

**REPORT OF PROCEEDINGS BEFORE**

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

---

**At Sydney on Tuesday, 25 November 2003**

---

**The Committee met at 10 a.m.**

---

**PRESENT**

Mr P. G. Lynch (Chair)

**Legislative Council**

The Hon. Jan Burnswoods

The Hon. P. J. Breen

The Hon. D. Clarke

**Legislative Assembly**

Ms N. Hay

Mr M. Kerr

**BRUCE ALEXANDER BARBOUR**, New South Wales Ombudsman, 580 George Street, Sydney;

**CHRISTOPHER CHARLES WHEELER**, Deputy New South Wales Ombudsman, 580 George Street, Sydney;

**STEPHEN JOHN KINMOND**, Assistant Ombudsman, Police, 580 George Street, Sydney, and

**GREGORY ROBERT ANDREWS**, Assistant Ombudsman, General, 580 George Street, Sydney, affirmed and examined, and

**ROBERT WILLIAM FITZGERALD**, Deputy Ombudsman and Community and Disability Services Commissioner, 580 George Street, Sydney, and

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

**CHAIR:** We have received a submission from you in the form of answers to some questions that were placed on notice. I take it that it is your wish that those answers be included as part of your sworn evidence?

**Mr BARBOUR:** Yes, thank you, Chair.

**CHAIR:** Would you like to make an opening address?

**Mr BARBOUR:** Yes, I would.

Thank you, Mr Lynch, and members of the Committee. The last time we formally met with you to discuss the operations of the Ombudsman was in June 2002. Since then we have met with the Committee to discuss issues of police corruption and we have also recently met with Committee members less formally. That was a valuable opportunity to discuss issues of interest to the Committee.

I would like to use my opening address this morning to discuss three particular areas that I believe are of interest and significance to the operations of the Ombudsman. First, I will outline some of the major work of my office in the past 17 months. Second, I will explore two particular areas, both because they are significant and also because they provide a good picture of the general operations of the Ombudsman and our approach to dealing with agencies and issues. Thirdly, I will flag with the Committee some particular matters concerning public reporting and explaining the role of the Ombudsman where I would value your views and input as to our most recent thoughts on those issues.

My recent annual report in Parliament comprehensively outlines the work of the Ombudsman in 2002-03. Last year we handled more than 26,000 telephone inquiries and in the first four months of this financial year we have fielded an additional 9,000. We dealt with increased numbers of written complaints against

public sector agencies and more than 2,200 complaints against local councils. This trend of increased complaints has continued this year with over 1,100 written complaints received in the first four months, an increase of some 5 percent over the same period last year.

Agreements with the Police Integrity Commission to reduce the number of minor complaints notified to the Ombudsman have now been fully implemented. We estimate that more than 1,000 minor complaints from members of the public are now directly managed by police commanders. We are auditing local commands to ensure that these complaints are handled quickly and effectively. We have also pushed police to report on whether these complaints are conciliated and whether complainants are satisfied with police action. In the meantime, my office is focused on whether serious police complaints are dealt with in a timely and effective manner. It is significant in that regard that police officers continue to make complaints to us, almost 800 in 2002-03. This, I believe, is a good indicator of their confidence in how complaints will be managed.

A better knowledge of our work in child protection saw an increase of more than 1,000 notifications of child abuse to the Ombudsman in 2002-03. However, the first four months of this year shows a new trend and provides evidence of our work to increase the efficiency and fairness of child protection notifications. Notifications decreased from 710 for the four months, July to October 2002, to 534 in the same period this financial year. The decrease in notifications is in agencies like the Department of Education and Training where we have entered class or kind agreements, meaning that those agencies can deal directly with less serious complaints without notifying the Ombudsman. However, where we have worked to increase knowledge of agencies' reporting requirements, such as with the Department of Juvenile Justice, notifications are now made consistent with child protection laws, therefore there is in fact an increase in notifications this financial year.

It is not yet 12 months since the amalgamation of the Community Service Commission with the Ombudsman. In that time we have consolidated the work of both organisations, especially with respect to the oversight of the Department of Community Services and the Department of Ageing, Disability and Home Care, to increase our effectiveness in safeguarding the interests of children, young persons and disabled persons in care. At this time it is a difficult process to actually assess the full impact of the amalgamation. However, early indications for this financial year are that complaints have increased approximately 10 percent. I believe that this reflects a better understanding of our role and has been contributed to by education programs run by the office in the community sector.

This year's annual report lists some of our more significant investigations and projects and I would like to give a brief snapshot of some of those.

We have completed an investigation of plagiarism at a university which has resulted in the Minister promulgating new procedures for all universities to increase transparency in grant applications and academic publications.

We have reviewed hundreds of Department of Corrective Services decisions to limit or ban visits by particular persons to inmates, and recommended that processes are made more transparent and decisions more consistent.

We have audited how agencies report dealing with Freedom of Information applications and have found a 17 per cent decrease in full release of documents over the past five years.

We have monitored a major police Strike Force investigation about false knife searches at a metropolitan local area command, which demonstrated inflated recordings and poor supervision. We have made recommendations which have been accepted by NSW Police, which will decrease this occurring in the future.

We are measuring across New South Wales the success of policing in aboriginal communities. Our reviews have resulted in better communication between local commanders and aboriginal leaders and real improvements in the policing of aboriginal communities.

We are scrutinising the operation of new laws, including nine laws conferring new police powers and a law conferring additional powers on correctional officers.

We have inquired into individual funding arrangements for children in out of home care. This has resulted in an overhaul of these arrangements within DOCS.

We have reported on the findings of our review of the transfer of 10 people with a disability from licensed boarding houses to disability services. We have found that the transfers program is working and we have suggested further refinements.

Our recommendation that an act of grace payment be made for the cost to a fisherman of poor procedures at NSW Fisheries has been accepted.

Fines have been withdrawn by police or the Infringement Processing Bureau after our investigations.

Refunds have been given and compensation paid by local councils for unlawful fees or unreasonable actions after our inquiries.

A police superintendent has received an apology from a senior police officer for the distress caused by poor investigation of his management practices when we conciliated his complaint.

We conciliated the concerns of a father for his young disabled son at a group home, resulting in better assessment and increased support for the son and increased trust between the father and the service.

We have visited 18 correctional centres and all full-time juvenile justice centres.

We have observed Vikings policing operations as part of our review of drug detection dog legislation.

We have spoken to all student police officers at the Police Academy and hundreds of officers in local commands as part of our ongoing program to explode the myths about police complaints.

That is some of the work of the office in the past 17 months.

Since our last meeting the Ombudsman's office has grown by more than a third. Some areas, notably corrections this year, have seen our role increase. I have set up a specialist corrections unit within my office to handle complaints by inmates. This is in part because of our anticipated work, given the expiration of the Inspector-General of Corrective Services. It is also in part because of the need to recognise and consolidate the expertise of our officers in dealing with inmates' complaints.

The amalgamation of the Community Services Commission has not been without its challenges. It has, however, brought the increased coherence of a one-stop shop to the oversight of community services in the State. In my view it has been especially successful in ensuring the appropriate oversight of the Department of Community Services to the benefit of the department, its clients, and the community, and I will return to that in a few moments.

A review and restructure of the Community Services Division has seen a more functional arrangement which should enhance our complaints work while increasing the effectiveness of our reviews and other projects. Some of the anticipated efficiencies from the amalgamation are slowly being realised. Reduced commitments to administrative services through amalgamation of corporate functions are now freeing up other officers to engage in frontline complaint resolution and investigation work, and reviews of systemic issues.

Experts from across the office, including lawyers, investigators and project managers, are now working closely with officers within the division and with a range of community sector experience to contribute to major projects and investigations.

Scrutiny of new laws conferring powers on police or correctional officers has been the other major area of growth for the office. We are currently scrutinising the implementation of 10 new laws, with another five already legislated for and awaiting commencement.

We have produced one final report and three discussion papers this year. At least one, and possibly two more, discussion papers will be released before Christmas and our DNA report will likely be the first of a series of final reports released in 2004.

It would perhaps be appropriate at this time to acknowledge that all staff at the Ombudsman's office have worked extremely hard in the past year and in making the new responsibilities work effectively they have done that without compromising, in

my view, the standard of service offered and I especially recognise the work of my deputy and Assistant Ombudsman present today.

As you would be aware, the Parliament is presently debating amendments to the Privacy and Personal Information Protection Act with a view to the Ombudsman taking on the functions of the Privacy Commissioner. Without wishing in any way to pre-empt the decision of the Parliament concerning the amendments, I believe an amalgamation of Privacy New South Wales with the Ombudsman will be of benefit to the community and the administration of New South Wales.

We already have privacy expertise from our policing, community services and telecommunications intercept monitoring functions.

Our Freedom of Information jurisdiction has many points of intersection with the privacy laws. We have experience in working with public and private sector agencies. We are efficient and effective complaint handlers.

Parliament has given me strong powers to investigate and resolve difficult issues of importance to the public or an individual, and our clear understanding of administrative issues across thousands of agencies would, I believe, serve well the privacy interests of the community.

With the finalisation of any decisions as to this and other bills presently before the Parliament, which may confer additional responsibilities on the Ombudsman, I believe that the office has now grown to what should be its maximum size for the immediate future. This is primarily to allow a proper settling in and melding of these new areas. Because I am concerned to make sure that the Ombudsman continues to provide a high quality service to the community and Parliament, I may resist any proposals for significant additional responsibilities.

If I am concerned that a proposal is not an appropriate fit, having regard to our other functions, or if I believe the functions or responsibility to be better undertaken outside my office, I will take steps to bring this to the attention of the Government, this Committee and, if necessary, Parliament.

I am pleased to report though that for each of the new functions conferred on the Ombudsman, the Government has generally engaged in a negotiated process. This was especially the case concerning community services and the amalgamation with the former Commission. Such negotiation enhanced the protections and safeguards which are the objects of these new laws.

In legislation review a failure on one occasion to fully consult has meant that my preferred arrangements for reporting to Parliament and obtaining information for the review were not fully considered by the Government or Parliament.

I have raised this issue with the Premier and I am pleased to note the Government's positive response in relation to any future laws.

Our increased responsibilities have served as a sharp reminder of the need for exemplary standards of service and integrity of the Ombudsman. We acknowledge that if we ask other agencies to look closely at their administrative practices and conduct, our practices need to be of the highest standards.

I continue to personally review those matters where a complainant is dissatisfied with the initial handling of a matter by my office. We have tightened our code of conduct and are completing a review of office policies.

We have successfully implemented a new document management system which integrates with our existing complaints database and provides an increased capacity to share information within the office, and we have also enhanced security across the office and were the first public sector agency in Australia to be accredited as complying with the Australian Standard for information management security.

To better demonstrate to the Committee our approach to enduring issues in public administration, I would like to provide two brief overviews of our work in discrete areas, firstly, conflict of interests and secondly, the Department of Community Services.

Conflict of interests have continued to compromise the integrity and work of some Government agencies.

Our investigations this year have included the much publicised misconduct of Chris Puplick in his roles as Privacy Commissioner and President of the Anti-Discrimination Board. My primary finding was that he dealt with a complaint of a good friend to both agencies without declaring his friendship or taking steps to minimise or eliminate his own involvement in the complaint.

This very serious matter and other conflicts and administrative failings uncovered during the course of the investigation had the clear potential to undermine public confidence in the handling of complaints by both agencies. Outcomes of the investigation have included proposals for legislative change to reduce the possibilities of conflict of interests for the ADB President and recommendations that the same person not head two separate and discrete organisations.

We handled a complaint about a conflict of interest by a senior bureaucrat in managing a contract awarded to a university where her husband was employed. We urged the department to conduct its own investigation in those circumstances and the investigation resulted in a number of significant findings and a review of the agency's conflict of interests policies.

We examined unlawful suspension powers implemented by Queanbeyan City Council which could have had the effect of allowing a majority of councillors to negate the election of another councillor. The clear potential for a conflict of interest in exercising these powers resulted in our recommendation that an independent person or body be given the role of determining any suspension of councillors. Recent Government announcements indicate that this recommendation has been accepted.

We are also scrutinising an extensive investigation by New South Wales Police of complaints about relationships between students and instructors at the Police Academy. The clear potential for any personal or intimate relationship to conflict with an instructor's role as teacher and assessor at the academy is readily apparent. The investigation has also prompted a review of the academy's professional distance guidelines.

Beyond these and other complaints we have handled, we have taken a whole of Government approach to increase awareness of conflict of interest issues. We have published fact sheets, forwarded to agencies and local councils, dealing with conflict of interests and bias. These include information on identifying and assessing and dealing with conflict of interests.

We have reviewed our good conduct guidelines, available to all Government agencies and local councils, with a separate chapter dealing with public interest and conflicts of interest. In addition to providing guidelines to assist agencies, it gives a list of additional resources for their consideration.

Given the seriousness of the conflict of interests issues managed by our office this year, we have also conducted a review of our own code of conduct and introduced a separate and more detailed conflict of interests policy to assist officers in identifying and managing possible conflicts in their work.

It is because of our work across many Government and non-Government agencies that we have been able to identify and practically address emerging issues such as this, which may compromise fair and effective administration.

Because we are the primary oversight agency for complaints about Government agencies, we have also become, in my view, more adept at managing key relationships in a productive framework.

Our work with the Department of Community Services provides a good study of this and demonstrates the advantages for agencies and the community.

In May 2002 I tabled in Parliament a special report to Parliament highlighting critical issues that touched on almost every area of DOCS operations. I reported at that time that child protection interventions had become as much a matter of good luck as good management.

Since then the jurisdiction of the Ombudsman to oversight various aspects of DOCS has been consolidated. We now deal with complaints about child abuse by employees, responses by DOCS to child protection notifications and community services provided or funded by DOCS.

It is fair to say that there are significant moves on foot at DOCS. Those are due in part to a fresh approach with a new Minister and a new Director-General and also additional funding for hundreds of new frontline positions. The Director-General



has been publicly quoted as stating his commitment to work with this office for the benefit of children and young persons.

We have successfully negotiated a Memorandum of Understanding which sets out the arrangements between our organisations. We have agreed on arrangements for matters such as information requests by Ombudsman officers and interviews with DOCS staff and notifications of child abuse allegations against DOCS employees. The memorandum provides for dispute resolution, monitoring the implementation of our recommendations, as well as regular liaison. What the memorandum means is that instead of wasted efforts in trying to get information or speak to officers, this work can occur within clear guidelines. The focus for our officers and DOCS staff can instead be on solving and resolving complaints or improving systems and procedures.

At a senior level, Mr Fitzgerald, Ms Barwick and I meet regularly with the director general and other senior staff of DOCS to establish effective working relationships where concerns can be highlighted and a response quickly sought. This is preventing serious issues degenerating into a paper war.

I have recently received from Dr Shepherd a further response to my special report. We are closely assessing this response. It does, however, highlight some of the changes such as a new computer system, better record keeping, plans for improved foster carer recruitment, a review of risk assessment arrangements and clearer arrangements between DOCS and the Family Court, which are aimed at addressing key issues raised in our report of April 2002. In my view, these are positive steps.

For me, the challenge is to manage our grave responsibility as an oversight agency for DOCS while at the same time not intervening in a manner that limits the effectiveness of the changes which are being brought in.

We know from complaints and telephone inquiries that there remain substantial concerns about the way DOCS goes about its business. We know that children and young people remain at risk. While DOCS managers are making the right noises, progress on the ground, where there must be real impacts for the benefit of children and young persons and those who care for them, are not as fast as we would like.

Our investigations and program of audits are being conducted in a framework that balances these competing imperatives to add value, facilitate good change and not unnecessarily divert attention or resources from the renewal process going on in the department. This framework of interaction with DOCS is, in my view, constructive and appropriate. We can focus on appropriate resolution or investigation of concerns without the need for a polemic. The framework is reflected in our dealings with agencies such as NSW Police and the Department of Corrective Services.

I know I have spoken at length, but much of the reason I have done that is because the recent work of our office highlights a number of significant issues, in my view, for your consideration.

The Ombudsman is quite unique within the administrative landscape of New South Wales. We have a jurisdiction that extends well beyond the public sector. We are directly accountable to Parliament and not to Government. This Committee too performs a distinct and important role in holding the Ombudsman to account for the way we conduct our business.

There are a number of particular matters that I wish to raise with the Committee. They are issues which, in my view, go to the heart of the Ombudsman's role as an officer of the Parliament.

The first matter is my obligation to report to Parliament. Two separate issues arise here for the Committee's consideration. First is a proposal to make more regular reports to Parliament about key functions of the Ombudsman. To date the Ombudsman has reported annually on all business areas at the same time, including meeting formal statutory annual reporting requirements. We are presently considering a proposal to report on each of our key functions separately and at distinct times. For example, we may report on community services or police complaints in April, another operational area in June and our general work with our formal annual report in October. This will bring a focus to key areas of accountability and provide an increased profile for each of the important aspects of the office's work. The reports would be scheduled at regular intervals throughout the year. More regular reporting may enhance parliamentary and public debate about distinct and important issues affecting the community. It will also avoid all of these matters being bound up in a single report to the possible detriment of all of them. I would welcome your thoughts on this particular proposal.

The second matter is special reports. These are, of course, in addition to my annual reports and I have made seven such special reports to Parliament since being appointed Ombudsman. I will continue to report to Parliament on matters where I consider there is a significant public interest in doing so. In saying this, I am aware that some persons have encouraged more special reports from this office. My own view is that special reports should generally be reserved for those matters where agencies refuse to comply with significant recommendations. Special reports can then bring to the Parliament and community's attention the matter in issue for debate and resolution. This would generally only be done as a matter of last resort where discussions had failed to make any headway and it is a testament to the standing of this office and the quality of our reviews and investigations that we are mostly able to persuade agencies to accept our recommendations. Sometimes it may also be necessary to report to the Parliament on matters where a public debate is already occurring to help inform that debate. Often this is the only manner in which I can provide relevant information which may assist decision makers. While others may have a different view, my opinion is that special reports should only be used sparingly, lest their impact dissolves and they become of limited use. This is a similar view to that held by my predecessors. I would, however, welcome and be interested in any views of the Committee members about this particular matter also.

The final matter I raise is what I perceive to be an increasing trend over the past 12 months for politicians and senior public figures to misrepresent or mistake the role and practices of my office. Most recently, in debates concerning

amendments to child protection legislation, the debate surrounding the Inspector General of Corrective Services and the proposed amalgamation of Privacy NSW with the Ombudsman, statements have been made which in my view were not accurate and should not have been made.

In raising this matter with the Committee I recognise and I respect the important role of politicians to engage in vigorous debate about new laws and the role of the Opposition to oppose. I also welcome constructive criticism about the operations of my office. I recognise that my reports will be used by both sides in a political way. That too, in my view, is quite appropriate. Such is a direct consequence of the subject matter of those reports and the fact that they deal, as they do, with agencies' and departmental practices. The difficulty, however, is that the standing of the office of the Ombudsman as an officer of the Parliament may be diminished by comments that are misleading or inaccurate. In making my office the sport of a debate, members may reduce my capacity to highlight and resolve important issues of public administration.

It is inappropriate for me to in any way enter these debates through public statements. I provide already to all members of Parliament, both members of the Legislative Assembly and Council, copies of all of my reports on the day they are tabled. Copies of and information relating to the Ombudsman's publications are also made available. These Committee proceedings are also publicly reported and available to all members. My officers and I have always been available and willing to discuss matters which touch on our work with politicians, subject of course to the constraints of our secrecy provisions. Many members from both Houses do contact us about our work.

This Committee is made up of members of both Houses. It includes members from the Government's side, the Opposition and cross-benches. Some members have, and new members will develop, an expert knowledge of the Ombudsman, our jurisdiction, practices and procedures. I would be interested, therefore, in the Committee's views as to any role members of the Committee might play in clarifying, with their colleagues, issues concerning the role of the Ombudsman and the functioning of my office to help limit the degree of misleading or inaccurate information entering parliamentary debate.

In conclusion, it has been a full and varied period since I last appeared before the Committee. My senior officers and I welcome the opportunity to appear before you today to discuss our work and seek your input into these important issues affecting the work of the Ombudsman.

**CHAIR:** Could I ask a question arising out of some of the things you said a little earlier in your address: Did I understand you to say you would be reluctant to take on any more functions?

**Mr BARBOUR:** I think, apart from those currently before Parliament, my view would be that we need a time to further settle in those new jurisdictions and with the recent additions to the office I think the office has grown fairly rapidly and, whilst to date there has been no diminution in the quality of work and our representation of the

interests of people, I think that there is a genuine risk that if we do not have time to consolidate that might be a problem, so I would resist any further jurisdiction coming in the immediate future.

**CHAIR:** That is not from a philosophic base that you now have the entire field covered, but it is about letting it settle and making sure that the organisation does not take on too much too quickly?

**Mr BARBOUR:** That is correct. We essentially set a number of standards or benchmarks in terms of good public administration. I think it is important that we have the capacity to consolidate so that we do not err in relation to that.

**CHAIR:** In relation to the increase in jurisdiction, what sort of consultation have you had with Government about those expansions and is that consultation before it goes to Cabinet or afterwards?

**Mr BARBOUR:** Generally the consultation has been quite good and it is before it goes to Cabinet in relation to new areas of responsibility. I think there is a recognition that it would be inappropriate to consider putting whole areas of responsibility or new jurisdiction at the office before having some degree of consultation. That consultation has been carried out fairly openly and it has provided an opportunity for us to raise particular concerns that we might have with what the proposal contemplates.

**CHAIR:** What about proposals for legislative reviews where you have a role for looking at particular laws. When are you consulted about that? Is that as a fait accompli or is it at an earlier stage of consideration?

**Mr BARBOUR:** Consultation is a little bit more patchy in relation to legislative reviews, but generally at a sufficiently early stage to allow us to have valuable input. As I mentioned in our answers to questions on notice, there was one particular occasion where that was not the case. We drew the Premier's attention to that and we received a response which indicated that that would not happen again in the future.

**CHAIR:** And it has not happened again?

**Mr BARBOUR:** No.

**Mr KERR:** In relation to your opening address and your answers to the Chairman's questions about resisting proposals to give you further responsibilities, in the event of you becoming a resistance leader, what sort of resistance campaign would you contemplate?

**Mr BARBOUR:** Well, I think what I would do is speak honestly about the potential consequences or risks associated with putting new jurisdiction in. At the end of the day it is a decision for Parliament, but I think it is important that Parliament base its decision on an informed view coming from my office about some of the risks that might ensue or some of the potential conflicts. For example, if it

were proposed to put a jurisdiction into my office which in some way threatened the independence of my office then clearly it would be important for me to publicly indicate that I saw that risk.

**Mr KERR:** You spoke about dealing with students at the Police Academy and dispelling some of the myths about police complaints. Could you tell us what some of those myths have been?

**Mr BARBOUR:** There has been a range of myths over a long period of time about how complaints are handled. My Assistant Ombudsman, Police, is currently endeavouring, through an extensive campaign of presentations and discussions, to deal with some of those directly. They range the gamut from misunderstandings about how the complaint system works through to the notion that criminals use the complaint system inappropriately as a way to avoid prosecution; that there are large numbers of vexatious or mischievous complaints that are made; that the Ombudsman requires the police to deal with complaints in particular ways which are not necessarily true. It is essentially what I would put into the category of folklore and I think it is important for us to deal with that because that is the way perceptions are built about systems and we want to make sure that police understand fairly and openly and with a great degree of accuracy how the complaint system works.

**Mr KERR:** Dealing with that mythology, do you say that criminals do not use the complaint system inappropriately; that there have been no instances of that?

**Mr BARBOUR:** There probably have been a couple of instances, but our report to Parliament several years ago I think dispelled that very clearly. The statistics indicated that there were very, very few matters in a significant sample of complaints to demonstrate that there was any real risk of that occurring.

**Mr KERR:** But it does happen; it is not entirely mythical?

**Mr BARBOUR:** I think it is possible. I think the myth is that it is used extensively. That is what we are trying to dispel.

**Mr KERR:** You complained about people's representatives making misleading statements in debate in Parliament, I take it. Were they confined to factual matters? I mean could what was being said be objectively shown to be false?

**Mr BARBOUR:** I think that, had members reviewed the material contained in our annual reports or other documents that we provided, they would have perhaps presented information differently. I think the concern is that parliamentary debate and consideration of issues in Parliament is a very important process. One would like to think that, if there is information available on which to base facts being put forward or positions being put forward in relation to particular legislation, that material would be used effectively.

**Mr KERR:** When this misrepresentation came to your attention did you take any action in relation to it?

**Mr BARBOUR:** It is not something that has not been happening for a long period of time. As I said in the opening, I think the concern for me is that in recent periods it has become a little bit more pronounced and a bit more regular.

Our usual practice was to write to the particular politician to provide factual information and refer them to excerpts from our annual report or previous reports to Parliament. Quite frankly it would be an inappropriate use of our resources to do that now because it happens far too frequently and that is why I have asked the Committee for its assistance in relation to these particular issues.

**The Hon. PETER BREEN:** I got one of Mr Barbour's letters from something I said in Parliament and it was very helpful. I misunderstood the role of the Ombudsman in relation to investigating Corrective Services and in the course of the debate about the Inspector-General of Prisons, I think I inadvertently suggested that the Ombudsman did not have any power to investigate policy matters.

**Mr BARBOUR:** Thank you for raising that and if you do not mind I will use that as an example.

**The Hon. PETER BREEN:** I found that very helpful.

**Mr BARBOUR:** This was the intention. The issue that we particularly raised with you was firstly, as you stated, that we had no jurisdiction in relation to policy issues and the second area where there was a slight misunderstanding was that we had no jurisdiction in relation to staff of the Department of Corrective Services, officers of the department.

We wrote to you explaining that we did in fact did have jurisdiction in relation to those and also provided some additional information about areas where we had jurisdiction and the Inspector-General of Corrective Services did not. That is one of the ways we have tried to deal with this in the past.

**The Hon. DAVID CLARKE:** It would seem to me that your positive work has been far reaching and comprehensive and carried out in a way that Parliament would have intended and hoped that it would have been carried out, particularly in giving relief to many people who were up against laws, new laws, conflicts of interests, protection of children, and it seems that the office appears to be working in a very positive way in that regard.

In relation to what you see as inaccurate statements by Parliamentarians, what means have been available to you to correct what you see as those inaccuracies, apart from letters to the Parliamentarians concerned? Have there been other avenues open to you to enable you to correct what you see as inaccuracies and if not, what would your suggestions be in this regard?

**Mr BARBOUR:** The challenge is that there are not many options for me as an independent office holder reportable to Parliament. The risk for me in correcting errors is that I would be seen to be entering the political debate and siding in some way with a particular position. I would not do that because the risk to my office and

to the integrity of my office would be too great and it would be likely to be misinterpreted and referred to inappropriately.

**The Hon. DAVID CLARKE:** The integrity of the office could be adversely affected if incorrect information is being publicised out there as well.

**Mr BARBOUR:** That is the very reason why I raised it with the Committee. It is an extremely difficult issue for our office to deal with in an effective way and any assistance that the Committee members can give me as to how we ought handle it, I would be grateful for that assistance. There is no easy response. There is nothing that readily comes to mind.

I think that it is the nature of politics that there will be sharp exchanges, lots of debate. Nobody wants to see that change. I suppose the bottom line for me is that given that I report to Parliament and given that the reputation of my office can be negatively affected, quite unreasonably or inappropriately by errors in debate, that there needs to be some consideration given to how we might address those issues to better inform people, so as to remove the potential for there to be misinformation.

I hasten to add that I am not suggesting that I think this is done with intent to cause difficulties. What I am hoping to do is work with Members to ensure that if we can give them any better information or level of information to assist in their understanding about our procedures and practices, I am happy to do that.

We certainly already give quite a considerable amount of information, but if the Committee can also assist with ideas or indeed play some role, that would be something that I would welcome discussion of at some point also.

**CHAIR:** The problem of the Committee playing a role of course is that we are all partisan figures around the table and it is obviously a matter that I have turned my mind to at various times, but it seems to me that a Committee Member coming out in trying to respond or advise another politician that they are wrong, that feeds into a bigger part of the debate.

**Mr BARBOUR:** I suspect that what more I had in mind, and maybe this is something that the Committee can consider, but if Committee Members in their respective party framework were able to indicate that they were available for people to come and speak to them about these sorts of issues before speeches were made or debate was entered into, there might be a capacity to assist in terms of provision of better information.

I certainly would agree with the Chairman's position that once somebody has made up their mind to say or do something it is much more difficult for Committee Members, particularly cross-party, in a way that is not going to be conducive to their particular role.

I was thinking more of the calibre and possibility of Members being a resource, if you like, for their respective colleagues in terms of information and access to information prior to people entering into debate.

**CHAIR:** That is based on the premise that those who enter into the debate do want information and want to get the facts right.

**The Hon. PETER BREEN:** Quite often, particularly with the proliferation of oversight bodies, it is not always easy to work out who has jurisdiction over what, and the Inspector-General and your office is a good example, I think, and so the continued reduction in oversight bodies and concentrating them in your office, I think that one positive aspect of that would be less likelihood of there being confusion about the role of different bodies.

The other thing is that quite often the Government has a particular agenda on a bill or on an issue and the Government introduces legislation or briefs members about their ideas behind legislation, and then if for one reason or another it does not work for the Government, they cannot get the support they need, they then refer Members to organisations such as the Ombudsman.

It happened in the privacy legislation, for example. The Government struck a brick wall in the Upper House with the privacy legislation and then sought to deflect the problem off to the Ombudsman, saying if you cannot work it out or you have issues to raise, go and see Mr Wheeler.

The problem always is that there is going to be a political spin on anything that comes into the Parliament and so it is not always possible to get an independent assessment, even if you ask one of us. We would naturally be biased. The cross-bench, for example, to a man and woman, has been opposed to the privacy legislation and that position can only be resolved by extensive negotiation and discussion and I suspect a lot of the differences they have are misunderstandings, but there is not the forum, particularly with the time constraints of legislation to do any of that.

**Mr BARBOUR:** I certainly take your point and we do get contacted by Members from both Houses to check on information, things like jurisdiction, what our procedures are. We are very happy to provide that sort of information to the limits of our secrecy provisions, which means that everything that is on public record, all about procedures, the way we deal with things, our jurisdiction base, are all areas where we can happily answer questions or confirm people's understandings, or deal with lack of understanding about particular issues.

**The Hon. JAN BURNSWOODS:** I wanted to clarify that the issues you are talking about would have come up overwhelmingly in debate on the major changes. You mentioned the problem has come, so I assume that it is privacy or child protection discussions for the Inspector-General of Corrective Services, but most of the things you are talking about would be in debate on major pieces of legislation?

**Mr BARBOUR:** It is.



**The Hon. JAN BURNSWOODS:** It may be that the problem could solve itself in the next year or two. The Parliament is not heavily engaged in debating those sorts of things.

**Mr BARBOUR:** I think certainly you are right, and the position you have put is accurate, that the increase we have noticed is certainly a corollary of further discussions in relation to additional jurisdiction and responsibilities. I think that even if we do not get any new jurisdictions in the foreseeable future, given the breadth of our responsibilities now and the areas that we do have involvement with, I think there is going to be regular discussion about issues to do with our office in Parliament, whether it be in terms of amendments to current legislation, or other issues. I think it is just the nature of the spread of jurisdiction and responsibilities that we have now and I think that is partly why there is a sense of greater urgency in my mind to try to come up with a way of dealing with that more effectively because I suspect that it will be an ongoing pattern or trend over a period and I would hate to see that damage the standing of the office, not only in the minds of other Members of Parliament but obviously in the minds of people within the community who want to use it.

**The Hon. JAN BURNSWOODS:** I was going to suggest that if the problem tended to concentrate on particular pieces of legislation it might be relatively easy for the Committee and the Members to play the role, but if your prediction of remarks coming up all over the place on a debate, it is much harder for Committee Members to even keep an eye on the process, let alone do anything much about it.

**Mr BARBOUR:** There is certainly a range of issues which underpin our current thinking about releasing more individual and separate reports annually and this is one of factors as well that goes to that. There may well be an outcome if we do focus on reporting on specific areas of discrete business operations within the office, to ensure that there is perhaps a greater awareness of what we are doing in those particular areas, rather than us doing one big document at the end of each year as we have been doing traditionally.

**CHAIR:** The other risk to that is that by putting out more and more reports you create more and more targets. How many reports would you envisage doing?

**Mr BARBOUR:** At the moment what we would envisage doing is picking out our key areas, so we would have one on police, one on community services. We might link community services and child protection together, or look at doing that separately. We have not really thought that through. We would welcome any views you might have, and our general area which would cover public authorities, local councils, and we would obviously have to, under the law, do an annual report and so what we would probably do is use that as a vehicle for one of those areas, so doing it that way we would get four, possibly a maximum of five in a year, so we would space them out every two months, two and a half months.

**CHAIR:** Is report preparation and those sorts of things going to impose a greater workload within the office?

**Mr BARBOUR:** There would be a minor spike in terms of workload as we introduce this, but essentially the work that we need to do to pull together our existing report would be duplicating this, it is just that we publish them separately.

The exercise this year of trying to keep our annual report to approximately 200 pages, which we thought was the maximum size we should inflict upon anyone, was extremely challenging with the number of new areas and responsibilities and what it meant was that we had to write the report in, we believe, a much more hard hitting and more detailed focus than what we would have normally done.

The capacity for us to report separately would allow us to provide more detail, more case studies, and more information, but certainly there are some pros and cons to that.

**The Hon. PETER BREEN:** Just arising out of your initial remarks, you indicated that you were doing some work on people visiting inmates. You were seeking to make the process more transparent and I think you said you were going to limit visits by certain groups of people. Did I misunderstand that?

**Mr BARBOUR:** We are currently doing a very extensive investigation into decisions made by the Department of Corrective Services to limit visits to particular prisoners or against particular visitors to those prisoners. That has been coordinated by Greg Andrews. If you would like specific information about that, I am sure he would oblige.

**The Hon. PETER BREEN:** I am curious about the culture, for want of a better word, that is developing, whereby people are being restricted in terms of access to prisoners. The present Minister has a particular view that he does not want prisons treated like zoos and people just going in for voyeuristic purposes. I do not think that is a legitimate concern personally, but I know the Minister thinks it is a concern and there are other authorities in England which suggest that is a problem in prisons, but I wondered whether that is an issue that you are focussing on.

**Mr ANDREWS:** No, the investigation that the Ombudsman is referring to arises from individuals who actually breach the rules by being found with drugs or other contraband, or engaging in some sort of other conduct that causes problems in visits, and as a consequence of that their visiting privileges are actually withdrawn. It appears about every year that 450 or so people have their visiting privileges affected in some way either by being restricted to non-contact visits or in the main actually being banned from visiting for a period of 12 months or a couple of years. We were concerned about how that system was working, whether it was fair, and we did an audit, we looked at every second case over a period of a year to work out how the system was operating, and we have prepared a report which is actually in its draft stage currently with the Minister.

**The Hon. PETER BREEN:** You may not want to answer this, but did you look at the matter of Bilal Skaf where he is alleged to have smuggled out to his mother a plan of how to escape? It is the most bizarre allegation I have ever seen.

**Mr ANDREWS:** I think that was one of the cases that was caught in the audit, but that is a classic case where someone will try to take something into a gaol or take something out and there are clear laws against that, and what happens is that not only do all those people face the possibility of a criminal charge but, as an administrative action, the commissioner is able to stop them visiting for an indefinite period.

**The Hon. PETER BREEN:** The problem I always have with that is that it seems to me that there is nothing of any concern that could be smuggled out of a prison, and for someone to draw a map of their cell and the features of the cell and to give it to someone else would seem to me to be fairly innocuous, yet it was such a big issue and caused a revamping of the rules of prison visits. It just did not seem to me that the issue justified the response that it got.

**Mr ANDREWS:** It is probably not appropriate that I give a view on that particular case, but I think you have to remember that there is a long history in the department of concerns about any internal layouts or security arrangements being smuggled out of gaol. If you remember, the plans of Katingal many years ago ended up in the household of a well-known criminal and they facilitated a huge breakout from what was regarded as the strongest gaol in the country.

**The Hon. DAVID CLARKE:** I guess the incident that the Honourable Peter Breen referred to may not be of concern, but then of course it may be of concern.

**Mr ANDREWS:** That is right, it is often not clear.

**The Hon. PETER BREEN:** I was concerned for Mr Skaf because he was in trouble with all the other inmates for giving information to his mother.

**The Hon. DAVID CLARKE:** I am concerned about the community as well.

**The Hon. PETER BREEN:** But if it degenerates to an extent where you have to wonder really whether it is just being overblown by the tabloid press, that I think is a good example.

**CHAIR:** Whilst these may well be legitimate points, I am not sure that they are necessarily relevant to this Committee's deliberations. The Committee is on the Office of the Ombudsman, not on the state of prisons.

**The Hon. PETER BREEN:** Mr Barbour, you said that the increased acceptance of the one-stop shop was a result of the integration of the Community Services Commission. I got the feeling from that that you actually favour the idea of a one-stop shop and one large oversight body as opposed to a lot of smaller ones?

**Mr BARBOUR:** There are some positives and some negatives in relation to a single organisation having a large area of responsibility, and I think they are obvious. We certainly think that there is a great deal of continuing lack of understanding about where people should take particular problems. That was what prompted us in part a few years back to suggest that there ought to be an initial one-stop shop office set up

to deal with initial inquiries and complaints coming in so that members of the public had one place that they could go to with their complaint and that office would then put to the particular agency that had responsibility for dealing with it the particular complaint.

**The Hon. PETER BREEN:** Do you still favour that?

**Mr BARBOUR:** Well, we do. We had a lot of work done on it and unfortunately funding was pulled by Treasury in relation to it, but I must say, with the advent of the Community Services Commission coming in to us, and also if Privacy comes in, many of the areas that are obviously linked would in fact be in the one organisation and there are obvious merits in relation to that. We spoke earlier about members of Parliament, notwithstanding a lot of information that we give them about our office, having a degree of misunderstanding about what our jurisdiction is, what our responsibilities are. That could only be greater in the general community, and so the capacity for the general community to go to one place knowing that that agency was able to deal with a range of issues I think is significant. The other benefit is that that agency is able to deal with a lot of issues that have enormous synergies in terms of relevance with one another.

The point I raised in the opening about privacy is that privacy and freedom of information go hand in hand. There are enormous benefits in linking them. We are responsible currently for FOI. There are a lot of negatives that flow from having Privacy in a separate organisation when most government departments have officers that deal with both and are currently confused about how they both interact and how they operate. What we hear from them is that they would welcome having one agency responsible for both of these areas so that they had one body to deal with and the one agency was responsible for issuing guidelines and papers that were in fact consistent with one another across different areas that were relevant. So I think there are some significant benefits, yes.

**The Hon. PETER BREEN:** When I was first elected to Parliament the idea of a one-stop shop for complaints was actually very popular in the Premier's Department. I can recall a meeting of the cross-bench with the Premier's Department in which a merger of all the agencies, including the Independent Commission Against Corruption I might say, into the Office of the Ombudsman was mooted as the Government policy of the day. I personally support the idea of the one-stop shop and I think that having one complaints authority like the Ombudsman is better than having a proliferation of different agencies. I expressed that view at the time. Mine was a minority view, I recall. In your answers to written questions you have said that, even if Treasury provided the funding, you would not be in a position to take up the one-stop shop proposal or advance it any further at this stage. I wanted to raise with you the possibility that, if the Government policy of three or four years ago in relation to this one-stop shop were to be reinvented in some way, would there be any prospect of the Ombudsman taking over the work of the Independent Commission Against Corruption? I do not want to appear biased about it or to have any vested interest, but it seems to me that the work of the Crime Commission could incorporate a lot of the work of the Independent Commission Against Corruption and complaints investigations and other aspects of the ICAC could be taken over by the Ombudsman. That originally, I think,

was the proposal put forward by the Premier's Department. Would you see that as a possibility?

**Mr BARBOUR:** The role and functions of the Ombudsman have grown significantly and the key which holds those functions together is that those functions have in common either a complaint handling, an audit or scrutiny function. The ICAC is separate and distinct from that function. It is not a traditional complaint handling body or an auditing agency, it is a corruption fighting and prevention agency, and I think there is a distinct difference between the two roles. Certainly as long as I am Ombudsman I would resist any attempt to have the ICAC merge with the Ombudsman's office - I do not think that is a good fit at all - and that is what I was getting to in my opening. Where I do think functions fit well with my office, then I am happy to look at it openly and, if it can be worked out, then contemplate it, but where they do not fit I think it is very important for me to state that I do not think they do fit.

Certainly the one-stop shop idea, as far as I am aware, has been in large part a longstanding policy of the Labor Party, it has been around for some time, and prior to the last election it was the policy of the Liberal Party as well, as announced by the leader of the Opposition, so clearly there is cross-bench support for that, but I think what we need to do is we need to move slowly with that for fear that we might make a decision which on the surface seems to be a good one but which, after closer analysis, may not necessarily be as wise as we think. Certainly we would look very carefully at any sort of proposal which further increased our operations.

The other thing you mentioned about the one-stop shop call centre idea, we have simply said that at this stage what we have in terms of new work, the growth and, over a fairly short period of time, the problems and administrative factors associated with that and the fact that with the Community Services Commission entering in, with the Inspector General of Corrective Services no longer in existence but us performing part of that role and with the prospect of Privacy coming in, they were three of the key agencies with which we would have been setting up that organisation anyway, so the need for it to some extent has been reduced a little, but certainly we would like to settle down our own jurisdiction before we facilitate another one-stop shop idea. I think it is an idea that continues to have merit and certainly something that could be revisited down the track.

**The Hon. PETER BREEN:** I think Adele Horan recently in the *Sydney Morning Herald* suggested that you were becoming a monster agency. I am just wondering if you can identify any other community watchdogs or oversight bodies that might be the subject of a take-over, for want of a better word, in the future?

**Mr BARBOUR:** I cannot see--

**The Hon. PETER BREEN:** You have them all?

**Mr BARBOUR:** No, and it has not been my policy, I hasten to add. As I said before, there needs to be a synergy in terms of function and responsibilities. There are many watchdog agencies that have a range of functions or different

responsibilities and you would need to look very closely at whether there was an appropriate fit. If I could give one example: the Health Care Complaints Commission. That would not, in my view, be a good fit with the Office of the Ombudsman. If it were put forward as being something that ought come in I would have reservations about it, certainly as it is currently structured and certainly given its breadth of responsibilities. It has a prosecutorial function which is very inconsistent with the role of this office. Now I have used that example and I want to assure the Committee members that it is hypothetical and no one has approached me or discussed it with me, but it is one of the agencies that was going to join us in the one-stop shop because there are some cross-overs of responsibilities. We have responsibility over the Department of Health in relation to administrative matters; they have responsibility over health service providers. We need to work effectively with that agency and sometimes we get complaints that are destined for them more appropriately and vice versa.

**The Hon. PETER BREEN:** Could I ask one more question arising from your opening statement, and you can pull me up if I am out of line. I wanted to ask about the Chris Puplick matter, since you raised it in your opening statement. First of all, it seemed to me unusual for you to release to the Daily Telegraph under the FOI legislation a copy of your report.

**Mr BARBOUR:** We did not do that. That was a request made on the Attorney General and the Attorney General released the report. We are not under the jurisdiction of the FOI Act and would not be able to respond to a request of that kind.

**The Hon. PETER BREEN:** Were you surprised that the Attorney General released the report?

**Mr BARBOUR:** Well, if he is required to release the report under the Act, I would be surprised if he did not comply with the legislation. That would be something that would concern me.

**The Hon. PETER BREEN:** I do not think it was a public report at that stage, was it?

**Mr BARBOUR:** No, but that is not relevant to the issue of whether or not it is required to be released under the FOI Act. If it is not covered by any of the exemptions under the Act, then the Attorney General is obliged to release it.

**The Hon. PETER BREEN:** I accept that, but I am surprised by it. It did cause an enormous amount of adverse publicity and, I would have thought, unfair publicity given that it was a current investigation.

**Mr BARBOUR:** The only information that I put into the public arena in relation to that matter was confirmation early on that we were conducting an investigation, which was our standard practice, and an item in the annual report which went in of necessity because it was a significant investigation not only in relation to who it involved, but also in relation to the resources used to deal with the matter and so I would properly report on that to Parliament.

**The Hon. DAVID CLARKE:** In other words, it was an investigation you carried out in the way that you would normally carry out such an investigation?

**Mr BARBOUR:** Absolutely. In addition though to a normal investigation, it was also the subject of a Royal Commission power hearing, using our Royal Commission powers.

**The Hon. JAN BURNSWOODS:** Still on the issue of what Mr Breen described as the monster, we did ask a question, question number 6, in relation to the one-stop shop. In your answer you mentioned the power to enter into agreements under Part 6 of the Act. You say that you have entered into formal agreements with health care complaints, for instance, and others. Does that process, referring complaints and sharing information, potentially mean quite a large sort of bureaucracy, either in the Ombudsman's office or across the different bodies?

**Mr BARBOUR:** Not at all. It is simply a legal device which allows us to provide advice from one agency to the other, to avoid duplication of work and to ensure that the right agencies get that information and are able to deal with one another.

It was an alternative that was put forward, given the problems with the one-stop shop, to ensure that we are able to do that. If anything, it cuts down on bureaucracy rather than adds to it. It assists the agencies to do their work more effectively. It does not facilitate a one-stop shop for members of the public, and that is a slight distinction between the two.

**The Hon. JAN BURNSWOODS:** It does not, for instance, enable one of those agencies to say to whoever may ring them up or write to them: Look, you have come to the wrong place but do not worry about it, we can pass you on to the right place?

**Mr BARBOUR:** Most agencies when they are contacted by phone will refer the person to the right place and will provide them with contact details of the right place, as distinct from passing on direct complaints or direct material that comes in. These measures allow us to provide much more information between agencies than we were able to do before.

The benefit of the one-stop shop idea, in our view, was that any member of the public who had a particular problem and did not know where they were supposed to go, could contact one number and that one agency could provide them with information and assistance and also could accept their complaint and then refer it on automatically to the relevant agency.

**The Hon. PETER BREEN:** Arising out of your response to the other questions asked about the Chris Puplick matter, you indicated that you used your Royal Commission powers. I assume that was in the context of interrogation. Can you clarify that for us?

**Mr BARBOUR:** I would not use the word interrogation. Mr Puplick and a number of staff and others appeared on summons before me to answer questions and that was pursuant to the exercise of my Royal Commission powers.

**The Hon. PETER BREEN:** Did you advise them that they had the right to have a lawyer present?

**Mr BARBOUR:** Absolutely. Not only was that advice provided, as it always is, irrespective of who comes before this office on a Royal Commission basis, but there are also documents that are settled by senior counsel and those documents are provided to everybody in advance as well, setting out how the process will be conducted, what their rights and entitlements are, and details about any of the other issues that are general issues that they potentially have concerns about.

**The Hon. PETER BREEN:** Did you make a recommendation as a result of exercising those powers?

**Mr BARBOUR:** I prepared a report on my findings in relation to the matters and that report was provided to the Attorney-General, as the responsible officer.

**The Hon. PETER BREEN:** Did you also make a recommendation or referral to the Independent Commission Against Corruption?

**Mr BARBOUR:** I subsequently, as noted in my annual report item, referred various issues to the Independent Commission Against Corruption after the Daily Telegraph published documents which suggested that the evidence given to me might not have been accurate by Mr Puplick, and I thought it appropriate in those circumstances to refer those issues to the ICAC for them to conduct an investigation.

**The Hon. PETER BREEN:** Going back to my earlier question about the ICAC, given your Royal Commission powers and the way you exercised them in the Chris Puplick matter, would you see any circumstances in which you could deal with the matter yourself, without needing to refer it on to the Independent Commission Against Corruption?

**Mr BARBOUR:** We had concluded our investigation at that stage. The information was coming from an external party. It related directly to matters that had been the subject of a hearing before my office, and could potentially lead to a view that criminal conduct had occurred. In those circumstances, given the definitions of corrupt conduct and the role of ICAC to investigate those matters, it was far more appropriate for them to conduct that investigation.

My office does not have the capacity to investigate matters in those circumstances to the degree that the ICAC can.

**The Hon. PETER BREEN:** You do have the power to determine that something is criminal conduct, or has the potential to be criminal conduct?



**Mr BARBOUR:** If it was something that we were already investigating, that is a potential finding that we might make, but if we did make that we would probably refer it off to the DPP for consideration.

**The Hon. PETER BREEN:** Why would that have a different outcome, you deciding that there was potential for criminal conduct, as opposed to the ICAC coming to the same conclusion?

**Mr BARBOUR:** Because I wanted to make sure that things were seen to be independent and fair. If there was an issue surrounding Mr Puplick's evidence to me, I thought it much better that that issue be assessed by somebody other than me.

**The Hon. DAVID CLARKE:** You did it in fairness to the individual concerned?

**Mr BARBOUR:** The entire investigation was conducted in a manner which was extremely fair to Mr Puplick.

**The Hon. PETER BREEN:** You do not think he was prejudiced by having it referred on to the ICAC?

**Mr BARBOUR:** No. The only reason it was referred to ICAC was because of the possibility of corrupt conduct having been committed by Mr Puplick, nothing to do with my teams.

**The Hon. PETER BREEN:** It was a question of criminal conduct, was it not, not corrupt conduct?

**Mr BARBOUR:** Corrupt conduct is defined in part as potential criminal conduct under the ICAC legislation.

**The Hon. PETER BREEN:** Are you saying that you did not have any authority to reach a decision about corrupt conduct?

**Mr BARBOUR:** No, I am saying that taking into account all the circumstances, I believed that the ICAC was the most appropriate body, the fairest body, and the appropriate investigator for the particular issues that had arisen after I had concluded my investigation.

**Mr KERR:** Arising from that, I take it that having exercised your Royal Commission powers, Mr Puplick did not have the right to remain silent in terms of any questioning by you?

**Mr BARBOUR:** At the end of the day Mr Puplick can refuse to answer any questions if he wants to. If he does that I may draw adverse conclusions in relation to that, but I did not require or compel Mr Puplick to answer anything that he said he was not prepared to answer.

**Mr KERR:** He appeared under summons and I think you mentioned documentation being settled by senior counsel. Does that relate to the rights of the witness? Is the term witness correct?

**Mr BARBOUR:** Yes. All of the procedures that we adopt in relation to the exercise of our Royal Commission powers have been referred to and subsequently settled by senior counsel, to ensure that we were exercising those powers appropriately.

Documentation is given to anybody prior to coming along either as a witness or as subject of investigation to those proceedings. There are entitlements in relation to legal representation set out. There are details about the procedures to be followed set out. In addition to the written documentation, there is always contact made by the staff working with the officer who is presiding at the hearing, to ensure that they have not only received that information, but they have considered it and to confirm whether they want to raise any issues in respect of it.

**CHAIR:** That documentation is not specific to the Puplick matter, it is generic?

**Mr BARBOUR:** No, it is general and there was no departure from the standard practice in relation to this matter at all.

**Mr KERR:** Were the terms of those documents settled by one senior counsel or a number of senior counsel?

**Mr BARBOUR:** We do not have the resources to get things settled by more than one senior counsel.

**Mr KERR:** Who was that senior counsel?

**Mr BARBOUR:** Peter Garling.

**Mr KERR:** That documentation would have been served on Mr Puplick?

**Mr BARBOUR:** Yes.

**Mr KERR:** Would he have issued a receipt?

**Mr BARBOUR:** No.

**Mr KERR:** What is the nature of serving him?

**Mr BARBOUR:** My recollection is it was actually handed to him personally by two of my senior staff, to ensure that there was no issue surrounding him not receiving the information.

**The Hon. PETER BREEN:** I understand that Mr Puplick was questioned for a period in excess of seven hours. Is that standard procedure in your office, to interrogate someone for that length of time?

**Mr BARBOUR:** No, it is not and Mr Puplick was questioned for a long period of time, but that was specifically at his request. During the course of the questioning of Mr Puplick he was asked on at least three occasions whether he would like to adjourn, whether he would like to have the matter go over to a further day. On each occasion he specifically requested that he wanted the matter to be concluded that evening. He did not care how long it took and we wanted to accede to his request in those circumstances.

It created enormous inconvenience to do so with court reporters, but we were able to manage to meet his prerogative.

**The Hon. PETER BREEN:** He was questioned for a lengthy period, I understand in excess of seven hours, without a legal representative. Did he have a support person?

**Mr BARBOUR:** No, and he chose not to have either a legal person or a support person.

**The Hon. PETER BREEN:** Do you think there would be circumstances that might arise in any case, not this case necessarily, but in any case where you would use your Royal Commission powers, to insist that that person either have a support person or a legal representative?

**Mr BARBOUR:** No. Certainly if somebody is subject to investigation it is made clear to them that if they want to have a legal representative there and the role that legal representative can perform, that is all made clear, but at the end of the day I believe that the head, particularly, of two Government agencies is able to make a decision whether he wants to have legal representation or not.

**CHAIR:** You cannot force him to do that.

**Mr BARBOUR:** No, and I think it would be grossly improper to do so.

**The Hon. PETER BREEN:** Not only was he the head of two Government agencies, but I think he was the head, or part of at least 20 different boards or tribunals. It seems to me that that particular complaint about a potential conflict of interests applies to numerous people in the public sector and people in the private sector as well, for example, who might be on the boards of several companies.

It seems to me that if that is going to be a benchmark about conflict of interest, how many different boards or tribunals you serve, it would exclude half the public service.

**Mr BARBOUR:** That is not the issue as far as we are concerned. I agree with you that there are a lot of people who perform a range of functions which have inherent in those functions the potential for conflict.

The issue for those people and the issue for Mr Puplick is to acknowledge that conflict, to recognise that it existed and to put in place procedures to ensure that nothing improper occurred. That is what our guidelines go to. Our guidelines and our instructional documents recognise that the nature of public service these days is such that potential conflicts will potentially exist.

The key is that where they do exist people need to recognise them, particularly when they are obvious ones, and put in place procedures to deal with them effectively. If taking on more than one job causes you to have a conflict which you are not able to deal with by putting in place administrative procedures, then I think you need to think very carefully about whether that is a desirable thing for you to do.

**Mr KERR:** The interview extended for more than seven hours and there is a record of interview, I take it?

**Mr BARBOUR:** Yes. I am not agreeing with that timeframe because I do not have the details with me. It was a long interview and there has been a lot of press speculation about it. I do not have the record of interview and so I cannot be precise. I am certainly happy to accept that it was a long interview and I think it was in the order of around six hours, but without that detail I cannot be precise.

**Mr KERR:** Certainly with notice would you be able to provide the Committee with the length of time?

**Mr BARBOUR:** Absolutely.

**Mr KERR:** During the course of that interview you suggested to Mr Puplick that you were happy to adjourn the matter?

**Mr BARBOUR:** Yes.

**Mr KERR:** Did you suggest to him at any point of time that he might get legal representation?

**Mr BARBOUR:** Without going through the transcript I cannot be definitive about that, but I would expect that my answer would be no, that I did not do that, only because I knew that he was well aware of the capacity for him to do that if he wanted to.

**The Hon. DAVID CLARKE:** That was specified in the documentation you gave him beforehand.

**Mr BARBOUR:** It was specified in the documentation, in our oral contact with him, and also in my opening statement to him.

**CHAIR:** I might move on to a couple of questions about the review of the Law Enforcement (Controlled Operations) Act, which is of interest to the Committee. We had the benefit, if that is the word, of a briefing from the Minister for Police about it last week.

In the answers you have provided to the questions on notice in relation to that review, you indicate that you consider that the general policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives.

You have also indicated that there have been some problems experienced in the operation of the Act, especially with reference to the interpretations of the Ombudsman's functions and powers. Do you consider those issues to be significant and does the current situation undermine the terms of the Act as they relate to the Ombudsman's jurisdiction, functions or powers to oversight the Act?

**Mr BARBOUR:** Yes. My answer to question 9 of the questions on notice sets out the details of the difference of opinion that I have had with the Commissioner of Police on the adequacy of the new application form used by NSW Police for controlled operations. Legal advice that both the commissioner and myself have received is to the effect that the form is technically sufficient to meet the legal requirements of the Act. However, I still consider that it does not provide a clear or adequate audit trail to easily demonstrate that the mandatory requirements of the Act have been satisfied.

If I can give you some reasons for that: In the past, my inspecting officers have generally not had to seek further information from the decision maker to show how they had satisfied themselves of the mandatory considerations under the Act and there is a range of mandatory considerations that the Committee would be aware of under the legislation. This was because information about each of those criteria was usually set out separately in the application form and it was easy to see that sufficient information was before the decision maker to enable them to form an opinion on each matter. With the new form, that information may be buried in the general description of the operation and the criminal or corrupt conduct it seeks to address, or it may not be there at all.

So, firstly, the actual inspection task becomes much harder and it will take longer. Secondly, if my officers are not satisfied that there is sufficient information in the application itself, they may then be duty bound to seek further information from the person who authorised the operation, and this is where the real problem arises and there is real potential to significantly undermine the effective monitoring of compliance with the Act. That is because the commissioner and I have conflicting advice about my powers to seek such further information.

The commissioner sought advice from the Solicitor General who, in my view, read the Ombudsman's powers in a very narrow and prescriptive way. If correct, the interpretation is that there would be an unintended consequence in the enactment. Essentially the advice says the Ombudsman's monitoring functions are restricted to issues concerning the maintenance of documents and the provision of relevant

reports. That is that we can concern ourselves with the information provided in the application, but not enquire about how or why the decision maker was satisfied of the matters required under the Act.

The advice I received from independent senior counsel was that that was not correct. However, I suspect that there is a likelihood that when I try to use those powers, in my view available to me, to seek further information, the commissioner will rely upon the advice of the Solicitor General. In the submission that I made on the review of the Act I said that if the Ombudsman's monitoring function under the Act was reduced to such a level it would be nothing more than a charade. I would be doing little more than making sure that for each controlled operation there was an application and operational plan, an authorisation and a follow-up report and the fact that there may be no reasonable grounds for approving the application would be an irrelevant issue. Clearly this was not what the Act envisaged when it was setting up the accountability provisions for controlled operations.

The Ombudsman's inspection powers under the controlled operations legislation are imported from the Telecommunications (Interception) (New South Wales) Act under which the Ombudsman has a much narrower function. There it is ensuring compliance with the record keeping requirements of the Act. Under the Law Enforcement (Controlled Operations) Act it is a much wider function ensuring compliance with all the requirements of the Act, including code of conduct issues. I therefore believe that if there is limitation on the Ombudsman's powers it results from an unintended drafting error where these powers are imported from one Act to the other. It seems to me sensible that this problem is cleared up by the review. It requires only a simple amendment, but if it is not fixed up it certainly has the potential to seriously undermine accountability under the Act.

One additional thing that I think is important to remember with this is that under the telecommunications and listening devices legislation there is in fact an affidavit that is sworn and that affidavit goes before a judicial office holder before an authority is given. There is no such measure in relation to controlled operations. They can be approved without that sort of scrutiny.

**CHAIR:** As I understand the material I have seen, whilst the police might have a problem with the forms, that seems to have been a problem of comparatively recent invention. When it was with the undercover unit it was not a problem, and it has become a problem when it has gone to the court and legal services branch. It does not seem to have been a problem with the other agencies that would be using the powers under the Act.

**Mr BARBOUR:** That is exactly right.

**CHAIR:** These points, of course, were made in your submission to the review?

**Mr BARBOUR:** In the submission, yes.

**CHAIR:** Were there any other points in your submission to the review where there were differences of opinion between the Office of the Ombudsman and the police or any of the other agencies?

**Mr BARBOUR:** There was a further issue in relation to the review which relates to a particular new technique or way of operating in relation to controlled operations. It once again is a conflict with NSW Police about particular issues, but the nature of that information, if I am to go into it in detail, I think ought to be left to closed session because it could potentially provide information relating to a controlled operation in a manner which could have not only unintended consequences in respect of the operation but also could potentially be in breach of the legislation, so I am happy to go into that in closed session, if you wish.

**CHAIR:** The Ministry for Police told us that there were no significant differences of opinion during the review of the Act.

**Mr BARBOUR:** Well, there was certainly a member of staff from the Ministry present when those issues were in fact discussed.

**CHAIR:** One of the other issues that arises out of the review of the Act relates to a proposal to have model legislation for all jurisdictions in relation to controlled operations. Do you hold any fears in relation to that happening or the implications that might flow from it?

**Mr BARBOUR:** No. I have some information that I can provide to the Committee in respect of that in some detail rather than going through it orally, but certainly there was a discussion paper released in relation to that issue in February. Interestingly, we didn't find out about it until after the closing date for submissions, but the intention of the model provisions is that they will only apply to cross-border investigations and we really do not know how many of those there are going to be. So for purely local investigations confined to one jurisdiction, the local laws on controlled operations and the use of surveillance devices will continue to apply unaffected. However, given the discrepancies in local laws, the initiative is also seen as a way of encouraging jurisdictions to provide for the same investigatory powers in those local laws. It is also assumed that there will be national consistency in areas of assumed identities and witness anonymity protection and that will be achieved through uniform legislation which will apply to all investigations, both intra and cross-border. There is no role contemplated for the Ombudsman in relation to assumed identities or witness anonymity, it is only in relation to controlled operations and electronic surveillance that we may have a role, and certainly we would think that if the operation was largely contained within our State then we would continue to have a role in respect of that, but I am happy to provide some more information that we have prepared by way of background on that, if you would like.

**CHAIR:** I would like to see that and I suspect other Committee members might. What process of consultation were you involved in with the most recent review of the controlled operations Act? Was it simply a matter of being asked for a submission by the Ministry and nothing else?

**Mr BARBOUR:** Essentially, yes. The Ministry wrote to us on 18 February announcing the review and inviting a submission by 30 April. We made a preliminary submission on 24 April, but we asked for the opportunity to provide further submissions later, given a range of issues which we have canvassed to some extent and the fact that we were getting legal advice in relation to them. We had a meeting with a representative of the Ministry, and police at our office on 1 April to discuss some of these issues.

On 7 May 2003 we received written advice from the commissioner. He indicated that the continuing concerns might be addressed in the review. We were not persuaded by his submissions and we decided to seek senior counsel's advice on the issues. On 8 May Assistant Ombudsman Andrews wrote to the Ministry informing them of this and requested the opportunity to make a further submission subject to getting that advice. We were told that that would not present any difficulties and that a further submission would be welcomed. We had some delays in obtaining the legal advice. We eventually received it and made a further written submission to the review on 3 November and to date we have received no acknowledgment of that submission. We have also not been provided with copies of other submissions and we have not been invited to comment upon any issues raised in them. We have also not as yet been provided with or asked to comment on any draft report that may be prepared in respect of the review.

**CHAIR:** In the submission that you made did you deal with any of the issues that the inspector had identified in his first review, things like retrospective approvals and time limits for authorities?

**Mr BARBOUR:** Yes, we dealt with both of those comprehensively from our perspective in relation to that. I understand that we have provided a full copy of our submission to the Committee. The submission dated 3 November 2003 is an eleven page submission, but it does take up those issues that Mr Findlay raised during the first review.

**CHAIR:** And would it be fair to say that the gist of your submission is that there is no basis on the statistical material you have seen to go down the path of extending the time limits in the Act?

**Mr BARBOUR:** That is correct.

**CHAIR:** Has your office been involved in any consultation with the Ministry in the review of the Police Act?

**Mr BARBOUR:** Not that could be described as in any way extensive. We were invited on 7 August last year to make a submission. We did that on 17 October. In December and January an officer from my office contacted the Ministry to establish progress of the review. In January of this year we were advised that NSW Police had made their submission and that a report or discussion paper would not be available before the election. On 5 August this year contact from the Ministry was made about the possibility of workshops on Part 8A and Part 9 of the Police Act. We were asked our view regarding any change necessary. We referred the Ministry to our submission



which dealt comprehensively with that issue. We were told that we would be advised of any workshop in due course. We are not exactly sure what that workshop is to do. Since that time there has been no contact by the Ministry with my office concerning the review and we have not been provided with a copy of the submission made to the review by NSW Police.

**CHAIR:** The other consultation I was interested in was the review of the PIC Act. There was a discussion paper that was presented as though it was a formal review. Has there been any consultation with your office since the tabling of that discussion paper?

**Mr BARBOUR:** No.

**CHAIR:** If I could turn to counter terrorism, the Terrorism (Police Powers) Act provides the PIC with the ability to investigate the conduct of police officers using the powers provided for under that Act. That Act says that the PIC is the only body with any powers of review for police actions authorised under that Act. Does that then preclude altogether your office from having any role in relation to misconduct or complaints? Can the PIC refer matters to you if they choose not to investigate them?

**Mr BARBOUR:** We do not believe it is a problem. It is noted that section 13 of the Act appears to apply only to the authorisation of the exercise of the special powers conferred by that legislation and not to the exercise of special powers by police officers. It is our view that police exercising special powers will continue to be subject to the complaints processes of Part 8A of the Police Act.

**The Hon. PETER BREEN:** Just on that question of scrutinising powers, I think earlier you said that there were 10 new laws involving police powers and correctional officers that you were reviewing. Does that include the anti-terrorism powers of the police legislation?

**Mr BARBOUR:** No.

**The Hon. PETER BREEN:** You do not have any specific brief to review those?

**Mr BARBOUR:** No. The extent of the reviews is consistent with the document I circulated when we met in September, and that document is still current except with regard to the information that I provided about our reviews.

**The Hon. PETER BREEN:** The review of the DNA legislation, I think you indicated that that is coming out of the blocks early next year.

**Mr BARBOUR:** Yes.

**The Hon. PETER BREEN:** Is it late, about a year and a half late? Am I right about that?

**Mr BARBOUR:** No. Part of the problem is that there were amendments, further amendments to the legislation, which changed things halfway through and

that caused some difficulty. We anticipate that there will be an initial report handed down on the first part of that in, I think, March 2004 and that will be hopefully in a draft form for me before the end of this year.

**The Hon. PETER BREEN:** Will that incorporate the new legislation that is proposed to set up the Innocence Panel, or the DNA Review Panel, or will you not be touching that?

**Mr BARBOUR:** We have no statutory role to review that.

**The Hon. PETER BREEN:** It is likely that when the legislation is available that you will have a role to review it, based on what has happened in the past with that legislation and similar legislation. If the legislation were to be tabled in February, is there any prospect that you would include it in the review if it was tabled in March?

**Mr BARBOUR:** No. I would anticipate that if there was going to be a review of the Innocence Panel in the legislation that that review period would probably be for a period of time to allow for there to be a report made about how it is working, which is the traditional input we make as a consequence of our reviews.

If that was the case and it was typical of our other reviews, I would imagine that we would not be reporting on the Innocence Panel legislation until one or two years after its introduction. There would not be an opportunity to comment on that specifically in terms of the DNA report. The DNA report is pursuant to specific responsibilities under the legislation.

**The Hon. PETER BREEN:** Have there been complaints about the Innocence Panel?

**Mr BARBOUR:** The Innocence Panel is not within our jurisdiction in any event.

**The Hon. PETER BREEN:** So if someone did complain about it, they would not complain to the Ombudsman?

**Mr BARBOUR:** If they did complain to us we would probably refer them to who we thought would have the best opportunity of reviewing those issues, which would probably be the Innocence Panel in the first instance, to look at it themselves.

I note that the review of the Innocence Panel, which was tabled recently by the Minister, has in it a recommendation that the Ombudsman have a complaint handling role in relation to the Innocence Panel. I simply note no view in relation to that, other than that was the first time we had seen that.

**The Hon. PETER BREEN:** That was Judge Findlay's review, I think.

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

**The Hon. PETER BREEN:** That review also said that there were serious conflicts between the role of the police in prosecuting offenders on the one hand, and in having control of evidence and seeking to help exculpate the same people on the other hand. It occurs to me that the Ombudsman ought to have some role to play in the Innocence Panel, or the DNA Review Panel, as it will now be known.

Would you propose using your resources to investigate prison affairs to deal with that, or would you propose setting up a new section to deal with that?

**Mr BARBOUR:** I would not want to speculate on that. Until it became the responsibility of my office I would not expend a great deal of time looking at how we might do it. Certainly if it were the intention of Parliament to have a role for us in respect of that we would need to look at it.

There is a range of issues that cross over with that responsibility and potential privacy responsibilities as well, if we end up getting that function, so they are all the things we would need to look at, depending on what avenue was proceeded along.

**The Hon. PETER BREEN:** In your response to the questions on notice about prisons, you said that part of the duties of specialist senior investigators in the general team is to monitor complaint trends and issues in their areas of expertise and you gave the example of specialist corrections staff to review all prison cases recorded in a thing called Resolve. Can you explain what Resolve is?

**Mr BARBOUR:** Resolve is our database system, our complaints management tool.

**The Hon. PETER BREEN:** It is not limited to prisons?

**Mr BARBOUR:** No. Resolve operates across the office.

**The Hon. PETER BREEN:** In relation to prisons, is there any tendency or any observations that you can make about particular complaints? I notice in that same response that Resolve captures areas where there are particular concentrations of complaints. Can you indicate what the main complaints are in the prisons system?

**Mr BARBOUR:** It does. The section on corrections in the annual report provides a significant amount of detail. It starts on page 44 and you will see that it not only deals with numbers, but on page 47 there is a table which details the nature of correctional centre complaints, and it basically breaks down the number of complaints as against the particular issue.

You will see from that table that the predominant issues that are the subject of complaints basically are around daily routine and loss of property type issues, but there is a complete and detailed breakdown there.

**CHAIR:** While we are talking about prisons and corrections, what has been the impact of the removal of the Inspector-General as an avenue for complaints? Has that lead to an increase in complaints to your office?

**Mr BARBOUR:** Not a noticeable increase at this stage, and that may be a consequence down the track, but we do not envisage a huge increase because there was already a duplication happening. The most significant things that we have been working on are the recruitment of additional staff to deal with our expanded corrections role, which will allow us to actually do a lot of things in the corrections area which we were not able to do, which we effectively doubled with the Inspector-General in the course of doing that.

We have recently recruited one of the positions and there are a couple more still under way. What we will then have is a dedicated unit to deal with these issues, and then we will be able to provide a greater quality service in that area than we have been able to in the past.

**The Hon. DAVID CLARKE:** You indicated in your opening remarks that there had been some investigation into inflated figures put out regarding the collection of knives by some divisional offices of the police. Am I correct in that?

**Mr BARBOUR:** Yes.

**The Hon. DAVID CLARKE:** Can you elaborate on that, what it is about?

**Mr BARBOUR:** Certainly. We received a complaint in November 2001 from a police officer and that complaint was about other officers in the Blacktown Local Area Command who he said were creating false records of knife searches, or conducting unlawful knife searches. He alleged that a cause for that, for the inflated statistics, was encouragement by senior officers to actually drive up statistical data and contact with members of the public and so on.

There was an extensive investigation of that matter. We were of the view that the investigation was conducted to a satisfactory standard, but the outcomes needed further attention by police. In particular we agreed that there was no evidence of corrupt conduct, but we were concerned to ensure that officers received proper management guidance and education about the recording of police powers, including knife searches.

Following the making of the report in that matter, police have agreed to report on knife searches more clearly, so the statistics focus not only on the number of searches but measures including a proportion of searches that actually result in knives being found, which was an anomaly uncovered during the course of the investigation.

In addition, there will be an ongoing audit of local command records of knife searches and we are awaiting final advice about these matters from New South Wales Police.

**The Hon. DAVID CLARKE:** You also indicated you are getting some 26,000 telephone calls a year, apart from those inquiries by way of e-mail and mail, I

assume. What is the waiting time for those calls to be answered? Have you done any investigation on this?

**Mr BARBOUR:** We do. We regularly monitor that issue and we have introduced a far more advanced system of equipment to deal with our inquiries over the last 12 months. That area is managed by Mr Andrews and he can provide more specific detail about that, but certainly there is a regular monitoring. We are very concerned to ensure that people do not stay on the phone any longer than is necessary.

We also have a process that people go through where, if they are waiting on the phone, they are provided with information which may in fact answer the query that they are ringing up about, and obviate the need for them to actually speak to one of our inquiry staff at the end of the call.

**Mr ANDREWS:** I do not have the figure on the top of my tongue unfortunately, but all I can say is that we, over the last two years, have actually increased the whole resources in that area. We have actually now got a substantial number of staff who do nothing but specialise in answering the phones, and that is quite a challenging job because of the breadth of jurisdiction that we have and the sort of knowledge that they need to have about how Government functions.

As the Ombudsman mentioned, we actually introduced a new software system a few months ago that allows us to establish various queues for telephone calls, so we can assign staff with specialist knowledge on to queues that handle inmate complaints for instance, or local government complaints, and it also is allowing us to monitor the actual waiting times and things like that. We are becoming a bit more sophisticated in running a mini telephone call centre.

**The Hon. DAVID CLARKE:** You are saying that the whole operation has been streamlined and waiting times have dropped appreciably?

**Mr ANDREWS:** I think so, yes.

**Mr BARBOUR:** Can I just add in relation to that, although we identify those as preliminary inquiry, oral inquiry type contacts, the focus on those is where they are within our jurisdiction and we are able to resolve them quickly over the telephone, we will do that. There may be the opportunity to try to do that while someone is still on the line or, alternatively, we will ring them back once we have contacted the agency they have the problem with. There is a real effort to try to deal with them as quickly as possible without the need for them to become formal complaints, as such, in writing.

We have a new capacity now with legislative amendment which allows us to take on board oral complaints, as complaints for the purposes of our legislation where appropriate. That means that in cases where we need to action something very quickly, or there are particular limits to someone being able to put their complaint in writing, we are able to deal with it more effectively.

**The Hon. DAVID CLARKE:** Referring to the area dealing with the protection of children, I think you have indicated that you have had some complaints coming through from people who feel that they did not get satisfaction from DOCS. Is that right?

**Mr BARBOUR:** I think most of the complaints that we get in relation to DOCS have some degree of problem, satisfaction level, concerns about the quality of service, attached to them. We have, as a result of the Community Service Commission being amalgamated with the office, the capacity now to deal with a lot of those once again in a preliminary fashion, without the need to formally investigate them or start a paper war.

We are certainly active in trying to do that. The complaints that we are getting, and the fact that we are getting increasing numbers, suggests that there are still lots of problems and certainly the material that comes from community visitors and also the material that comes in from complaints and our own inquiries and reviews, suggests that there is still a lot of work to be done.

**The Hon. DAVID CLARKE:** Have you come to a view as to the reasons for those problems? Do you think that it is a lack of funding for DOCS, or staffing, or training? What would you see as some of the problems?

**Mr BARBOUR:** I think the position, we would say, has not changed from what we set out in report, the DOCS critical issues, in April last year. There is a whole range. It is an holistic situation and there is a whole range of problems that contribute to these difficulties.

Part of that has been remedied by a recognition that there was a need for considerable additional resources to be put in. That is starting to happen. We are hopeful and optimistic that that will help in areas where resource problems are endemic, but there are also significant administrative problems, information exchange problems, lack of consistency in terms of processes and procedures, which are all documented in our report.

We are dealing with those in a very systematic way and, as I mentioned in the opening, we have recently had a further report back from the Director-General in response to that report about some of the new initiatives and they include things like a new computer system which is designed to plug up some of the gaps that the previous computer system did have.

In addition, there are new procedures for exchanging information between CSCs in different areas, so those sorts of things are happening.

**CHAIR:** In your annual report you talk about a major inquiry into the Supported Accommodation Assistance Program. What more can you tell me about that?

**Mr BARBOUR:** Well, it was certainly a major inquiry. It started under the commission and it has continued under the Office of the Ombudsman and it has been

now put into a preliminary report which is currently with the DOCS Director General and the Minister to consider and comment back. It was an extensive inquiry. We conducted very extensive research and questioning of providers about a whole range of issues in an area which clearly has significant problems. The problems that we focused on in the report were predominantly access and exit policies, but perhaps Robert can provide the Committee with more detail about that.

**Mr FITZGERALD:** Very briefly, as the Ombudsman has indicated, the report was extensive. We contracted the Australian Institute of Health and Welfare to do a survey of all SAAP funded services in New South Wales, and there are over 390 of those. There was a 79 percent response rate to that inquiry or to that survey. We also examined policies of 80 agencies.

The recommendations and the findings are, as Bruce has indicated, with the Minister and with the department at the moment, but it is a report that will have significant ramifications for the whole sector. In short, whilst the findings are still preliminary, there is a clear indication that there is a very large level of exclusion of certain categories of people from the homeless persons system. The reason for that is that people are presuming risk, not actually assessing that risk. For example, the highest levels of exclusion are around people with mental health conditions. The fact that a person has a mental health condition is not of itself a reason for exclusion. The only reason for exclusion would be behaviours that are evidenced as a consequence of that, yet workers, because of the pressures they are under, will tick the box "mental health" and that person is excluded. That is not an assessment of risk; it is a presumption of risk and those sorts of issues will be identified. There are many categories of exclusion taking place for SAAP service receivers, and that report will highlight those, as well as people being exited early from the program - "early" being earlier than what would have been anticipated under the program guidelines. So I think this report will be very significant for the sector.

Our approach will be a service improvement approach. It is not to cast blame, but rather to say, given that these exclusions are occurring, how better can we manage it, given that that system is the system of last resort. If you cannot enter a SAAP service, you cannot enter any service, so exclusion here means denial of service almost in its entirety. So this is a very significant report.

I just make one comment: The reason we did this inquiry was because we were concerned about the issues, but it is also an area where the complaint system itself will never tell you what is happening in that service system. Because of the vulnerability of the clients, because of the itinerant nature and short-term placement arrangements, normal complaint handling processes will never tell you what is happening, so this was a way of entering the system through one of our many functions and to look at an area which you would not otherwise pick up, so it is a very valuable report in that regard, but it is a very substantial piece of work and hopefully it will be concluded within the next two months.

**Mr BARBOUR:** One of the other problems in that area is that community visitors do not actually visit SAAP services and so, as Robert indicated, getting information through the normal channels is extremely difficult and that led to the

inquiry. The other thing is that, as he indicated, service improvement is the key. It is an extremely challenging area and it has been a fascinating process for me to start to become far more aware of these particular problems and issues that arise in community service provision because there is no doubt that these service providers are dealing with extremely difficult situations; they are undoubtedly under-resourced in large part; they do not necessarily have particularly strong training around a whole range of issues, not the least of which is matters that relate to potential exclusion of people, and they are of course dealing with a segment which would probably be described as the most vulnerable segment in the community, so trying to balance those issues and come up with a way ahead in terms of a productive process which would allow for service improvement has been one of the challenges of the review.

**CHAIR:** What have been the results of the audit of health care needs of residents who are currently living at the Mannix Children's Centre? There were some recommendations made I think by the former Community Services Commission. Have they been implemented?

**Mr FITZGERALD:** The Mannix Children's Centre, for the benefit of members, was a service operated by a non-profit organisation. Following our report by the Community Services Commission the service eventually relinquished its auspice and the auspice was taken over by the Department of Ageing, Disability and Home Care and Mannix is now a Government run service.

The second thing is that, following our report, the Government indicated that Mannix children's home would in fact be devolved. That devolution was due to have taken place last calendar year and that was delayed. It was then meant to have taken place this calendar year and has again been further delayed. Notwithstanding the delays in the devolution, we understand that there has been current activity such that all of the residents of that service will be out of that home hopefully in the first part of next year.

The third point I would make is that, following our report, the department actively engaged the services of the health department or the area health service. There was a significant improvement of the quality of care for the residents of that service and we understand that, subsequent to the department actually taking ownership of that service, that quality of care has continued to be reasonably high. The reports from the visitors who visit that service, together with our own reports, would indicate that there had been a significant improvement in the health care of those residents since that report and the audit indicated that. We provided a copy of the audit to the Minister and to the department and there had been significant progress on most of the issues. I am happy to give you more details if you want, but I have to say that overwhelmingly there was an improvement. The biggest improvement will come when the residents are placed in community services. The devolution of Mannix is taking place at the same time as the other service that was also under the auspice of that non-Government agency but now is in the control of DADHC, which is called Whitehall, and also a Government run facility called Grosvenor, so those three services are being devolved contemporaneously. We would only encourage that devolution to take place at the quickest possible rate, but certainly since our report there have been significant changes both now and we hope into the future.



**CHAIR:** Out of curiosity, where is Whitehall?

**Mr FITZGERALD:** Whitehall is at Revesby, I think, yes.

**Mr KERR:** Do you get complaints about delays in terms of replies to correspondence from government agencies or departments?

**Mr BARBOUR:** We do indeed get complaints of that kind, yes. The reason I was uncertain about what you were asking there was because I know that we are guilty of in fact delaying a response to you in relation to a matter and I thought your question was going to be directed at that and then you confused me by raising government departments. We do, yes.

**Mr KERR:** Since you raised that other matter, I was a little surprised to receive a reply from you where you said that you could not ascertain why the delay had occurred in your office.

**Mr BARBOUR:** I was anxious to respond to you in those circumstances because I thought that there had been an unacceptable amount of time go by. I thought it was best to respond to you and then to have a more detailed look at what happened, and we have certainly ascertained what the problem was. I would like to think that we, as an organisation, are immune from administrative inefficiencies, but regrettably I think everybody has one or other. I would like to think that we have got processes in place to deal with them quickly when they do happen and we certainly accept responsibility and, wherever possible, provide reasons.

**CHAIR:** In relation to the Guardianship and Protected Estates Legislation Amendment Act, is there any proposal to amend schedule 1 of the Ombudsman Act so that complaints concerning the conduct of the Protective Commissioner will fall within the Ombudsman's jurisdiction?

**Mr BARBOUR:** I am unable to answer that, I do not know. Certainly, until such an amendment takes place, it is going to be very difficult to look at complaints in relation to that particular agency. We have made that point abundantly clear.

**Mr KERR:** I was wondering whether you had read Peter Ryan's biography?

**Mr BARBOUR:** I personally have not read it, but I did get a summary of it because we thought that it was important to have a look at it, given our professional responsibilities obviously, but I personally have not read it, no.

**Mr KERR:** The summary probably would have brought to your attention what he said about the Ombudsman, I take it?

**Mr BARBOUR:** He did not actually say that much about me, which I was relieved to have reported to me.

**Mr KERR:** You have not made any phone calls to him? He did raise matters in that he thought there should be a review of the PIC and the Ombudsman's Office.

**Mr BARBOUR:** Well, I did not need to read his book to know that that was his opinion.

**Mr KERR:** Have you spoken to him since his retirement?

**Mr BARBOUR:** No.

**CHAIR:** I understand there is some legal advice being sought with DOCS on the issue of DOCS' responsibilities for risk of harm assessments. I am wondering what the background to that is?

**Mr BARBOUR:** As part of the negotiations that we have been undertaking with DOCS around how we were going to work with the agency, given its future development and change and our memorandum of understanding, it became clear that on a range of issues we had different views and those issues were in a number of areas and related to strictly, I guess, legal interpretation. That particular issue was one. The reporting requirements for a 30 day notification period in relation to child abuse allegations was another. The exchange of information and DOCS' responsibility to provide information and whether section 248 of its legislation allows it to provide other agencies with information, whether they need to make findings in relation to their investigations, are all contained in a brief which we have been working on which I understand has been concluded and we have agreed on counsel and we are getting counsel's advice on those issues. I have made it clear that if Mr Shepherd is right in relation to his view about how the legislation works and we see that as being an impediment to our responsibilities, we will seek legislative amendment. I suspect, however, he might seek legislative amendment if we are successful.

**Mr KERR:** Could I ask which counsel has been briefed in relation to that?

**Mr BARBOUR:** I think Mr Basten.

**CHAIR:** If there are no further questions from members of the Committee, that brings this session to a close.

**Mr BARBOUR:** We have prepared a detailed submission on the controlled operation issue that we had concerns about. If you would prefer to simply receive that in camera, we can do that rather than have me go through it.

**CHAIR:** That may be easier.

**Mr BARBOUR:** I also have a copy of the opening address which I would formally table as well.

(Documents tabled)

**Mr KERR:** I think the former Police Commissioner, Geoff Schuberg, has done a report in relation to police promotions and reforms of the police promotion system. Would that be of interest to your office?

**Mr BARBOUR:** Absolutely. We are aware that he was given that task. I am unaware of whether it has been formally completed and whether there is a report available, but when there is a report available it would definitely be of assistance to us.

**Mr KINMOND:** I understand that it has either been completed or is close to completion and I have received a telephone call about the terms, the sorts of things that it might be referring to.

**Mr KERR:** I would think it would probably be in a draft form anyway and discussed with the stakeholders. Would you regard your office as a stakeholder in relation to that?

**Mr BARBOUR:** Certainly it will have an intersection in relation to our responsibilities and I think that would be a prudent course, yes.

**Mr KINMOND:** As to whether we receive a draft copy of that report and are requested to respond to it is a matter that I cannot comment on. It is possible we may not be given a copy.

**Mr KERR:** It would be a wise course of action if you were involved in the process.

**Mr BARBOUR:** It certainly would not hurt.

**CHAIR:** The process was commenced with very little consultation with you as well. Just in relation to the written submission, we have to get that. It will be covered by confidentiality. I think that in essence it relates to an issue of controlled operations.

The legislation was originally designed to allow police in relation to criminal offences to gather evidence about serious wrongdoing and there is a process where that behaviour is allowed. There is some suggestion that police might now be using that not so much to investigate but to get admissions out of people, which is a significant move away from what it was originally intended to do. That is perhaps something we understand from the submission. That is covered by confidentiality.

**The Hon. JAN BURNSWOODS:** It will be in confidence.

**CHAIR:** Yes.

**(The witnesses withdrew)**