

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE
POLICE INTEGRITY COMMISSION**

**SIXTEENTH GENERAL MEETING WITH
THE NSW OMBUDSMAN**

At Sydney on Monday 30 November 2009

The Committee met at 2.00 p.m.

PRESENT

Mr K. A. Hickey (Chair)

Legislative Council

Ms S. P. Hale
The Hon. Charlie Lynn
The Hon. L. J. Voltz

Legislative Assembly

Mr Peter Draper:
Mr M. J. Kerr
Mr P. R. Pearce

BRUCE ALEXANDER BARBOUR, NSW Ombudsman, of level 24, 580 George Street, Sydney, and

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, of level 24, 580 George Street, Sydney, and

STEVEN JOHN KINMOND, Deputy Ombudsman and Community and Disability Services Commissioner, of level 24, 580 George Street, Sydney, and

GREGORY ROBERT ANDREWS, Deputy Ombudsman, of level 24, 580 George Street, Sydney, affirmed and examined:

CHAIR: Mr Barbour, your appearance before this Committee is to provide information for the general meeting in relation to the wide range of matters concerning your office in accordance with the Committee's statutory functions. In what capacity do you appear before the Committee?

Mr BARBOUR: I am the NSW Ombudsman and I appear before the Committee in that capacity.

Mr WHEELER: I appear as the Deputy Ombudsman.

Mr KINMOND: I appear as Deputy Ombudsman and Community and Disability Services Commissioner.

Mr ANDREWS: I appear as Deputy Ombudsman.

CHAIR: Mr Barbour, the Committee has received your submission dated 23 October 2009 that consists of your response to questions on notice concerning the 2008-09 annual report. Do you want that submission to form part of your formal evidence?

Mr BARBOUR: Yes.

CHAIR: Do you want to make an opening statement?

Mr BARBOUR: Yes. I appreciate the opportunity to address the Committee briefly. As it has only been five months since our last meeting, I will focus on just four issues, largely providing the Committee with updates on matters we discussed when we last met. These are: our current workload, changes to our structure, ongoing financial pressures, and several continuing issues of concern that impact negatively on our work. Our finalised figures for 2008-09, on which we reported in our annual report, show we dealt with approximately 33,000 matters last year. As you know, how we deal with these ranges from quick informal advice through to large-scale investigations. Since 1 July 2009, we have received more than 3,000 complaints and notifications, and almost 10,000 inquiries. However, the number of matters we deal with is an incomplete indicator of the level and nature of the work that we undertake, especially in the area of complaints and notifications.

As you know, our focus is on achieving the best possible result for the people of New South Wales. We can achieve significant and wide-ranging outcomes by identifying possible systemic failings and gaps in service provision and conducting targeted investigations. Such investigations often focus on multiple government and occasionally non-government agencies providing services to some of the most vulnerable members of our community. We often see policies and procedures that are well intended, but when we speak with those providing and receiving services, they are either not effective or are not being implemented correctly. Given the considerable resources provided to implement such policies, it is important to ensure they are delivering what they are supposed to.

Two recent examples of such work are our reviews of: the standard of services and support provided to those living in social housing, and the Department of Ageing Disability and Home Care's work for and with Aboriginal communities. Working with agencies to improve their own systems can also result in better outcomes. We continue to work closely with both government and non-government agencies to improve their respective complaint handling systems. We encourage agencies to change their view about complaints, to see them as an opportunity to improve their systems, working smarter and more efficiently into the future. Resolving issues without involving my office can also help to prevent bad feeling between a complainant and an agency, helping them to maintain a positive future relationship.

In a number of areas where we have oversight functions, once agencies have demonstrated they do have good systems to deal with matters appropriately, we work with them to develop an agreement whereby they deal with less serious matters themselves. We can then move to auditing them from time to time to ensure matters continue to be handled well. For example, we have these class and kind agreements, in place with the NSW Police Force, several Catholic Archdiocese, Community Services, Juvenile Justice and the Department of Education and Training. While these agreements and improved systems are an effective method of dealing with relatively minor matters, it is not surprising that more serious or complex matters continue to come to us. This is why complaint numbers alone are not a good indicator of the amount of work involved in dealing effectively with complaints.

Less serious complaints are able to be dealt with quickly and informally, whereas more serious matters often require a greater amount of time and resources, more research, and the use of coercive powers to require the production of information and compel people to answer questions. But it is not just the nature of our complaint and investigative work that creates greater challenges, there is also the impact of ongoing reductions to our budget. I raised the issue of financial pressures during our last general meeting. We are constantly working to be as efficient as possible, however there is only so much we can do before it impacts on our work. Almost 80 per cent of our budget goes towards our staffing costs.

As a consequence of financial pressures on the office resulting from unfunded pay increases and efficiency dividends, we are forced to regularly reassess and to be even more strategic about the way we do our work, and what work we do. Reviewing and changing the structure of the office has been one strategy we have

adopted. Following a wide-ranging review, our office is now made up of four branches, which in turn are divided into divisions. These are the public administration and strategic projects branch, the human services branch, the police and compliance branch—each headed by a Deputy Ombudsman and the corporate branch, which reports directly to me through the Director Corporate.

As part of this restructure, I have also deleted a number of senior positions. This allows the office to maintain as many front-line investigation staff as possible. I have deleted two Assistant Ombudsman positions and two Legal Officer positions. I would like to thank my senior staff for agreeing to take on a substantially heavier workload in order to avoid us having to reduce our frontline workforce. However, even these savings will not be enough to counteract the pressures placed on our budget. The reality is this: reducing our staffing levels will mean we will not be able to get through the same volume of work as in previous years. This will mean that we must decline or refer more matters to agencies to deal with which we would previously have dealt with. This is, of course, limited to the areas in which we have discretion as to what work we do, because so many areas of our work gives us no discretion. In August, I wrote to all members of Parliament to make them aware of the potential impact of these changes.

I continue to be disappointed by the Government's reliance on blanket efficiency dividends as a strategy to reduce government expenditure. It is in my view a short-sighted policy, as it fails to have regard to the positive contribution organisations such as ours can and do make to improving government efficiency. We work with agencies to improve their systems, in turn helping them to become more efficient and more effective. In this way, a relatively small amount of funding can make a very real difference. The arbitrary application and enforcement of efficiency dividends with no consideration of the differing ability of larger and smaller agencies to meet the requirement and their respective functions and level of efficiency is counterproductive and poor administrative practice. I referred the Committee at the last meeting to the recommendation made by a Federal joint parliamentary committee that certain smaller agencies should be exempted from such a dividend.

Such a change, however, would only deal with one aspect of the problem, as unfunded pay increases continue to be the major drain on our budget. As I noted in our answers to the Committee's questions on notice, our Savings Implementation Plan, which has been signed off by both the Department of Premier and Cabinet and Treasury, noted that by the third year of the current salary award, we will need to find savings of \$845,000 each year just to meet the cost of the pay increases. This is the equivalent of more than 11 front-line investigation positions, and if continued will significantly hamper the office's ability to help the people of this State.

Not all of the issues we are facing are quite so complicated. I would like to turn now to two current problems I believe can and should be solved quickly and easily. The first is not new to the Committee, as you have also sought action from government on our behalf. At our Fourteenth Meeting in 2008, I asked for the Committee's assistance in obtaining an amendment to our Act to prevent agencies from being able to claim legal professional privilege in response to an investigation by my office. As you know, the current wording of our Act allows a public authority to

refuse to provide my office with information over which it claims such privilege. I thank the Committee for their efforts in writing to both the Premier and the Attorney General seeking an amendment. I also noted your comments in the report following our last meeting that you are yet to receive a response.

Mine is the only Ombudsman office in Australia operating under such a restriction. I recently wrote to other parliamentary Ombudsmen across the country, seeking their views on the operation of the relevant sections of their Acts. All told me that they have not experienced any difficulty with such claims. If an agency attempted to rely on a claim of privilege, they were referred to the relevant section of their Act, resolving the matter quickly and easily. I have written to the Premier and the Director General of the Department of Premier and Cabinet requesting an amendment numerous times over the past two years. After following up again in September this year, I received a response from the Deputy Director General stating that draft legislation was still being prepared for consideration by the Government in the near future.

I wrote back, seeking clarification around what this amendment was, and when it would go before Parliament, requesting a response before our meeting today in order to allow me to brief you on the progress of the amendment. I received a response on Friday. Regrettably, the letter is yet another in a string of unhelpful fob offs. In part, the letter states:

In my letter of October 2009, I noted that draft legislation was being developed for the Government's consideration in relation to your suggested amendment.

As you will appreciate, the Government regularly considers proposals for legislative amendments across a wide range of areas. It is ultimately a matter for the elected government of the day to determine its legislative program, including when it will consider particular proposals for legislative amendments and, if approved, when those proposed amendments will be introduced.

It is unclear to me why an amending bill is still being drafted. I was provided with a draft bill for comment a year ago. I suggested a number of changes, some of which were made on the draft. The proposed amendment was not ideal, but it was an improvement although far narrower than similar legislation in other States.

Mr PAUL PEARCE: Who wrote that letter, who signed it?

Mr BARBOUR: It was signed by the Deputy Director General of Premier and Cabinet, Ms Leigh Sanderson.

However, that bill was pulled before it went to Parliament. The change required is not complex. It requires the removal of eight words, "other than a claim of legal professional privilege", which are repeated twice in the Act. All the bill requires is that they be removed. As this issue is still not resolved, I am now considering a brief special report to Parliament outlining the need for change, for tabling early in the new year. This restriction continues to hamper our work, and in my view there is no sound public policy for delaying amendment and continuing to support agencies not providing documents that they should to the Ombudsman's office.

The second issue is related to our proposed new role of coordinating the work of the State's Child Death Review Team. In his final report into the child protection system, former Justice James Wood recommended that my office be responsible for supporting and coordinating the work of the Child Death Review Team, known as the CDRT. Until now this role has been performed by the Commissioner for Children and Young People, at the CCYP. Although the Government initially opposed Justice Wood's recommendation, when the implementing legislation went before Parliament it was amended to honour the original recommendation.

That was the start of what has become a difficult and, on occasion, frustrating process. The CCYP's advice to me was that the budget for the team is currently \$220,000. I do not believe this level of funding is sufficient to allow for the team to achieve its intended outcomes; a view which is not only my view, but a view that is shared by current members of that team as well as the most recent former Commissioner for Children and Young People. My office has estimated that \$550,000 each year is needed to do this. This is an important role, and it should be funded accordingly. But funding is not the only sticking point.

At the moment the CCYP must seek the approval of the Minister for Youth before conducting research. We are independent of the government of the day, and this requirement would hamper that independence and should be removed. I also believe the function should sit within legislation dealing with the Ombudsman's community service functions and not the Commission for Children and Young People's Act. This would involve moving the function to the Community Services (Complaints, Reviews and Monitoring) Act, which already deals with our other reviewable death work. Any such amendment would also ensure that the responsibility for overseeing our work with the CDRT would become a function of this Committee. This would avoid my office being oversighted by two parliamentary committees, with the attendant unnecessary duplication, confusion and limitations which would arise. I wrote to the Director General of Premier and Cabinet on 2 November requesting the resolution of these matters.

I have spoken briefly about privilege and the CDRT as I believe the Committee, as our oversight body, should be well informed about issues which I believe prejudice our work, our efficiency or our independence. Mr Chair and Committee members, I am most happy, as are my senior staff, to answer any questions you have for us.

CHAIR: Thank you for that very comprehensive opening statement, Mr Barbour. Has there been any progress made with Corrective Services over the issue of access by official visitors to the correctional centres?

Mr BARBOUR: No, there has not been any progress in relation to that issue. The situation basically remains the same as we have previously briefed the Committee. We are invited to speak at regional or annual conferences but we were not invited to speak at the most recent induction training of visitors. We receive copies of their reports to both the Commissioner and the Minister. Indeed, we have received recently an anonymous complaint from a visitor concerned at the existing procedures and the very significant role that the department has in their work and their coordination. We have written to the Minister responsible to ask for his

comments in relation to that. But, in short, there has been no change to that situation.

CHAIR: Your annual report notes a 25 per cent increase in issues raised by official community visitors. What is the most common of these and was your office able to assist?

Mr BARBOUR: Usually the concerns that are raised by visitors are about the quality of care and the provision of planning for those within community care. They account for the largest number of matters. The Official Community Visitor annual report is complete and is currently being printed and will be tabled very shortly in Parliament, and that will provide a very comprehensive outline of the exact number of issues and how they are being resolved and dealt with.

Mr MALCOLM KERR: Mr Barbour, you mentioned in your opening address the need for further funding with the responsibilities you have with young people and children and said the former Commissioner for Children and Young People agreed with that. Who was that former Commissioner?

Mr BARBOUR: That was the most immediate former Commissioner, Ms Gaye Phillips. She was in the role for only a very short period of time and resigned recently. In earlier meetings with her, both privately and also with members of the CDRT in her role as convenor of that, those issues were canvassed. For the benefit of the Committee, one of the reasons the sum of money that has been nominated by the Commission is problematic is because the Commission provided support to the CDRT by way of significant research capacity and various other things, which have not been factored into that. In trying to look at the obligations on the CDRT and how they need to perform their work and what outcomes are desired, it was very clear to us that that amount of money would not go anywhere near what was required to be able to do that effectively. I certainly think that view is supported by the majority of members currently on that team.

Mr MALCOLM KERR: What is the practical effect of that shortfall?

Mr BARBOUR: Until now the CDRT has done the work in the way that it has. In our view there is an opportunity to build on that work and to provide far more significant outcomes by way of more detailed research, more detailed reporting, much more analysis, and more effort in terms of looking at what is happening in overseas trends and other jurisdictions. Certainly, if the role comes to us—at the moment it seems to be on hold—that would be my intent as convenor: to work with the committee to ensure that we provide more effective outcomes in the future and build on the work done to date.

The Hon. LYNDIA VOLTZ: I want to take you to the staffing levels in your annual report. I would like an explanation. In the \$88,000 to \$110,000 band you have 20 men and 21 women, which is about reflective of what you would see in the community, yet in nearly all the bands under that overwhelmingly the staff are female, from the \$68,000-\$88,000 band down to the \$36,000-\$48,000 band. Would you not expect to see that staffing level reflected in the upper bands if those were your staffing levels in the lower bands?

Mr BARBOUR: Yes, that would be the case. In terms of the number of women in senior positions, one of the regrettable consequences of the recent restructure has been that one senior female retired and another senior female was in an Assistant Ombudsman role, which has now been terminated. Certainly it will be my intent to recruit appropriately to all positions and if that sees the number of women in senior positions go up I think that will be excellent.

The Hon. LYNDA VOLTZ: But is there not an issue with the skewing of employment of women in those lower bands?

Mr BARBOUR: No, I do not think so.

The Hon. LYNDA VOLTZ: Is there a reason why you would not see it as reflective of the community?

Mr BARBOUR: I think the best people get the jobs in the office and if that means there are more women as a whole employed within the organisation than men I think that is fine.

The Hon. LYNDA VOLTZ: You do not see it as an issue that the women are in the lower paid jobs?

Mr BARBOUR: No, what I am recognising is that overall the staff of the Ombudsman is clearly reflective of a very open recruitment policy and the large number of women in our office demonstrates that. The number of positions in senior roles does not move quite as rapidly or as quickly as many of the junior positions so the opportunity for turnover is not as great. The policies in place ensure there is equity in terms of employment and that is certainly a principle that I would support.

The Hon. CHARLIE LYNN: Going back to the statement you made about departments using privilege and the impact it has, are you saying we are out of step with all the other States in this regard?

Mr BARBOUR: Yes, that is right.

The Hon. CHARLIE LYNN: As a rule of thumb, how many departments would use that mechanism?

Mr BARBOUR: It is not so much how many departments use it but in what circumstances they might use it. I think the reason legislation in other States makes clear that legal professional privilege does not permit an agency to not provide documents to the Ombudsman is to ensure the Ombudsman is able to get a complete view of exactly what is happening and determine the matter appropriately. Clearly, preventing the Ombudsman from receiving information that the agency believes is privileged—it is not even clear whether or not the privilege is properly grounded at times—means that they can prevent us from reviewing matters that quite clearly are relevant to an investigation. What that means in significant investigations or significant matters is that quite often critical information might be

withheld by an agency. So it might not be a matter of numbers but a matter of the importance or the degree of information that is withheld.

In our last annual report there were two particular cases that come to mind where issues of this kind were raised. One was a very significant investigation into the RTA and the other was our investigation into the Board of Studies and access to information under freedom of information. In both cases the agencies determined quite early on and were very reluctant to provide us with information that they claimed professional privilege on.

The Hon. CHARLIE LYNN: I imagine this would have an impact on your professional ability to complete your task and also lead to additional time for your investigators.

Mr BARBOUR: Yes, it is clearly not in the best interest of an open investigation process and my colleagues around the country are astonished that we do not have a provision similar to the ones they have. They all agree that it would clearly prevent our office from working effectively in some cases where the privilege is claimed.

The Hon. CHARLIE LYNN: It seems there is nothing more you can do to bring it to the notice of the—

Mr BARBOUR: No, I have done everything, the Committee has written, it is clearly an issue and it is unclear why the Government is so reticent to introduce the amendments.

The Hon. CHARLIE LYNN: The other issue was in regard to staffing. I think you mentioned that without the increase in budget for your office it would lead to 11 investigators or the equivalent—

Mr BARBOUR: The amount of the unfunded pay increases in the third year would equate to 11 positions. It is important for me to emphasise that I am not asking for an increase in my budget; I am asking for consideration to be given to the refunding, if you like, of money that has been taken out of the budget for unfunded pay increases and for efficiency dividends. In my view those amounts should be reinserted into my budget, and certainly in the latest round of budget negotiations, and in our papers to Treasury, I have argued that quite strongly. I recognise that the community as a whole is suffering fairly significant financial constraints. I recognise that the Government does not have large pots of money to provide to everybody. But what I am saying is a process that causes that kind of reduction to an office like ours, without any clear thinking about the consequences in terms of our work, and the impact it will have on improving other agencies, is short sighted and is not good policy.

Mr PETER DRAPER: The \$845,000 in unfunded pay increases, which you equate to 11 positions, is that on top of the \$600,000 you found by deleting the two assistant ombudsman positions and the two legal positions?

Mr BARBOUR: No, the \$600,000 is a reduction. We needed to do that to meet existing problems and to ensure that we did not have to cut any front-line investigation officer positions. That figure of \$845,000 comes into play in the third year. That is an amount we are going to have to save in that year and that would equate to 11 positions. I am hopeful we will be able to put some of the savings that we have made as a result of the restructure towards ensuring that we do not have to lose as many front-line staff as possible, but I am not optimistic.

Mr PETER DRAPER: Going back to policing. Are you satisfied that police are appropriately implementing the early intervention system?

Mr BARBOUR: The EIS?

Mr PETER DRAPER: Yes.

Mr BARBOUR: Certainly things have been moving apace. My understanding is that there is now a budget case that has gone before Treasury. Certainly our position, the position of the Police Integrity Commission and the police are as one in terms of the work that has been done to date—I think everybody is committed to it. It is now really going to become an issue of funding. There has been a business case put to Treasury and I understand that is where it is at the moment.

Mr PAUL PEARCE: With regard to the recommendations made in your recent report on tasers, could you provide the Committee with some examples of where the NSW Police Force has either addressed the recommendations directly or by other means? Would you also like to comment on several incidents of late where there has been the use of tasers with a negative result to the person who has been tasered?

Mr BARBOUR: Dealing with the first issue, the issue of tasers is clearly a significant one. If the Committee will indulge me I will provide a little bit of information about where we are. As the Committee knows, we prepared a very detailed report about our view following considerable research around tasers. We were not opposed to their use as such but we were concerned about the possible ramifications of general rollout. Unfortunately our view and our position on tasers was not endorsed by the Government, and the Government and the NSW Police Force decided to roll them out to all general duty police officers. All first response officers will have tasers now from 1 December 2009.

I have to say that, although the police have not complied with our recommendations as such, they have indicated, both in writing and, subsequent, by their actions, that they do understand the sorts of concerns and the sorts of issues we were identifying as problematic. As a consequence of that, they have been briefing us on the systems they are putting in place and we have been monitoring them. Greg Andrews can certainly give you some more detail if you are interested in this.

At this stage, to coincide with the rollout, the Commissioner has required every region to have a taser review panel and for every taser deployment to be reviewed. We see that as being a positive step. Up until this point in time the Deputy Commissioner of Police has reviewed every taser use personally but clearly, with the

additional rollout, that will not be possible. So the professional standards manager in each region will review each taser use within 72 hours and all actual firings of tasers will be subject to review by the region review panel, which will include the regional commander, the professional standards manager and a weapons professional. We see this as being a positive step in monitoring and safeguarding their use into the future.

A problem has been identified in recent press reports: the manner in which police are instructed to fire their Glock weapons and hold their Glock weapons is not suitable for the firing of tasers; that it conceals the video as it is taking images of the taser use—certainly that can happen. This has been taken up with police and they have indicated that for any such problem they identify as a result of these reviews they will provide warnings and instructions to the police officers, and if it should happen again on a future occasion they will take appropriate steps in relation to that matter.

We are quite comfortable with that process. We think that is an excellent way to look at that particular issue. So there is some positive progress in relation to tasers. That does not, I would suggest to you, take away from our residual concern: that once everybody has these, once the newness of them starts to wear away, once these systems are in place and they start not to perhaps be followed as critically as they need to, that there will be a real risk that there will be creep in their use and that they will start to be used in situations where there is not a really critical need for them to be used.

You mentioned about some recent cases of taser use. Whether you look at taser use in New South Wales, around Australia or overseas, you see constant reports about them either being misused, about them misfiring, about the consequences of them being potentially deadly and, certainly, the debate continues to rage internationally about their use and the appropriateness of their use. What I find interesting is that although Taser International believes there is no link between taser use and the development of heart problems, particularly arrhythmia or other issues resulting, they have now issued instructions to taser users to try to refrain from shooting towards the trunk of the body near the heart, which suggests that they are perhaps becoming slightly more concerned about the potential risk that there might be. I think I have answered your question. Is there anything else you want to know?

Mr PAUL PEARCE: A gun is considered to be a weapon of lethal force and deadly force; a taser is viewed by police officers something lesser. Internationally there appears to be an increasing number of circumstances where people are dying as a result of the use of tasers, either immediately or in a short period afterwards. My view is, and you do not have to comment specifically on this, is that they should be treated therefore the same as the withdrawal of a gun from officers.

Mr BARBOUR: Certainly apart from a gun they were going to have the most stringent requirements in terms of their use. Predominantly tasers are drawn but not used; they are not actually fired. Even those drawing of tasers are reviewed in each case at the moment and there are continuing plans, as I indicated, to do so. I think that is a positive step.

Mr PAUL PEARCE: Are you aware whether the senior officers in the police force are communicating this to their front-line?

Mr BARBOUR: That will certainly be the case but the reverse has also been raised with us—that is, this system of checking, once all officers have tasers, has the potential of being extremely onerous on these review groups within each of the area commands. We will be watching closely to see what the response is, if that is something which is viewed by police in a negative way. I would not want to see any winding back of this. I think it is an excellent starting point. What we need to do is monitor it to see how it is working and to provide commentary on it if we see any risks that arise.

We have had, I think 14 complaints relating to taser use since our report. Interestingly, a number of those have come from police officers who have complained about other police officers playing around and pointing tasers at them. I think that underscores the point that we have a dangerous weapon. It is not a non-lethal weapon; it can be potentially lethal in our view. The very fact that police joke around with them suggests to me that there is a large risk that they might be misused out in the field.

Ms SYLVIA HALE: You said earlier that there would be regional reviews of their use. Will a report of those reviews be forwarded to you for analysis?

Mr BARBOUR: Reports will be kept. We will be able to go in and audit them and do a systems check, but they will not necessarily be provided to us as a matter of course because they will number in the thousands.

Ms SYLVIA HALE: At the moment the Assistant Commissioner reviews each use. Have you spoken to him about what he has discovered as result of reviewing those tapes?

Mr BARBOUR: We have regular liaison with the senior ranks in the police. Tasers are just one of the issues that is regularly discussed. To date, so far as I am aware, the reviews have not disclosed any major problems in relation to procedure.

Mr ANDREWS: Only a week ago I had a meeting with the Assistant Commissioner in charge of the Major Incident Group and the head of the Public Order Riot Squad [PORS]. I had that meeting specifically partly to discuss this problem that had been reported in the press about the taser cam being covered up when police use the two-handed grip. I was pleased to hear from the head of PORS that, while that occasionally happens, it was not a substantial problem. He estimated that of the 440 taser reviews they had done in the past year or so, probably only in about 4 per cent or 5 per cent of cases there was some obscuring of the taser cams. It appears not to be a substantial problem. As the Ombudsman said, they will be checking a number of things with this rollout to general duties police. If the video is obscured they will see that as a training issue and they will refer that information back to the officer who used the taser. If they are not able to overcome that issue they will lose their accreditation after time.

Ms SYLVIA HALE: There are other worrying features. It is not merely the obscuring of the camera but the inappropriate use of tasers on occasions. I refer to the person who was drunk in Oxford Street.

Mr ANDREWS: Yes. Those review panels will be required to assess whether their use was in accordance with standard operating procedures, whether any training elements needed to be taken up, or whether there was inappropriate or excessive use of force. If that is the case the review panel will refer that matter to the complaint management team of the appropriate local area command and it will become a complaint that will eventually be oversighted by us.

CHAIR: Mr Barbour, do you consider DADHC's response to the recommendations in your review of the Aboriginal policy framework and Aboriginal consultation strategy to be satisfactory?

Mr BARBOUR: A meeting is planned tomorrow with DADHC staff about those issues, so I will be in a better position to brief the Committee once that happens. We have had good support from the agency. Something that I have noted in a lot of our work in relation to these broader systemic and strategic-type projects is that the agencies work cooperatively with us because they see considerable value in what we are trying to do. We do not have the tensions that arise from some of our other work.

CHAIR: Mr Barbour, is the New South Wales Police Force making satisfactory progress towards the implementation of an early intervention system?

Mr BARBOUR: I said earlier to Mr Draper that the Police Integrity Commission and the New South Wales Police Force are effectively working on that. We are working as one in relation to that issue. As I understand it there is a business case before Treasury. The next step would be to get funding to be able to introduce a trial program. We are awaiting advice from Treasury in relation to that.

CHAIR: I was given to understand that the business case was within the New South Wales Police Force.

Mr BARBOUR: No, it is my understanding that it has gone to Treasury. Is that your understanding?

Mr ANDREWS: My understanding is the police have a notional allocation for—

CHAIR: That is all right. The PIC told us something different this morning. Could you expand on the Ombudsman's future role in assisting the Office of Police Integrity [OPI], Victoria, to develop a strategy for auditing police work with Aboriginal communities?

Mr BARBOUR: Yes. We met with members of the Office of Police Integrity, Victoria in September. They requested that we talk to them about our work relating to auditing police activities, with particular regard to those commands and activities relating to Aboriginal work and our previous auditing relating to the Aboriginal

strategic direction for police. We brief them on that and we have indicated that we are happy to assist them in any future discussions to develop methodology for any work that they might want to do and to inform them how best to set up any Aboriginal unit or any dedicated investigations that they might want to undertake. We seem to be the leader in Ombudsman's offices or police oversight offices in working with police with regard to Aboriginal communities and we are now called upon—as we were in this case with the OPI—to provide some advice to it.

Ms SYLVIA HALE: Mr Barbour, the annual report that deals with Corrective Services makes particularly disturbing reading, largely because it seems to suggest that there is a culture of bullying and harassment within Corrective Services. You referred to complaints from inmates but I am also receiving complaints from Corrective Services officers who believe that they are being subjected to a similar regime. Do you believe this is endemic in Corrective Services? Is it an attitude from senior management that is being played out at all levels of the service?

Mr BARBOUR: I would not go so far as to say that, but over the past few years there have been troubling signs in relation to the level of openness and transparency around the operations of Corrective Services. It is something that we flagged not only in our annual report but also in my meetings with Commissioner Woodham. That is evidenced in everything from the reluctance to provide us with information and access to visitors, right through to the talk that we pick up when we go on our regular visits and the nature of the issues that are raised by those who are within the system. There is no doubt that it is a challenging environment. It is difficult to make that portfolio work effectively.

I think there are troubling signs, which means that we need to be particularly vigilant in our work in addressing them. Sometimes the number of people that want to see us when we go and visit centres has been vastly higher than it has been in the past. Over the past few days you would have read recent media reports of an alleged riot at Long Bay. Our advice about that is not so much that it was a riot but, more concerning, potentially it appears to have been the consequence of tensions around access to telephones and various other things within that centre, which is heavily populated at the moment.

After our visit in September we put the department on notice in relation to those issues. Clearly a lot more work has to be done in Corrective Services. We will focus on ongoing issues. We find it troubling that people on remand are housed with hardened long-serving prisoners, which raises issues of concern. Prisoners on low classifications are being housed with prisoners on high classifications, which also raises concerns. We have ongoing concerns about capacity in centres. Centres that were designed and purpose-built to have one prisoner in a cell currently are housing two, and some that were designed for two currently are housing three.

Clearly that is not desirable and it will lead to greater altercations, greater problems and difficulties under which the system must operate. All that is occurring within a framework of change. The current restructure process that is underway is creating significant tensions with the Corrective Services workforce. There is a great deal of misinformation and a whole lot of discussion about that as well. The context in which all these things are arising is something to which we need to be alert.

CHAIR: During this process half the prisons have been shut down and other prisons have double the population, or greater numbers than they should have. It is a recipe for disaster.

Ms SYLVIA HALE: Mr Barbour, do you believe that this is as a result of reduced staffing levels?

Mr BARBOUR: I cannot attribute it directly to that. That may well be one potential factor in all this. Some of the issues about which I have been talking arise where there appear to be adequate staff.

Ms SYLVIA HALE: I have been told that there is an increasing use of lockdowns within, say, Long Bay but also in all the prisons. While some of these are described as being for staff training—in fact they are all described as being for staff training—they are simple lockdowns and are the result of fewer people on the ground and the inability to provide sufficient personnel so that prisoners are allowed out of their cells in a relatively safe and secure environment. Have you looked at this in terms of whether there have been any infringements of people's rights to be out of their cells?

Mr BARBOUR: We certainly get complaints from time to time about lockins, about the duration and frequency of them and so forth. They are in large part matters that we try to deal with on the spot when we go and visit particular centres. I do not have the statistics available to be able to quote to you about that. If that is an area of particular interest for the Committee I am happy to provide some further information to you. I am unaware of there being a direct correlation that is so clear that one can actually draw that conclusion. But it is something I am happy to have a look at.

Ms SYLVIA HALE: At page 81 of the report you talk about the adequacy of the CCTV footage to maintain proper safety and security in accommodation units that are not staffed. Would you care to enlarge upon that?

Mr BARBOUR: I think it is one of the areas we have listed as being potentially substandard. Clearly that sort of footage allows anybody, both within Corrections and outside organisations such as ours, to be able to assess independently what has actually happened. It is a very desirable facility to have and to have operating well. Clearly that is not the case in all centres. So that is something we have highlighted there.

Ms SYLVIA HALE: Is your complaint that the CCTV system is not being used in the way it should?

Mr BARBOUR: And also there might be too much reliance from time to time placed on that when there is not enough staff to do things. So there is a double issue there potentially.

Ms SYLVIA HALE: Have you had any complaints or had cause to look at the failure to use CCTV equipment when prisoners have been transported between centres? It is my understanding that the regulations provide that the escort officers

are supposed to have CCTV equipment working so they can monitor what is happening in the vans in the same way that they are supposed to provide water. Yet it appears to be at least in several instances that this is not happening.

Mr BARBOUR: I am not aware of any specific complaints. But I am happy to look at the issue, if you like.

Ms SYLVIA HALE: Thank you.

CHAIR: Mr Barbour, are you satisfied with the actions of the Commissioner's initial instructions to his staff on the use of wall-mounted restraints?

Mr BARBOUR: We are pleased with the way that issue has gone. We had a lot of tension with the Commissioner around that issue initially. We obtained independent senior counsel advice on the issue. Ultimately the Commissioner has agreed with us that it is a form of restraint and he has issued instructions for them not to be used in any of the centres without his specific involvement. He is also looking at the issue of developing further policies. As far as I am aware they are not being used anymore. That would bring us into line with other States, which I think is a good thing.

CHAIR: So the Commissioner did not see that wall-mounted restraints were actual restraints?

Mr BARBOUR: No.

Ms SYLVIA HALE: Are the ankle cuffs and handcuffs still used in the Supermax when people come out of their cells?

Mr BARBOUR: There is a whole range of different techniques that are used for security within the centres. Certainly when I last visited the Supermax none of the prisoners that were inside was restrained in any way. I was able to move freely around and talk with them, which I have to say was somewhat alarming. Certainly when prisoners are being transported and there are issues of safety, proper order and care and control, then there needs to be some form of restraint. These particular rings were wall mounted and restricted people's movement. They were attached to walls and clearly they were forms of restraint. It took us a little while to get the Commissioner to review these but I am pleased with the outcome.

Mr PETER DRAPER: Are you aware of any concerns about police officer safety in cells where prisoners are held prior to being transferred to Corrective Services? I refer particularly to CCTV cameras. The old analog cameras operate with a significant time lag, so there is not constant supervision. Has that been raised as a safety issue?

Mr BARBOUR: To my knowledge, it has not been raised by police as a safety issue. From time to time we get complaints from people who are held in cells that they are treated improperly. If that happens one of the avenues that we and the Police pursue in looking at that matter is any CCTV footage. I am unaware of any police making complaints about that.

Mr PETER DRAPER: I have received quite a few in relation to a camera at a local police station where there is a significant time lag and activity can happen without it being captured on the camera. I believe the policy is to move to digital, but a number of these analog cameras remain across the State.

Mr BARBOUR: There is a range of policies in place with the Police Force in relation not just to old CCTV cameras but to a whole range of other equipment—in-car equipment, domestic violence kits—which are being rolled out progressively over time. It would not surprise me that there are different systems in operation in different police cells. But I am certainly unaware of any specific complaints about it.

Mr MALCOLM KERR: Mr Barbour, you mentioned earlier about meeting with the Commissioner of Corrective Services. I think you said there were some worrying tendencies that you have raised with him. Do you recall saying that?

Mr BARBOUR: What I indicated was in relation to concerns that arise from our regular visit program to prisons when I do meet with the Commissioner, which is normally about twice a year, sometimes three times a year, I will take the opportunity to raise those concerns very frankly with the Commissioner. One of the issues that we raised obviously was the wall-mounted rings. I raised that directly at a meeting. We have raised a range of other issues directly at meetings. It is normally an opportunity for a frank exchange about these issues, which are often the subject of correspondence as well.

Mr MALCOLM KERR: What was his reaction to other issues? Was he cooperative?

Mr BARBOUR: I think he always gives due consideration to the issues that I raise.

Mr MALCOLM KERR: Do you often find yourself in agreement with him?

Mr BARBOUR: I do not think I will answer that question.

Mr MALCOLM KERR: In relation to the disturbance that occurred on the weekend, is your office investigating that matter?

Mr BARBOUR: No, we are not investigating. I sought an update on that this morning because I thought the Committee might have some questions or be interested in it. What I was able to determine was that we were notified about the issue in our usual daily update and status report on what was happening in correctional centres. The information that we were updated on suggested that it was a series of fights between particular inmates. It certainly did not appear on the face of it to be a riot, as such. The number of people involved seemed to be significantly less than what has been indicated in the media. I have asked our corrections unit manager to follow up with various people for further information.

The Hon. LYNDIA VOLTZ: No shots were fired?

Mr BARBOUR: We are not sure. It indicated that there were some shots fired. If there were shots fired, they were probably fired into a vacant area, which is standard procedure to actually stop people fighting. I do not believe there were any shots fired anywhere in the vicinity of people.

The Hon. LYNDIA VOLTZ: You have raised with Community Services under section 29 of the Care Act that there may be a requirement for new legislation in regard to the new information exchange provisions. Have they responded to you on that issue at all?

Mr BARBOUR: We have done several things. We have spoken to them orally and we have also raised this issue in correspondence. Firstly, we are very supportive of the changes that have happened in terms of the capacity to exchange information. Our concern though is that it is going to be of limited value with the new Wellbeing Units if they do not have access to background information and holistic information, if you like, about the family and the particular children that might be the subject of notifications. The present wording of section 29 (1) (f) means that those reports are protected because they potentially identify the person who made the report. Unless that is amended or changed there is going to be, in our view, a risk with the quality of information that the Wellbeing Units are going to be able to have to use, and that will mean that the response will not be as good as it could be. We have made some suggestions about some interim steps, which are currently under consideration not only by Community Services but by the agencies that will be operating the Wellbeing Units. But they are only going to potentially resolve that problem as far as those Wellbeing Units in government agencies are concerned. It is not going to solve the problem for non-government areas dealing with these sorts of issues and the exchange of information.

The Hon. LYNDIA VOLTZ: What was the response to those recommendations?

Mr BARBOUR: They were interested in them and were going to consider those. To give you an example, one option suggested by Steve during the course of our meeting was that they considered having DOCS staff in each of the Wellbeing Units so that at least the DOCS staff could access the KIDS [Key Information Directory] system, which is the DOCS computer system, and be able to look at that information and provide as much support as possible to the other staff of the Wellbeing Units around providing some of that background. That was seen as potentially an attractive option, but one that needed to be canvassed further with all the agencies involved. There is no further progress on that at this stage.

The Hon. LYNDIA VOLTZ: You have reviewed your employment-related child protection function and identified under that a need for further reform, particularly in consideration being given to legislation to extend the definition of special care relationships to prohibit young people employed in special care settings forming a sexual relationship with any young person under the age of 18. What situations are you considering?

Mr BARBOUR: This is a very complicated issue and one that my office is still grappling with. I must say that I do not have a concluded view about it. Frequently

we see situations arise where young people form relationships with young people. You might have a 19-year-old person working as a teacher's aide or nurse's aide and they may initiate and start to develop a relationship with a 17-year-old person who is not directly a client of theirs and not in their particular class, school or so forth. That relationship on every other level would be seen as being quite a normal relationship between two young people. It is really those types of cases that one would want to exclude from any legislation to look at the bigger issue, which is where there are considerable age differences and it is quite clear the relationship is more likely to be one based on an improper power balance or of an improper nature. The dilemma and why we are still considering this—it is a very hard issue—is how you actually introduce legislation that will be able to deal with those sorts of problems because being able to deal with them effectively, of course, is going to be a challenging issue. Really, what we were proposing was to highlight this issue. If it was going to be looked at or addressed, it would need some legislative base. Whether it is possible and what that would be, we are still considering.

CHAIR: I understand where you are coming from, Mr Barbour, because in an electorate office you hear of all sorts of similar issues, like a person could not go to the United States because of something that happened 30 years ago. For example, a man charged with carnal knowledge of his partner to whom he has been married for 30 years. We had to go through a whole lot of rigmarole to get that fixed. I understand that, but where do you draw the line? That is the problem we have. I understand a 19-year-old and a 17-year-old, but what about a 25-year-old and a 15-year-old?

Mr PAUL PEARCE: That is the problem.

The Hon. LYNDIA VOLTZ: That is a problem; 15 years of age and 30 years of age is a problem.

CHAIR: You and I agree there is a problem, but who draws the line and where is it drawn? That is the problem we have.

Mr BARBOUR: Of course, the other thing is that legislation differs, depending on the nature of the relationship. Consent becomes relevant at 16 or 18. If the relationship starts when someone is between 16 and 18, if it were a friend down the street, then there is going to be no problems with that relationship, but if it is somebody who happens to be a nurse's aide, teaches aide or someone of that kind, then there can be a problem. There are real risks around introducing something like this. Clearly, if you have a 45-year-old schoolteacher and they are going to date a 16- or 17-year-old student in some other school or State, that sets off alarm bells. But how you are able to legislate around those issues is extremely challenging. That is why we are looking at it more closely.

The Hon. LYNDIA VOLTZ: Sports coaches. I am sorry, I had a 15-year-old girl in one of my State teams who was living with her 40-year-old coach. I think it is inappropriate. They are the kinds of situations you need to have some way of dealing with.

CHAIR: It is an area about which I feel very uncomfortable.

The Hon. LYNDA VOLTZ: You are a dad, you would feel uncomfortable.

Ms SYLVIA HALE: Whilst we are on the subject of discomfort—

Mr BARBOUR: Is this going to be mine or someone else's!

Ms SYLVIA HALE: Do you have regular inspections or receive complaints from the use of police holding cells as de facto remand centres? I have received numerous complaints, for example, the numbers of prisoners who are held in a cell in the Surry Hills complex with lack of toilet facilities and privacy, and also the transfer of prisoners from one set of police cells to another around the State just to meet targets that no-one will be held in a cell for any longer than a specified period. Have you received any complaints about that? Are you aware of the problem?

Mr BARBOUR: We certainly get complaints that relate to the housing of people in prison cells. From time to time we get complaints about the operation of those cells. Certainly when we visit local area commands and police stations we do our best to look at the facilities available in those places. When we get any complaints we look at those matters in more detail. It is an extremely challenging area to look at and it is very difficult to get a thorough picture of whether or not the sorts of things you are talking about are actually occurring.

The Hon. LYNDA VOLTZ: You would have to balance to some extent the Government's desire to build more purpose-built police stations with modern holding cells against the community's demand that police stations be placed within a certain area. For example, in the inner city of Sydney, until the Leichhardt police station is built, there will be a limit on the capacity of holding cells within the inner west area?

Mr BARBOUR: Yes. I think there are also a whole range of issues that crop up from time to time that are built around tensions between Corrective Services and police around the holding of people. There are also time issues: whether or not it is possible to organise transport, whether or not it is possible to actually take someone to a correctional institution, whether they need to be held longer. Invariably, there are so many issues that potentially crop up that it is very difficult to actually identify any systemic failings in relation to those types of things from individual complaints.

Ms SYLVIA HALE: In your answers to questions on notice you say that you had a meeting with the Minister for Juvenile Justice and the Director General who indicated that at Emu Plains there would be a reduction in the maximum number of detainees from 50 to 40, fencing of the perimeter, installation of heating and the introduction of chaplaincy and a homework program. Have you any indication as to when these changes will be made?

Mr BARBOUR: They are all in the process of happening now. I have to say that I think the response of the Minister has been excellent and one that perhaps is a little out of kilter with the rest of the Government. It is troubling to me that there is such an overcrowding problem in Juvenile Justice. I think it is important to acknowledge that the Minister is endeavouring with this non-purpose-built facility—one they have had to use—to house the number of young people they have to in the

best way possible. The Department and the Minister have taken on board our concerns. They have taken on the issues we raised following our visits. I see these changes as being very constructive and positive. I welcomed them when the Minister announced them.

Ms SYLVIA HALE: In your report you were concerned at the lack of educational facilities at Emu Plains. Has the Department made any decision as to the ultimate use to which Emu Plains will be put?

Mr BARBOUR: No. It is still a temporary facility and still owned by Corrective Services. Until such time as a final decision is made, it is very difficult. Much of this change is going to be made notwithstanding that there has been no finality to that decision. The issue of education services has been a vexed one because, as I understand it, the Department of Education and Training was concerned that the fit-out, structure and facilities were not such that they lent themselves to their staff going out and conducting programs as they would normally do because it is not a purpose-built facility. So, to the Minister's credit, I think he has looked at alternative options to ensure that those who are there who are only supposed to be there for a short period of time still get some education programs and some access to things.

Ms SYLVIA HALE: One of the complaints at Emu Plains was that children were being held in their cells and they had no ready access to water. Every time they wanted a drink of water they would have to ask for it. Has any change been made in that regard?

Mr BARBOUR: It is difficult because within the cells there are no water facilities and they have shared bathroom facilities and shared toilet facilities. What I think has been done to help the situation is the changes that are being promoted are designed to allow much more time out of cells for the young people, reducing the number of people that are there and also making sure that they are held there for as short a period of time as possible. I think they are all very positive. The reality is that the facilities are not ideal, there is no doubt about that, and everybody agrees with that. I think what is happening though is that they are endeavouring to make the best possible use of them they can in the best way they can.

Ms SYLVIA HALE: In the report you also talk about the transfer of young people who have turned 18 to adult prisons and this transfer process had come to a halt. But you also say there are new draft transfer procedures being introduced. Have they become operational yet or are they about to become operational in the new year?

Mr BARBOUR: I would need to get some advice. My understanding is they have not become operational yet. But I am certainly happy to follow that up for you.

Ms SYLVIA HALE: Were you happy with the changes that were mooted?

Mr BARBOUR: We were consulted about the changes and I understand we provided feedback, but I am not exactly sure at what stage they are at at the moment.

The Hon. CHARLIE LYNN: Mr Barbour, have you received any further indication from the Department of Premier and Cabinet regarding the progress of the development of a stand-alone code of conduct for ministerial staff?

Mr BARBOUR: The short answer to that is no.

Mr MALCOLM KERR: What is the longer answer?

Mr BARBOUR: That that is disappointing.

Mr MALCOLM KERR: In relation to what you said earlier about privilege and the possibility you might make a special report to Parliament, is that likely?

Mr BARBOUR: I do not see what alternative I have left. I generally only like to use the option of a report to Parliament where all other possible options have been exhausted. I am not sure what else I can do. The Committee agrees with the need for this amendment. It is written; I have written multiple times; we are not getting any further. We had a draft piece of legislation a year ago and yet I still get correspondence saying that they are still drafting it. So I think really there is no alternative. I will put the case out there and that will allow me to talk publicly about it and to raise the concerns. To me, quite frankly, to use a colloquial expression, it is a no-brainer. I just do not understand what the problem or the issue is, quite frankly.

Ms SYLVIA HALE: Just returning to the Supermax in Goulburn, in your report you talk about how prisoners within the Supermax when they leave their cells are required to be cuffed at both the ankle and the wrist. The report says, "However, given the high level of security already present, it is difficult to see why both hand and ankle cuffs are required when inmates are within the HRMU and we have recently written to the Commissioner about this issue". Have you had any response from the Commissioner?

Mr BARBOUR: I am not aware of any response to that particular issue. The contents of this report are basically valid up to around early September, mid September, before the report went off for final printing. I cannot recall the exact date we wrote to the Commissioner but I do not believe we have had a response yet. I am happy to look into that as well.

Ms SYLVIA HALE: It seems to be indicative of an unnecessarily punitive approach to people who are within the Supermax.

Mr BARBOUR: Certainly we raise from time to time issues with the Commissioner like this. I have to say, at the end of the day if the Commissioner is able to put forward persuasive arguments about why it is necessary for the good order and control of the centre, it is very difficult for us to take it further. But if there are no persuasive reasons as to why this is necessary, if there is no evidence to support the need for it, then it is something that we are happy to look at further.

CHAIR: Mr Barbour, thank you and your staff for coming today and answering our questions. If there are any further questions we wish to put on notice will you accept them?

Mr BARBOUR: Absolutely.

(The witnesses withdrew)

(The Committee adjourned at 3.15 p.m.)
