stage was the creation in 1973 of a Health Service Commissioner for England, Scotland and Wales to investigate complaints against health authorities. The Commission for Local Administration in England (the Local Government Ombudsmen) and the Commission for Local Administration in Wales were set up in 1974 to investigate complaints of maladministration by local authorities in England and Wales. A separate Local Commissioner for Scotland was appointed in 1975 when local government was reorganised in that country.
3. The Parliamentary Commissioner for Administration in Great Britain and the Parliamentary Commissioner for Administration in Northern Ireland are officers of Parliament appointed by the Queen. Although not required by legislation, the House of Commons set up a Select Committee of MPs to examine reports of both Parliamentary Commissioners on which the Select Committee reports to Parliament. The Select Committee has the power to summon senior officials of government departments and health authorities to appear before them and the outcome of their questioning has invariably been to support the Parliamentary Commissioners for Administration. In its

fourth report of the 1990-91 session published in July 1991, the Select Committee said:

"Since its establishment in the late 1960s, the Office of the Parliamentary Commissioner for Administration has assisted in maintaining and improving the quality of administration by Government departments. The Parliamentary Commissioner's ability to investigate alleged maladministration by Government departments and public bodies provides an important redress for many aggrieved citizens. It is the task of this Committee to examine the Commissioner's work and thus to assist him in his work."

4. It is clear from the Citizen's Charter White Paper and from similar documents published by the Labour Party and the Liberal Democrats that all three political parties favour the institution of Ombudsman and strengthening of the Ombudsman or similar role. In its second report of the 1991-92 session, the Select Committee on the Parliamentary Commissioner for Administration recorded their discussion about the Citizen's Charter with Mr Francis Maude MP, Financial Secretary to the Treasury, as follows:

"The Citizen's Charter makes no proposals to change the powers or jurisdiction of the Parliamentary Commissioner for Administration. At the time of its publication, the Commissioner was informed by the Secretary to the Cabinet that this reflected general satisfaction with the performance of the Office and a wish to avoid tinkering for the sake of it with "a machine that works well as it is." Mr Maude confirmed that point. He described the work of the Parliamentary Commissioner as "a very considerable success"; he felt the procedure for consideration of complaints by the Commissioner "works extremely well: not always comfortably for the Government, but these arrangements are not meant to be comfortable for the Executive." He also acknowledged the importance of the fact that the Parliamentary Commissioner "works for Parliament and not for the Executive." We (the Select Committee) welcome and warmly endorse the Minister's sentiments.

The White Paper states that "the Parliamentary and Health Service Commissioners have a power to report to Parliament, in effect laying their recommendations before the highest court in the land. As a result recommendations on compensation cannot be ignored." Mr Maude said that the Government "do accept and implement the recommendations that are made" by the Parliamentary Commissioner."

5. The work of the Local Government Ombudsmen is not subject to examination by a Select Committee of the House of Commons. However Ministers at the Department of the

Environment have over the last 18 years given support and encouragement to the Commission in a number of ways. Ministers' attitude may be illustrated by an extract from a letter to the Chairman of the Commission in June 1990 from Mr Michael Portillo, at the time Minister for Local Government and Inner Cities, who wrote:

"The Commission performs a very valuable service to local government and to the general public. I know that you are in the process of a fairly major expansion and restructuring to cope with the increased demands that are being placed on you and your fellow Commissioners, as well as your staff. I am sure you will meet this challenge and continue to provide a valuable service both to the general public and to local government."

6. The Commission is required to review the operation of the provision of Part III of the Local Government Act 1974 and to report to the Secretary of State for the Environment their recommendations or conclusions every three years (until 1989, the requirement was to report each year). Most of the important recommendations made by the Commission have now been accepted and implemented by the Government.

In July 1988 the Government published their response to the report of a Committee of Inquiry into the Conduct of Local Authority Business (the Widdicombe Report). This response included the following paragraph:

"The (Local Government Ombudsman) service has in practice proved a positive force for good, both by redressing individual grievances and by providing a spur to a more responsive, efficient and fairer local administration."

The Government subsequently enacted legislation in 1989 which included the following measures designed to increase the effectiveness of the Local Government Ombudsman service:

- Councils were to be given time limits by which they must respond to both initial and further reports.
- When a council do not remedy an injustice found as a consequence of their maladministration, the Local Government Ombudsman have the power to require the council to publish a statement in the local press of the action recommended by the Local Government Ombudsman which the council have not taken.
- When considering a Local Government Ombudsman's further report, councils must refer recommendations of non-compliance to the full council. When considering a report by a person or body with an interest in the

Local Government Ombudsman's report, the council must not reach a conclusion without also taking into consideration a report by a person or body with no interest in the Local Government Ombudsman's report.

- When a councillor is criticised in a Local Government Ombudsman's report or further report, that councillor is not permitted to vote on matters relating to the report.
- The Secretary of State was given the power to issue a National Code of Local Government Conduct to replace the previous voluntary code. If the Local Government Ombudsman issues an adverse report involving a breach of the new code by a councillor, the Local Government Ombudsman usually names that councillor in his report and gives particulars of the breach.
- The Commission may issue to local authorities advice and guidance about good administrative practice.

Within the last few months, the Government have announced that they intend to bring in legislation to extend the jurisdiction of the Local Government Ombudsmen to cover the appeals committees of voluntary aided and grant-maintained schools.

7. The Commission intend to publish a series of guidance notes for local government on good practice designed to assist councils to improve their administration. The first of these, "Devising a Complaints System", published in February 1992, is intended to assist councils to set up their own complaints systems or review existing systems. The guidance note was well received by Government and by councils themselves. In a letter to the Chairman of the Commission in July 1992, Mr John Redwood, Minister for Local Government and Inner Cities, reported that at a recent seminar on the Citizen's Charter, chaired by the Prime Minister, there was praise for the Commission's guidance note on "Devising a Complaints System" and it was agreed that further additions to the proposed series of guidance notes would be welcome.

The Commission has in mind publishing guidance notes on subjects such as council housing repairs, council housing allocation, consultation with neighbours about planning proposals. Two important guidance notes which are planned for publication in 1993 are guidance for council members and officers on the declaration of non-pecuniary interests, and axioms of good administrative practice.

8. Despite the recent changes in the law designed to persuade councils to implement the Local Government Ombudsman's recommended remedy, when he has found that a citizen has suffered an injustice through the maladministration of the council, a few councils persist in refusing to do so. Over

the years the Government of the day has been concerned about this and the Citizen's Charter White Paper includes the following paragraph:

"The Local Government Ombudsmen's recommendations have been ignored in 6% of the cases in which maladministration has been found. When this occurs, local authorities must now explain to their electorate what happened and why in terms approved by the Ombudsman. If difficulties continue we will take the further step of introducing legislation to make the Local Government Ombudsmen's recommendations legally enforceable, as those of the Northern Ireland Complaints Commissioner already are."

9. The Commission recognises that as a public body it has a duty to spend taxpayers' money wisely and effectively. In July 1989 Coopers and Lybrand Deloitte, management consultants, reported to the Commission on the outcome of their review of the Commission's organisation, operational procedures, workload, information systems, office location, and information technology needs. They found that the Commission's working practices were sound and there was no need for any major change in the Commission's approach to handling complaints, if the present quality of service was to be maintained. They recommended that the Commission should continue to look for ways of improving efficiency without prejudicing the quality of service. Coopers and Lybrand Deloitte also confirmed that the number of staff for which the 1989/90 agreed estimates provided for was not sufficient to handle the forecast workload, and that a substantial increase was needed.

The Commission has now implemented most of the recommendations of the management consultants, including measures designed to ensure that it operates as efficiently and economically as possible, by, for example, keeping working practices under continuous review and establishing indicators against which the performance of the organisation and sections within the organisation are regularly measured.

10. The Government has accepted that the Commission's work is demand-driven. As the Commission is essentially concerned with one activity only - the investigation of complaints - there is no scope for moving resources from other activities, as is available to other organisations such as local authorities themselves. For several years now the Government has been favourably disposed to the Commission's request for more funds as the following table shows:

| Year | No of new complaints received | % increase over previous year | No of complaints determined in the year | Cost per complaint determined £ | Grant £ | % increase over previous year |
|---------|-------------------------------|-------------------------------|---|------------------------------------|------------|-------------------------------|
| 1988/89 | 7,055 | 44 | 3,908 | 440.66 | 1,948,780 | 15.3 |
| 1989/90 | 8,733 | 24 | 7,159 | 427.13 | 2,604,780 | 33.7 |
| 1990/91 | 9,169 | 5 | 9,033 | 432.50 | 3,834,119 | 47 |
| 1991/92 | 12,123 | 32 | 10,610 | 457.85 | 4,797,311 | 25 |
| 1992/93 | 15,153* | 25* | - | - | 5,921,424 | 23.4 |
| 1993/94 | - | - | - | - | 6,931,424 | 16.3 |

*Forecast for year based on trend at 31 October 1992

Even these increases in the Commission's grant have not been large enough to enable the Commission to recruit all the staff needed to avoid a backlog of complaints developing and an increase in the time taken to investigate complaints. However, the percentage increase in the Commission's grant has been far greater than central government grants to councils themselves, who have generally been restricted in recent years to very much smaller increases.

Central government have also largely met the requests of other public sector Ombudsmen for increases in their funds. The first report for 1990/91 of the Select Committee on the Parliamentary Commissioner for Administration reports in relation to the Northern Ireland Parliamentary Commissioner as follows:

"... The adequate funding of the Office seems assured. The costs of the Office are now exempt from running costs control and the Government has undertaken that its resources "will continue to be viewed sensitively"."

11. The Government has also shown its support for the Ombudsman institution in the UK by incorporating a requirement to establish an Ombudsman in the following legislation:

1986 Building Societies Act (the Building Societies Ombudsman)

1990 Court and Legal Services Act (the Legal Services Ombudsman)

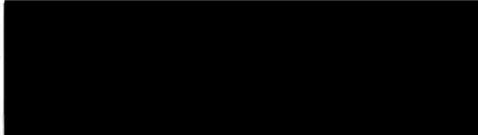
1990 Social Security Act (Pensions Ombudsman)

The Government is now understood to be considering the creation of a Prisons Ombudsman and an Ombudsman for Housing Associations. There are also four voluntary

Ombudsman schemes set up by the industry concerned: Banking Ombudsman, Insurance Ombudsman, Corporate Estates Agents Ombudsman, and Investment Ombudsman.

12. In their review of the Citizen's Charter published within the last few days ("Citizen's Charter First Report: 1992") the Government have announced further measures to facilitate the making of complaints by citizens. These include the setting up of a telephone helpline (Charterline) which amongst other things will direct enquirers to sources of help such as the various Ombudsmen. They have also commended in their document the Commission's guidance note "Devising a Complaints System", which, they say: "will give further encouragement to local authorities and to others to develop their own complaints systems."
13. I would like to place on record that the Commission are extremely grateful for the support they have received from the Government and for the recognition of the importance of their work in helping individual citizens and promoting high standards of local administration.

30 November 1992



G D Adams
Secretary

APPENDIX 6
Chronology of Events
Re: Ombudsman's Report on Allegations of
Police Bias Against Asian Students

CHRONOLOGY OF EVENTS

RE: OMBUDSMAN'S REPORT ON ALLEGATIONS OF POLICE BIAS AGAINST ASIAN STUDENTS

1. Complaint to Police Commissioner letter of 16.1.92
2. Personal letter to Police Commissioner 11.2.92
3. Letter from Parliamentary Committee to Police Commissioner
26.2.92 - drawing concern
4. 15.7.92 letter to Police Commissioner advising that statutory period had
expired.
5. Police investigation completed and received by us 22.7.92
6. Provisional report to Police Commissioner February 1993.
7. Final draft to Minister 13.4.93 "do you want to consult" - no reply.
8. Further letter to Minister 12.5.93, no response
9. Report final and sent to Minister 31.5.93
10. Report to be made public 25.6.93
11. Report made public 1.7.93

APPENDIX 7
*Annexures - Ombudsman's Answers to
Questions on Notice*

ANNEXURE A

Costings - Rigg Investigation

ANGUS RIGG INQUIRY - COSTS TO PUBLICATION OF THE REPORT

Direct Costs

| OFFICER | SALARY | OVERTIME | TRAVEL | TRANSCRIPTS | TELEPHONE | SUNDRY | PRINTING | TOTAL |
|--------------------|---------------|--------------|--------------|--------------|-----------|------------|--------------|---------------|
| Landa | 4,931 | 0 | 397 | 0 | 35 | 45 | 0 | 5,407 |
| Pehm | 35,667 | 0 | 964 | 0 | 0 | 0 | 0 | 36,631 |
| Christmann | 9,181 | 1,697 | 845 | 0 | 0 | 12 | 0 | 11,734 |
| West | 7,396 | 1,946 | 997 | 0 | 0 | 11 | 0 | 10,350 |
| Yeung | 7,788 | 2,341 | 1,025 | 0 | 0 | 11 | 0 | 11,166 |
| Macklin | 22 | 0 | 0 | 0 | 0 | 65 | 0 | 88 |
| Linsley | 675 | 0 | 0 | 0 | 0 | 0 | 0 | 675 |
| | 0 | 0 | 0 | 4,212 | 0 | 0 | 1,755 | 5,967 |
| SUB - TOTAL | 65,660 | 5,984 | 4,227 | 4,212 | 35 | 144 | 1,755 | 82,017 |

Overhead Costs

Overhead costs include such items as rental, electricity, motor vehicle running, photocopying, Investigative Assistant and Administration staff salaries (and related employee costs such as payroll tax, overtime etc), stores (stationery) etc. It should be noted that savings were achieved through co-operative arrangements with the Victorian Ombudsman by using his facilities including motor vehicles while in Victoria.

The overhead costs are a conservative estimate as no formal records were maintained.

| | | | | | | | | |
|----------------------|---------------|--------------|--------------|--------------|-----------|--------------|--------------|---------------|
| | 5,000 | | | | | | | 5,000 |
| SUB - TOTAL | 0 | 0 | 0 | 0 | 0 | 5,000 | 0 | 5,000 |
| GRAND - TOTAL | 65,660 | 5,984 | 4,227 | 4,212 | 35 | 5,144 | 1,755 | 87,017 |

ANNEXURE B

Training

TRAINING CHECKLIST - INVESTIGATION STAFF

Training sessions (can be small group, office wide sessions or one on one)
Supervisors should ensure new staff have participated in all the sessions nominated below within the first two months of duty.

FIRST DAY BASICS

Induction - personnel
Basic rules and protocol - list of who signs what, what do we do with dissatisfied customers.

SUBJECT MATTER AREAS

Prisons- the basics
Prisons - current issues
Participate in prison visit
Local government - the basics
Local government - current issues
Basics of the police system - first stage procedures
First stage determinations and assessment for reinvestigations
Current issues in the police system
Issues in Community Services
RTA complaints
Juvenile justice - the basics
Participate in visit to juvenile justice centre

SKILLS

Training on electronic mail and basic searches on parlaires and police system
Training on word perfect (2 day course)
Research resources- library; precedent files; past reports

FILES

Stats and recording of performance indicators eg constructive/remedial
Non jurisdictional matters
TINS
Preliminary inquiries (general)
Preliminary inquiries (police)
Terminating correspondence
Sections s16's
Section 19's -protocol, organisation etc

IDENTIFIED OUTSIDE TRAINING

(Examples only)
Negotiation/dealing with difficult complainants

Additional computer skills
Mediation skills

FUTURE INHOUSE TRAINING DISCUSSED AND IDENTIFIED

Internal training:

"Nuts and bolts" - one hour course basic conducted by PIO on investigative procedures, telephone protocols, house writing style. Attended by 3 SIOs, 15 IOs, 2 AIOs and 9 IAs. (A reminder course for experienced staff)

"Current issues in the Police area" - one hour briefing/discussion by Asst O (Police). Same attendance as above.

"Assessing complaints on the telephone" - 2hr course on identifying investigable complaints, jurisdiction, dealing with difficult complainants. Attended by all IAs, AIOs and 4 IOs (training package available)

"Handling police complaints" - 2 2hr sessions for new IOs, AIOs and IAs on the fundamentals of declines, PEs, investigation and first stage reports (training package available)

"Internal complaint handling mechanisms" - mediation, CHIPs and related issues. (one and a half hour session for IOs - conducted by SEA (police)(draft manual on internal complaints handling available)

"Current issues in the Department of Housing" - attended by all IOs and inquiry staff - conducted by two IOs specialising in Housing complaints

Two two-hour sessions on local government, attended by all investigation staff. Course designed and written by SIO, presented by Asst O (Local Government), SIO and IO (Local Government). Detailed training package available.

Entrepreneurial activity by Public Authorities; Big Government and small business. Briefing by 2 IOs regarding issues in the commercial area.

Mediation - briefing by Ombudsman on issues and future directions; two subsequent training sessions with expert mediators from UK and USA

Complaints about the RTA. Course run by specialist IO. Attended by IOs, AIOs and IAs. Detailed package available. (Course run twice, once for all staff and again in January 1993 for new inquiry staff and IOs)

How to assess complaints about DOCS- one hour course for new IOs and AIOs - conducted by SIO

How to assess complaints about prisons - one hour course for new staff - conducted by A/SIO

Current issues in local government and prisons - 1.5 hours - Assistant Ombudsman - all investigative staff.

External courses

"Child sexual assault- a Koori perspective" attended by IO (Aboriginal)

"Managing time" 2 IOs

"Managing human resources" - 3 SIOs

"Working on the front line" - 2 inquiry staff

Various conferences, seminars etc on juvenile justice issues etc attended by IOs specialising in the field.

Supervision course - 1 AIO

"Customer relations:quality service" - 1 A/AIO

"Communicating assertively" 2 IAs

"Children's Legal Services" 1 IO

Local Government and Planning workshop 1 IO

Lawyers and the Investigative function (Part of Advanced criminal law CLE program)- 4 IOs

Public interest law conference - 2 IOs

Family breakdown conference - 3 IOs

Women and prisons seminar - 2 IOs 1 SIO PIO

Telephone management workshop - 1 AIO

ANNEXURE C

Code of Conduct

THE OFFICE OF THE OMBUDSMAN

CODE OF CONDUCT

BACKGROUND

The Office of the Ombudsman is constituted under the Ombudsman Act, 1974. Its operations are governed principally by that Act and the Police Regulation (Allegations of Misconduct) Act, 1978. It also has specific operational responsibilities under the Freedom of Information Act, the Telecommunications (Interception) (New South Wales) Act and the Independent Commission Against Corruption Act.

The Office is accountable to the public of New South Wales through Parliament and its operations are essentially independent of the government of the day. The Office has a prime obligation to the public interest which demands that the work of the Office and the conduct of its officers and staff must maintain public confidence and trust.

The basic charter of the Office is to receive, investigate and report on complaints about the administrative conduct of public authorities and alleged misconduct of police officers, to determine complaints and, where appropriate, to make findings and recommendations.

The Mission of Office of the Ombudsman is to safeguard the public interest by

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

In pursuit of this mission the Office seeks the achievement and maintenance of high standards of conduct on the part of the State's public authorities. It seeks to maintain standards no less high on its own part.

INTRODUCTION

This Code applies to the Ombudsman and all staff of the Office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee for service basis. It is subject to annual review, and revision from time to time as circumstances require.

The code has been developed to provide practical guidance to all staff in their performance of their duties and in handling situations which may present ethical conflicts.

It sets out basic principles which officers and staff are expected to uphold and prescribes specific conduct in areas central to the exercise of the Ombudsman's functions and powers.

The document cannot cover every possible situation which may arise. If you are uncertain of what to do in a particular situation, ask your supervisor or a senior officer for guidance.

The code will be reviewed annually and updated. If you have comments or suggestions for improving the code, please give them to the Ombudsman.

BASIC PRINCIPLES

The public have a right to quality service from the Office of the Ombudsman. That service will be characterised by

- the vigorous pursuit of truth, without fear or favour
- courteous, attentive and sensitive treatment of individuals and organisations that the Office deals with
- conscientious and competent discharge of all duties and responsibilities
- fair procedures
- the setting aside of personal interests and views in discharging functions
- the efficient and effective use of the resources of the Office

LEGISLATIVE OBLIGATIONS

You are obliged to always act in accordance with the provisions of the legislation under which the Office undertakes its functions (Ombudsman Act 1974, Police Regulation (Allegations of Misconduct) Act 1978, Telecommunications (Interception)(New South Wales) Act 1987, Freedom of Information Act 1989, and Independent Commission Against Corruption Act 1988) and the Ombudsman's policies, directions and delegations as set out in memoranda and procedure manuals.

You are to become and remain fully conversant with those instruments.

You should also be conversant with the principal provisions of other public sector legislation having general effect upon the Office, including the Public Sector Management Act 1988, the Anti-Discrimination Act 1977, the Occupational Health and Safety Act 1983, and the Public Finance and Audit Act 1983 and observe them.

PERSONAL CONDUCT

You are to deal with other staff and the public with honesty, courtesy and consideration, and to refrain from conduct or behaviour which may damage the reputation and standing of the Office and its staff.

You must not discriminate or deal unfairly with complainants, public authorities or fellow officers on the grounds of:

- sex, age, marital status or pregnancy
- race, colour, nationality, ethnic or social origin
- physical or intellectual disability or impairment
- sexual preference, religious or political belief.

DRESS AND APPEARANCE

Officers dress and appearance needs to be appropriate to the formality of their official duties. Casual clothes are not to be worn on official visits or when interviewing public authorities. If involved in a section 19 hearing, officers are expected to dress to a standard that would be expected of legal representatives in a court.

PROFESSIONAL CONDUCT

You are expected to discharge your duties with care and thoroughness, in compliance with all lawful instructions and with close attention to:

- honesty and integrity
- accuracy and completeness
- consideration of all relevant facts
- particular merits of the case
- impartiality and procedural fairness
- equity and natural justice
- accountability
- consistency, all things being equal

- Office policy
- discretion and tact
- conflicts of interest

You must maintain adequate documentation to support any decisions made.

You must not unduly delay taking action or making decisions

Any verbal communications on sensitive or important matters are to be recorded accurately and immediately and brought to the attention of an appropriate senior officer.

CONFLICTS OF INTEREST

To maintain the integrity of the Office, personal interests (financial and otherwise), associations and activities must not conflict with your duties. The Ombudsman is entitled to know if there is even a remote possibility of a conflict arising.

You must make full and frank disclosure to the Principal Investigation Officer or the relevant statutory officer of any conflict, either real or potential, which may be seen to impact on the impartial exercise of your duties. If necessary, you must disqualify yourself from having any involvement in particular matters where that conflict arises.

If you are in any doubt whether to disclose a potential conflict of interest, you have an obligation to consult the Principal Investigation Officer or the relevant statutory officer. Such consultations will be treated confidentially and may avoid harm or embarrassment to the Office and yourself.

ACCEPTANCE OF GIFTS OR BENEFITS

You must not accept any gift or benefit that could be seen by a member of the public as intended or likely to cause you to do your job in a particular way, or deviate from usual procedures.

Generally any such offers should be declined except in cases where the offer is of some token kind and it would be rude or offensive to refuse, or where the offer is also to associates who share a common task and purpose and which does not impose any obligations that may conflict with your duties eg. modest hospitality offered on visits to institutions, during meetings of working parties, selection committees etc.

You must always decline offers from individuals or organisations that are complainants to the Office or that you know to be the subject of an investigation by the Ombudsman.

You must never solicit any money, gift, benefit, travel or hospitality in association with your duties.

CONSULTATION AND REPORTING

You have a duty to report any operational problem or difficulty you identify to your direct supervisor, or where appropriate, to a more senior officer.

You have a duty to consult your colleagues or supervisor when you have any doubt about the way in which you should exercise your delegated powers or fulfil your duties.

You have a duty to seek approval for any action that you do not have delegated authority to take or that is the subject of any specific direction or policy of the Ombudsman or a senior officer requiring consultation or approval.

You must report without delay to the Principal Investigation Officer or the relevant statutory officer any complaint that is made about the exercise of the functions of the Ombudsman or the conduct of yourself or another staff member.

You must inform the Ombudsman of any case where there is reason to suspect corrupt conduct within the meaning of the Independent Commission Against Corruption Act whether occurring within or outside the Office in view of his obligation of notification under the Act.

GENERAL ACCOUNTABILITY

You are responsible for your own acts and omissions and will be held responsible for them.

If you have a supervisory role, you will also be held responsible for any foreseeable acts and omissions of your staff which by their seriousness, repetition or common occurrence are matters that you should know of and correct if you are exercising responsible management, leadership and supervision.

If you have a supervisory role, you therefore have a duty to make sure the staff under your control or leadership have a clear understanding of their duties, how they are expected to perform those tasks, and what results are expected.

You must notify the Ombudsman or the relevant senior officer of any precautionary or remedial action that is necessary to take in respect of any staff under your leadership or supervision or any function or responsibility of the Ombudsman which you are unable to take yourself.

CONFIDENTIALITY

You must always comply with the obligations of confidentiality in respect of the work of the Office prescribed by the legislation under which the Office undertakes its investigations, monitoring and reporting.

You must not access or disclose any of the sensitive information that the Office receives or has access to except in the proper performance of your duties.

You must not use any information that you obtain in the course of your duties to gain improper advantage for yourself or for any other person, that would cause harm or discredit to the Office or any person, or would be inconsistent with your duties.

PUBLIC COMMENT

You must not engage in public comment, whether through public speaking engagements, comments to newspaper or radio or television journalists, letters or articles to newspapers or other publications that:

- comments on the work of the Office unless you have prior permission or delegated authority of the Ombudsman
- is the expression of private views but by implication is capable of being perceived as official comment from this Office

You can disclose official information which is normally given to members of the public seeking that information.

In discussing any other work of the Office outside the Office, you must confine yourself to material that has entered the public domain by way of Annual Reports, Special Reports to Parliaments, Reports of the Joint Parliamentary Committee on the Ombudsman, media releases authorised by the Ombudsman or public addresses given by the Ombudsman or other statutory officers.

You must refer all media enquires to the Media Officer unless you are the designated officer to take media calls in relation to some specific issue.

The constraints on public comment and the obligations to observe and protect confidentiality still apply when you leave the employ of the Ombudsman.

USE OF OFFICE RESOURCES

You must use any resources and equipment of the Office economically and without waste.

When using equipment you must exercise care and follow service requirements. When using shared equipment, you must ensure that your use does not unnecessarily impede access by others or assume unreasonable priority.

You must not use your work time or obtain or use stores items such as stationary, equipment or postage for a private purpose unrelated to the work of the Office unless authorised. There are some reasonable exceptions to this rule. For example, you may use the phone for private local calls if they are short, infrequent and do not interfere with work, and send and receive private fax messages as long as they are local, infrequent and do not interfere with the work of the Office.

When using Office resources for an authorised private purpose you must ensure that they are secure and properly cared for, used in your own time, do not interrupt the work of the Office or access by colleagues for official purposes, and supply any consumerables yourself.

When you leave the employ of the Ombudsman you must return all equipment and documents that belong to the Office.

You must not incur expenditure on behalf of the Office unless authorised. If incurring authorised expenditure, you must adhere to all relevant requirements of the Public Finance and Audit Act, Treasurer's Directions, Office policies and any financial delegations you have.

SECURITY

You must maintain security of the Office and any keys or mill keys that you have.

You must make yourself familiar with any security procedures followed in the Office including emergency and fire procedures.

OUTSIDE EMPLOYMENT

You must obtain approval for any outside employment that you are engaged in or considering.

You must not engage in any outside employment or remuneration that would conflict or compromise your duties as an Officer of the Ombudsman.

SANCTIONS

You should be aware of the various sanctions that may be applied for the breach of any provision in the legislation governing the work of the Ombudsman or your employment under the provisions of the Public Sector Management Act.

Sanctions may be applied if you are involved in:

- * unacceptable behaviour, either in the course of your duties or in your private life that would bring discredit on the Office of the Ombudsman or the public service
- * unsatisfactory performance of your duties
- * breaches of this Code of Conduct
- * breaches of your terms of employment
- * breaches of any provisions of the Acts mentioned in this code

Any sanctions applied will depend on the seriousness and nature of the breaches and may include counselling by a supervisor or member of senior staff, a record of behaviour being documented and placed in your personnel file, the deferment of salary increments, not being recommended for renewal of contract, formal disciplinary or criminal action.

I have read and understand the Office of the Ombudsman's Code of Conduct and agree to abide by its terms.

Signed _____

Date _____

ANNEXURE D

Clause 9 FOI Regulation

FREEDOM OF INFORMATION ACT 1989—REGULATION

(Relating to reports to Parliament)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Freedom of Information Act 1989, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY, M.P.,
Premier.

The Freedom of Information (General) Regulation 1989 is amended by omitting clause 9 and by inserting instead the following clause:

Reports to Parliament

9. (1) An annual report prepared by an agency:
- (a) must include the required information for the year concerned; and
 - (b) must also include an assessment of that information.
- (2) The required information must be set out in the form required by the relevant section of Appendix B to the FOI Procedure Manual.
- (3) An assessment of the required information for a particular year must include:
- (a) a comparison of that information with the required information for the previous year; and
 - (b) an assessment of the impact during that year on the agency's activities of the FOI requirements; and
 - (c) particulars of any major issues that have arisen during that year in connection with the agency's compliance with the FOI requirements; and
 - (d) particulars of the circumstances in which there have been any inquiries under the Act by the Ombudsman or any appeals under the Act to the District Court or the Supreme Court; and
 - (e) particulars of the outcomes of any such inquiries and appeals.
- (4) In this clause:
- “FOI Procedure Manual” means the document entitled “Freedom of Information Procedure Manual (2nd edition)”, issued by the Premier's Department, as published on 30 June 1991;
- “FOI requirements”, in relation to an agency, means the requirements imposed on the agency by the Act;
- “required information” means the information required by sections A–L of Appendix B to the FOI Procedure Manual.

EXPLANATORY NOTE

The object of this Regulation is to amend the Freedom of Information (General) Regulation 1989 as a consequence of the amendment of the Freedom of Information Act 1989 by the Statute Law (Miscellaneous Provisions) (No. 2) Act 1991. The amendment prescribes the information to be included in an annual report under section 68 of the Act and further prescribes the form in which that information is to be set out.

ANNEXURE E

Cost of Correctional Visits

The total is therefore as follows:-

| | |
|-------------------------------|------------------|
| Additional staff cost: | \$302,686 |
| Terminals, car and furniture: | <u>\$ 51,100</u> |
| | \$353,786 |

2. VISITS TO PRISONS

I have done this in two parts: the salary cost and the travel/subsistence cost.

Salary cost

In working out these costs I have combined the daily rate for the two officers at the maximum rate for their grade eg Mulawa is visited by an SIO/IO team so the cost of a day trip is \$177.52 (max grade 10) plus \$156.94 (max grade 8) = \$334.46

There are 14 metropolitan prisons (including 1 to be opened in September).

The salary costs of a one day visit are:-

| | |
|-------------------|-----------------|
| Reception | \$313.88 |
| Assessment | \$313.88 |
| Remand | \$313.88 |
| Special Purposes | \$365.85 |
| Long Bay Hospital | \$313.88 |
| Parklea* | \$334.46 |
| Special Care Unit | \$313.88 |
| John Moroney* | \$313.88 |
| Mulawa | \$334.46 |
| Parramatta* | \$285.67 |
| Training Centre | \$334.46 |
| Norma Parker | \$313.88 |
| Silverwater | \$313.88 |
| Emu Plains* | <u>\$285.67</u> |
| | \$4,451.61 |

The * refers to visits where Clause 36 meal money would be paid and these figures are covered below.

On the basis of 4 visits per year the salary cost is \$17,806.44: i.e. about half a grade 6 officer.

There are 15 country prisons where an overnight stay is required so I have set out the salary cost for a two day visit. The locations are grouped so as all are visited in the one trip:-

| | |
|------------------------------|-----------|
| Goulburn/Berrima | \$627.76 |
| Bathurst/Oberon/Kirconnell | \$748.58 |
| Maitland/Cessnock/St.Heliers | \$627.76 |
| Lithgow/Newnes | \$1086.74 |
| Cooma/Manus | \$1045.58 |
| Broken Hill (3 days) | \$941.64 |
| Grafton/Glen Innes | \$1045.58 |
| | \$6123.64 |

On the basis of 3 visits per year the salary cost is \$18,370.92: i.e. about half a grade 6 officer.

Travel/Subsistence Costs

Metropolitan Visits

Four prison visits entitled officers to lunch money under Clause 36. The cost for 2 officers, over 4 prisons is $\$21.60 \times 4 = \86.40 .

At 4 visits per prison per year the total cost = \$345.60.

Country Visits

Goulburn/Berrima (2 days)

2 officers subsistence at \$106.50 per day (assume 34 hours) office car used. \$301.75

Bathurst/Oberon/Kirconnell

2 officers at \$106.50 assume arrival in Bathurst night before and return two days later (assume 50 hours) office car used. \$444.00

Maitland/Cessnock/St Heliers

2 officers at \$106.50 (assume 40 hours) \$355.20

Lithgow/Newes

| | |
|-----------------|----------|
| As for Goulburn | \$301.75 |
|-----------------|----------|

Cooma/Manus

(includes Riverina Detention Centre).

2 officers at \$106.50 (assume 36 hours) = \$319.68

Airfares: \$280/person

Car Hire: \$340

| | |
|--------------|------------|
| <u>Total</u> | \$1,219.68 |
|--------------|------------|

Grafton/Glen Innes2 officers at \$106.50
(assume 40 hours) = \$355.20

Airfares: \$710

Car Hire: \$315

| | |
|--------------|------------|
| <u>Total</u> | \$1,380.20 |
|--------------|------------|

Broken Hill2 officers at \$106.50
(assume 48 hours) = \$426.24

Airfares: \$1,264

Taxi fares: \$ 50

| | |
|--------------|------------|
| <u>Total</u> | \$1,740.24 |
|--------------|------------|

Total cost of one visit to all country prisons = \$5,742.82

Therefore total cost of 3 visits per year per prison = \$17,228.46

3

Visits to Detention CentresSalary cost

I did the same exercise as was done for prisons. There are 5 metropolitan centres:-

| | |
|---------|-----------------|
| Yasmar | \$313.88 |
| Minda | \$287.67 |
| Reiby* | \$287.67 |
| Ormond | \$334.46 |
| Cobham* | <u>\$346.08</u> |
| | \$1,569.76 |

The Clause 36 money (*) will be covered below.

On the basis all of these centres are visited on the same frequency as prisons the total salary cost is $\$1,569.76 \times 4 = \underline{\$6,279.04}$

Two non Metropolitan centres also get one day visits

| | |
|-------------|-----------------|
| Keelong* | \$287.67 |
| Mt. Penang* | <u>\$313.88</u> |
| | \$601.55 |

On 3 visits per year the salary cost is $\$601.55 \times 3 = \underline{\$1,804.65}$

Two non Metropolitan centres receive visits requiring overnight stays. Riverina is done in conjunction with a prison visit but I have counted it again on the basis a visit could be made to that centre alone. The salary costs are:-

| | |
|----------|------------------|
| Riverina | \$1,045.58 |
| Worrimi | <u>\$ 627.76</u> |
| | \$1,673.34 |

On the basis of 3 visits per year the salary cost is $\$1,673.34 \times 3 = \$5,020.02$.

The salary cost of visiting all such centres at the frequency shown is \$13,103.71: i.e. about the cost of half a grade 2 officer.

Travel/Subsistence Costs

The Clause 36 costs for visiting the 4 centres where lunch/dinner money would be paid totals \$420.00, allowing for all visits in a year.

The travel costs to Riverina have been counted above in the prison figures but assume a trip to the Centre alone:-

| | |
|---|--------------------|
| 2 officers at \$106.50 (assume 24 hours) = \$213 | |
| Airfares: \$552 | |
| Taxi: \$ 30 | |
| | <u>Total \$795</u> |

Worrimi

| | |
|---|--------------------|
| 2 officers at \$106.50 (assume 24 hours) = \$213 | |
| Use office car. | |
| | <u>Total \$213</u> |

Therefore the cost of 3 visits per year to both centres is \$3,024

ANNEXURE F

Letter to Friends of Ombudsman



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

Our reference:

Your reference:

1-

31 July 1992

Dear 2-

The Joint Parliamentary Committee on the Office of the Ombudsman has responded to my reports of financial crisis and has decided to examine the adequacy of the office's resources and budget.

The committee announced its inquiry on 6 July. The terms of reference are 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.

This is the committee's second inquiry into the operations of the Office of the Ombudsman. When it recently investigated the handling of police complaints, among other aspects, it recommended an increase in the Ombudsman's powers, including the power of direct investigation.

I asked for those changes and I'm most pleased with the recommendations to improve the police complaints system. But I think everyone recognises that increased powers without adequate resources is a hollow victory.

This is the first review of the office's resource base since it was established 17 years ago. I hope the committee will investigate right across the board and look closely at the office's independence.

The forced cutbacks to services for rural complainants and other disadvantaged groups and the overall impact of additional jurisdictions and functions cry out for urgent attention and I will press these matters with the committee.

As our respective organisations frequently have issues and views in common, I am drawing your attention to this inquiry in the belief that the committee would be interested in your views on this Office's ability to function effectively.

Submissions should be forwarded to:

Clerk to the Committee
Committee on the Office of the Ombudsman
Parliament House
Macquarie Street
Sydney NSW 2000

Enquires: (02) 251 4084

Although, the closing date for submissions is 7 August 1992, if you wish to make a submission, I'm sure the chairman will make adequate provision for you.

I have enclosed with this letter a brief background document which highlights the effects of inadequate funding. If you would like further information, please contact either myself or my media officer, Julie Linsley.

Yours sincerely,

David Landa
OMBUDSMAN

ANNEXURE G

Background Paper

BACKGROUND PAPER

INADEQUATE FUNDING OMBUDSMAN SQUEEZED OUT

The ability of the Office of the Ombudsman to perform its basic public duties has been seriously eroded over the past few years. Essentially, demand has outstripped supply, yet Treasury refuses to concede that the office is driven by this demand and insists I balance the books by declining to investigate valid complaints.

Treasury's power to dictate public access to this office amounts to an erosion of my independence. It removes a fundamental public right to bring issues forward confident in the belief they will be investigated.

Some problems can't be fixed by throwing money at them. Others repay the original small investment many times over. This is one such case. This problem can be fixed for about \$500,000.

An insufficient budget means I have been forced to implement a harsh decline policy. I'm telling every second person who complains to me I cannot take up their grievance in any way. Last financial year I was only turning away one in every three.

STATE ASSET

About 12,000 people bring their dissatisfactions to us each year, either over the telephone or in person. Close on 5,800 lodge formal written complaints. Without the Ombudsman's office, these people would need to find other avenues. Many would litigate, pressuring the over-crowded court system and placing further demands on legal aid. Many others would be left to suffer injustice, unheard.

Often a problem arises from a systemic fault in a government authority's procedures. The intervention of an experienced, independent investigator can identify and fix faults which are often immune to internal review. In these cases the actual or potential savings to the government authority can be substantial.

Increasing the budget by \$500,000 would allow this office to meet its statutory obligations and to continue saving both the state and the tax payers money.

THE URBAN OMBUDSMAN

My current decline policy is only holding the complaint numbers to a base line which was insufficiently resourced in the first place. I reported to Parliament about my resource problems on 19 July 1990 and again on 21 June 1991.

Those reports highlighted the fact that my services were increasingly becoming the preserve of the metropolitan middle class as I had insufficient funds for country travel.

Similarly, in the past year I have had to suspend nearly all visits to country gaols and juvenile detention centres because of inadequate funding.

MINORITY GROUPS

One of the most distressing and unfair aspects of the situation is its impact on those sectors of the community with the greatest needs.

Young people, especially those in custody, need ready and consistent access to an independent arbiter. Under present arrangements, they are losing faith in the NSW Ombudsman, as I am not properly meeting their needs.

As there are no funds for a research or public education budget, I can not assess the awareness or needs of clients, especially the Aboriginal community and those from non English speaking backgrounds.

FUTURE BUDGETS

In past years, I have cut severely into our non-salaries budget to meet the productivity savings imposed on this Office by the Treasury and to meet the increased demand for this Office's services.

There is now no room for further cost savings and I have no option but to dismiss staff or leave positions unfilled in the coming year. As the majority of my staff are investigators, the inevitable consequence is that the already overstretched investigative capacity of this office will be decimated.

INCREASING DEMAND

Treasury refuses to concede that the work of this office is demand driven. It insists I can simply use my discretionary powers to decline more complaints to control complaint numbers without the need for increased resources. That is absurd.

The implementation of a drastic decline policy, the forced use of discretionary powers

to refuse to take up valid complaints and the restructure of work flows have not been sufficient to offset the effect of the dramatic increase in complaints received over the last four years.

As a result of these restrictions, less than 85 per cent of written complaints result in a formal investigation. To expect this rate to be decreased even more would be irresponsible in the extreme. To do so would be to abdicate the Ombudsman's statutory obligations.

CREDIBILITY

When I came into this office four years ago, I inherited a well funded organisation, with sufficient funds to cope with the workload. The institution had been built into a viable asset which enhanced the integrity of government. That workload has since increased by 32 per cent, yet my budget has declined.

For the last two years the very independence of the Office has been steadily eroded to the point where the asset faces bankruptcy and is unable to act effectively. Ultimately, it will cease to be credible.

OTHER STATES

Similar financial dilemmas have existed in each other state and with the Commonwealth Ombudsman. Except for WA, every state has acknowledged the problem and granted additional funds to the Office of the Ombudsman.

New Zealand has granted an eight per cent increase in funds, recognising the added need for its Ombudsman to be adequately funded as budget restraint bears down on public services generally.

Significantly, the Commonwealth Government recently accepted a Senate Committee recommendation to substantially increase the Commonwealth Ombudsman's budget.

Issued by David Landa, NSW Ombudsman
3rd Floor, 580 George St, Sydney 2000
Ph: (02) 286 1000
July 1992

APPENDIX 8

List of Ombudsman's Special Reports to Parliament as at October 1993

Special Report to Parliament, under section 32 of the Police Regulation (Allegations and Misconduct) Act and under section 31 of the Ombudsman Act, Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations (No. 18).

Special Reports to Parliament under sections 26 and 31 of the Ombudsman Act 1974, on the Administration of the Local Government and Community Housing Program, by the Department of Housing, dated 25 February 1993.

Special Report to Parliament pursuant to section 31 of the Ombudsman Act concerning the enforcement of the Parliamentary Electorates and Elections Act, 1912 and Associated Electoral Legislation, dated 4 March 1993 (No. 27).

Special Report to Parliament under section 32 of the Police Regulation (Allegations of Misconduct) Act 1978, concerning Public Interest in releasing the Ombudsman's Report on Allegations of Police Bias Against Asian Students, dated 25 June 1993 (No. 118).

Special Report to Parliament pursuant to section 31 of the Ombudsman Act on an Investigation into the Conduct of the Department of Community Services and Certain Officers in relation to Brougham Residential unit, dated 12 August 1993 (No. 100).

Special Report to Parliament under section 31 of the Ombudsman Act 1974 entitled the Neary/SRA Report, dated 12 October 1993 (No. 136).

APPENDIX 9
Joint Committee on the Office of the Ombudsman
Minutes of Proceedings



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

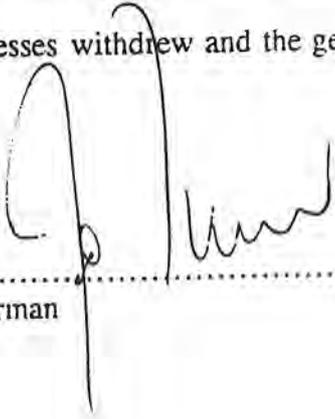
Mr B. Morris, Mr A. Windsor.

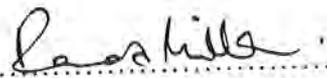
The Committee asked the Ombudsman, Mr Landa, and the Deputy Ombudsman, Mr Pinnock, further questions to those given on notice to the Ombudsman prior to the meeting. The Ombudsman's written answers to the questions on notice from the Committee had been distributed prior to the meeting and were tabled 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.


.....
Chairman


.....
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 Arkininstall (Consultant).

Apologies

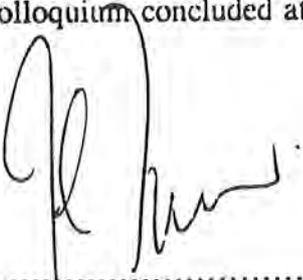
The Hon. L. Coleman, The Hon. S. Mutch, Mr B. Morris.

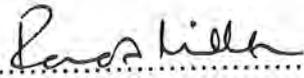
The Chairman opened the meeting and continued the colloquium with the Ombudsman from 25 March, 1993.

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.


.....
Chairman


.....
Clerk



COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

**MINUTES OF THE MEETING HELD AT 1.00 P.M. ON
THURSDAY, 28 OCTOBER, 1993 IN
ROOM 1136, PARLIAMENT HOUSE, SYDNEY.**

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr M. Kerr, Mr A. Humpherson, Mr K. Moss, Mr A. Windsor, Mr A. Fraser.

Apologies: Mr P. Scully.

In attendance: Helen Minnican (Project Officer).

Mr Mutch, Vice-Chairman to the Committee, announced that as recorded in the Votes and Proceedings for 12 October, 1993 Mr Turner had been discharged and thus ceased to hold office as Chairman.

In accordance with section 31E of the Ombudsman Act the Vice-Chairman called for nominations for a new Chairman.

Mr Kerr nominated Mr Fraser for the office of Chairman, seconded by Mr Humpherson. No other nominations being moved the question was put and passed that Mr Fraser be elected Chairman of the Joint Committee on the Office of the Ombudsman.

Mr Fraser took the Chair and welcomed Mr Humpherson who had replaced Mr B. Morris (resigned 13/10/93) and thanked the Committee for its support.

Committee agreed to hold its next meeting in the week commencing 16 November, 1993 at 1.00 p.m.

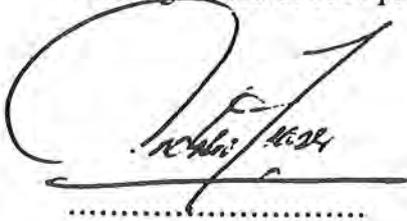
Mr Moss made a motion which was subsequently withdrawn.

Debate ensued.

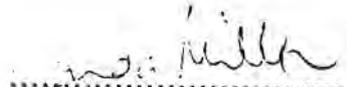
The Committee resolved that:

"It should be formally noted in the minutes of the meeting that the Committee feels the comments made by the Member for Myall Lakes regarding the Ombudsman and Dr M Burgmann, when presenting the Committee's report in the Parliament on the adequacy of the funds and resources available to the Ombudsman, do not necessarily reflect the views of the Committee."

Meeting closed at 1.24 p.m.

A large, stylized handwritten signature in black ink, appearing to be 'D. F. ...', written over a horizontal dotted line.

CHAIRMAN

A smaller, cursive handwritten signature in black ink, appearing to be 'M. ...', written over a horizontal dotted line.

CLERK



COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

MINUTES OF THE MEETING HELD AT 1.00 P.M. ON
THURSDAY, 18 NOVEMBER, 1993 IN
ROOM 1043, PARLIAMENT HOUSE, SYDNEY.

Members present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. L. Coleman, The Hon. S. Mutch (Vice-Chairman)

LEGISLATIVE ASSEMBLY

Mr A. Fraser (Chairman), Mr A. Humpherson, Mr A. Windsor, Mr. Mr C. Scully.

Apologies: Mr K. Moss and Mr M. Kerr.

In attendance: Helen Minnican (Project Officer).

On the Motion of Dr Burgmann, seconded by Mr Windsor the minutes of the meeting held on 30 August 1993 and 28 October 1993 were taken as read and confirmed. The Committee resolved to advise Mr Landa of the motion passed on 28 October 1993 in relation to the Funds and Resources Inquiry and comments by the former Chairman.

On the Motion of Mr Coleman, seconded by Mr Scully, the Committee resolved to write to KPMG Peat Marwick requesting that it provide all documents relating to the Management Review of the Ombudsman's Office, including material gathered from the public authorities survey. The survey material would remain confidential to the Committee. The Committee also resolved to write to the Ombudsman confirming that it was unable to supply the material he had requested.

On the Motion of Mr Windsor, seconded by Mr Coleman, the Committee resolved to respond to Ms A Simpson of Clifton Gardens concerning her FOI complaint.

On the Motion of Mr Scully, seconded by Mr Coleman, the Committee resolved to respond to Dr King's correspondence regarding the Ombudsman's handling of his complaint.

The Committee noted the late submission submitted by the New South Wales Council for Civil Liberties dated 4 August 1993.

The Committee noted and discussed a letter from the Director-General of Cabinet Office to the Chairman, dated 1993, concerning a request for advice from the Committee about consultation with the Ombudsman on legislative proposals affecting his Office or jurisdiction.

The Committee decided to defer deliberating on a letter from the Ombudsman dated 2 August 1993.

General Meeting Report

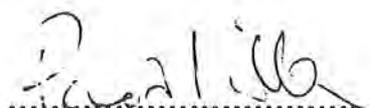
The Committee deliberated on the draft Report on its General Meeting with the New South Wales Ombudsman, Mr David Landa. The Committee resolved to seek advice from the Crown Solicitor regarding certain provisions of the Statutory Appointments Legislation (Parliamentary Veto) Amendment Act and agreed upon amendments to this section of the report.

Recent correspondence from Mr R Wilkins, Director-General of The Cabinet Office was noted. The Committee resolved to amend the draft report and to circulate the proposed amendments to Members for comment. If consensus was obtained the amendments would be incorporated into the report which would then be tabled. If a consensus was not reached the Committee would reconvene to discuss the report.

Meeting closed at 2.00 p.m.



.....
CHAIRMAN



.....
CLERK