

**REPORT OF PROCEEDINGS BEFORE**

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

**FOURTEENTH GENERAL MEETING WITH THE NEW SOUTH  
WALES OMBUDSMAN**

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**At Sydney on Tuesday 18 March 2008**

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**The Committee met at 10.15 a.m.**

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**PRESENT**

Ms A. D'Amore (Chair)

**Legislative Council**  
The Hon. C. J. S. Lynn  
The Hon. L. J. Voltz

**Legislative Assembly**  
Mr P. R. Draper  
Mr M. J. Kerr  
Mr P. R. Pearce

**CHAIR:** I formally open the proceedings for the fourteenth general meeting with the New South Wales Ombudsman and statutory officers from his office. Mr Barbour, thank you and your team for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the committee is to provide information for the general meeting in relation to a wide range of matters concerning your office in accordance with the committee's statutory functions.

**BRUCE ALEXANDER BARBOUR**, New South Wales Ombudsman, level 24, 580 George Street, Sydney, and

**CHRISTOPHER CHARLES WHEELER**, Public Servant and Deputy Ombudsman, 580 George Street, Sydney, and

**GREGORY ROBERT ANDREWS**, Assistant Ombudsman (Police), level 24, 580 George Street, Sydney, and

**HELEN YVONNE FORD**, Acting Assistant Ombudsman (General), level 24, 580 George Street, Sydney, affirmed and examined.

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

**ANNE PATRICIA BARWICK**, Assistant Ombudsman, level 24, 580 George Street, Sydney, sworn and examined.

**CHAIR:** Mr Barbour, the committee has received two submissions from you. One is dated 15 October 2007 and the other is dated 11 February 2008. Both these submissions consist of responses you have provided in answer to questions on notice in relation to your 2005-06 and 2006-07 annual reports. Do you want those submissions to form part of your formal evidence?

**Mr BARBOUR:** I do, thank you.

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

**Mr BARBOUR:** Yes thank you, Madam Chair. This is our first formal meeting before the new committee. Firstly, can I offer my congratulations to the members on their appointment to the committee and formally take this opportunity to reiterate my own and my officers' commitment to a positive, open and productive relationship with the committee. I look forward to working with the committee in the coming years. I believe most strongly that an interested and involved parliamentary committee is an important contributor to the continuing effectiveness of my office. The committee can provide an effective avenue of communication with Parliament, to whom ultimately my office is accountable. This helps to ensure that members of Parliament fully understand the scope of our jurisdiction as well as the breadth and importance of our work.

There have been several changes in senior staff positions since I and my senior officers met informally with the committee at the end of last year. Simon Cohen, who held the position of Assistant Ombudsman (Police) for over four years, has taken up the role of Victorian Public Transport Industry Ombudsman. It is important for me to publicly acknowledge Simon's significant contribution to the work of this office. Greg Andrews will be undertaking the position of Assistant Ombudsman (Police) until at least August of this year. Greg, of course, as you know, is Assistant Ombudsman (General) and for a considerable period of time has brought extraordinary levels of knowledge to the office and I think it is appropriate that he act in that role. The position of Assistant Ombudsman (General) will be filled consecutively by two senior members of staff until August. They are Helen Ford, senior project officer in the general team, who is here with us today, and Monique Adofaci, the Manager (Legal) for the office. Helen is currently acting in the role and her term will conclude in May. Monique will then take over the position until August.

I have spoken on numerous occasions both before this committee and elsewhere about the changing role of my office. We are no longer just responding to individual complaints on a case-by-case basis. In order to bring about systemic change to the provision of services within New South Wales we use a range of powers to proactively review the work of both government agencies and non-government service providers. I propose to focus my opening remarks on a number of current issues of interest to the office and, I hope, to the committee. I will refer to our cross-agency team, the trial of a streamlined police complaint handling process, and a recently completed defendants survey, and provide a progress report on our unreasonable complainant project. In addition there is one matter I will raise about which I would welcome the committee's consideration and assistance—that is the issue of possible amendments to the Ombudsman Act to remove the difficulties associated with agencies' use of legal professional privilege to prevent my office accessing information.

In relation to our work to date you are familiar with our last annual report, which sets out in detail the statistics of our work. I would like to add to that information that, from the end of June last year to the end of February this year, we have received approximately 6,000 formal and 16,000 informal matters.

Recently we undertook a survey as part of our review of the Law Enforcement (Powers and Responsibilities) Act 2002. This legislation was introduced in an attempt to implement the Wood royal commission's recommendations relating to the consolidation of police powers. As well as a number of other important police powers, the Act provides for the search of individuals on arrest and while in custody. My office's survey was designed to assess the first-hand experiences of those persons searched at arrest or in police custody. Staff from my office attended nine local courts, a weekend bail court and two juvenile courts. In order to be eligible to take part in the survey, an individual had to be facing charges on the day they were spoken to and have been arrested between December 2005 and December 2007. Our staff

approached 700 eligible people. Of those approached, only 190 refused to take part. It means a participation rate of 73 per cent. The information we collected during this survey relates to searches conducted by police based within five different regions and the results of the survey will be useful to our complaint handling in those areas in the future.

In addition to informing our legislative review and our future complaint handling, the survey also presented an opportunity to provide members of the community with information about our office. Our staff spoke not only with those facing charges, but also with many family members and support people who attended court on the day. They were provided with advice about the role of our office, the process surrounding making a complaint, and any necessary referral details for relevant government agencies and community services. The reason I mention this is because the survey is demonstrative of the way in which public input and participation in our work can be achieved in a number of different ways. When assessing issues of importance to the community, wherever possible we will consult interested parties and provide them with an opportunity to contribute their opinion. It is also appropriate to note that we receive considerable cooperation from several government agencies, without whom the survey would not have been possible. Our office is in the process of analysing the information collected during the survey and will be included in our final report to Parliament.

The Unreasonable Complainant Conduct Project, as you are aware, commenced in August 2006 and is scheduled to conclude in September this year. It is aimed at developing a systemic approach to dealing with unreasonable complainant conduct across all parliamentary Ombudsman offices in Australia. The project is unique on a number of levels, but most particularly because, for the first time, it sees all parliamentary Ombudsman offices working together on an issue of common concern. I have a one-page briefing document to provide to Committee members which details the key features of the project and the work that has been undertaken since August last year and what still needs to be done.

Importantly, the level of interest that this project has generated in agencies, throughout not only Australia but also New Zealand, the United States of America and Canada, has been extraordinary. We have now conducted one-day seminars to a range of agencies throughout New South Wales, Victoria, South Australia and Queensland attended by over 300 staff and we have three seminars scheduled in July for New Zealand. The level of interest in the project is also demonstrated by the number of times our interim practice manual has been downloaded since it has been put on our website. In the month of February alone, it was downloaded 1,398 times.

New South Wales Police trial of streamlined complaint handling— Recommendation 6 of this Committee's report, following its 10-year review of the police oversight system, was that New South Wales Police should consider ways in which to encourage the informal resolution of minor complaints at local command level, particularly local management issues, without the involvement of complaint management teams. This is an issue to

which both my office and the New South Wales Police Force have demonstrated a genuine commitment.

In addition to refining our class and kind agreement relating to complaints requiring referral, the New South Wales Police Force has worked closely with my office to develop an alternative approach to handling minor complaints aimed at providing complainants and subject officers with fair and timely outcomes as well as enabling commanders and senior officers to make better use of their scarce resources. New South Wales Police Force commenced the trial at 12 local area commands on 1 August last year. An evaluation is being undertaken by both police and my office. Our preliminary view is that where it has been applied to less serious matters, the trial arrangements are proving successful and we hope to be in a position after an evaluation to endorse them further so that they can be rolled out throughout the State.

Cross Agency Team—in order to respond to what is clearly the emerging whole-of-government provision of services, multi-agency or across-office issues, I established a cross agency team [CAT] in March last year. It is aimed at strengthening communication and collaboration between the various specialist teams within the Ombudsman's office as well as targeting specific systemic issues which may involve one or more jurisdictional responsibilities. The CAT membership includes the Ombudsman's Aboriginal complaints unit and its youth liaison officer, and this allows those important specialist areas to work more effectively with a number of teams within the office. This year CAT was also responsible for the coordination and preparation of our annual report.

In April we will conduct an evaluation of CAT's operation for its first 12 months. That evaluation will be coordinated by an external consultant and will utilise information from the CAT steering committee plus the users of CAT throughout the office. If the Committee has any interest in contributing to that evaluation process, I am more than happy to keep the Committee updated.

Now to the issue of legal professional privilege: I would very much appreciate the Committee's consideration of this particular issue. New South Wales is the only Australian jurisdiction where public sector agencies can refuse access to documents to the Ombudsman on the basis of a claim of legal professional privilege. Within New South Wales, the primary oversight and accountability agencies, the Independent Commission Against Corruption and the Police Integrity Commission, are both able to require the production of documents over which a claim for legal professional privilege has been made. I believe that this is an anomaly within our Act. It serves no practical purpose and it has the considerable potential to frustrate thorough and proper investigation or inquiring into relevant matters by my office.

This issue has been brought to the attention of the Committee previously. In our submission to the 10-year review of the police oversight system, we noted that there had been a number of occasions when New South Wales Police had challenged our entitlement to access all information

relevant to assessment of a complaint investigation. One basis for the objections has been legal professional privilege. As we noted in our submissions to the Committee at that time, in our view it is necessary for us to be able to access all relevant information to properly perform our oversight functions. Any obstacles should be overcome or resolved through appropriate legislative amendments. As this issue is one which continues to frustrate the proper work of my office, I thought it appropriate to raise it again with the Committee this morning. I prepared a more detailed briefing paper for your consideration, and I will hand that up to you.

**Document tabled.**

The briefing paper not only outlines the issues I have just addressed but also provides some specific examples of areas where we have reached negative views as they relate to the ways in which departments have claimed privilege, and it also sets out comprehensively relevant legislation in other States where this is not a problem.

In conclusion, I once stated, in answer to a question put to me by a previous meeting of this Committee, that in order to operate as effectively as possible it was essential for the Ombudsman to expect the unexpected. This remains very true, despite our considerable efforts to work proactively by assisting agencies through publications, training and developing a detailed work program for our future. It will nonetheless always be the hallmark of the Office of the Ombudsman that issues will arise or complaints or problems will come to our attention which will require an immediate response. Priorities must sometimes be reordered and we must have flexible systems in place.

This would simply not be possible without a very talented group of staff who are committed to the office and its work. This forum provides me with an opportunity to formally thank them. Madam Chair and Committee members, I and my senior managers are most happy to answer any questions that you have of us today.

**CHAIR:** Thank you for that comprehensive opening statement. I shall now open the inquiry to questions. On 11 February 2008 the *Sydney Morning Herald* carried a story called "DOCS insiders blow whistle on tragedy". Have complaints been received from staff from within the Department of Community Services [DOCS]? If so, are the issues raised in the complaints of a systemic nature?

**Mr BARBOUR:** We do not receive very many complaints from staff members of DOCS. We do receive complaints occasionally. I have details in relation to those which I would be happy to provide to the Committee in camera. Also there is some additional information that I can provide in relation to the context of those complaints as they fit with systemic issues, if the Committee would like.

**CHAIR:** The Special Commission of Inquiry into Child Protection Services public forum on 15 February 2008 was about mandatory reporting.

It included a question on whether or not police should report child abuse and neglect by providing the Computerised Operational Policing System [COPS] entry for the incident. What is your view on the potential benefits and weaknesses of such an approach?

**Mr BARBOUR:** I will commence by saying that we are in the process of preparing a very detailed submission to the commission of inquiry on mandatory reporting and the other issues that the commission is looking at. We have already provided them with a submission in relation to the Children's Court. Mandatory reporting is, as you can imagine, a very complex area. Our submission will focus on the information that we have obtained and views that we have formed as a result of our work in this area over the past five years. In terms of police involvement directly in mandatory reporting, there is no doubt that they are one of the largest reporters, if not the largest, and that is as a consequence of the operating practices. Their standard operating procedures [SOPs] require them to notify in circumstances where children are present, particularly in domestic violence situations.

There is work that is currently being undertaken by both police and DOCS in terms of research as to whether or not there are better ways that this work can be undertaken. That was the subject of consideration by Commissioner Wood when he held his forum in relation to mandatory reporting. There is a range of issues that we will present in our submission. I will not go into them in detail because I am happy to provide a copy of the submission to the Committee. I think suffice to say that we would be concerned about any changes to mandatory reporting which limit the quality of information that was necessary for a proper child protection response to be undertaken. What is often seen as being a minor matter that is the subject of a report may be so seen on its own, but when it is put together with other similar reports relating to the same family, for example, it might present a deteriorating situation in terms of neglect and circumstances which do require an appropriate response from the authorities.

The other issue that we will be focusing on is the way in which information that comes from mandatory reports is utilised by the Department of Community Services and other agencies. We have advocated for some time, and will continue to advocate, an intelligence-based system in terms of response to reports. The work that has been undertaken by the Department of Community Services suggests that of the 280,000-plus mandatory reports each year, approximately half of those relate to only 11 per cent of families. It seems to us that an intelligence-based approach in looking at those 11 per cent of families is a very good starting point to try to ensure that the application of child protection services is more targeted to those families that are in need of it. Those are some of the issues we will cover in our submission to the Wood commission. I am happy, once that is finalised, to provide a copy to the Committee.

**CHAIR:** Regarding DOCS policy of assisting unaccompanied children under 16 years in Supported Accommodation Assistance Program [SAAP] youth and accommodation services, your response to a question taken on

notice referred to a recommendation in a report on the young people in care to replace the SAAP services. The recommendation requested that DOCS provide a report to you by 29 February 2008 on the progress in relation to this issue. Did you receive a report from DOCS?

**Mr BARBOUR:** We did receive a response and that response provided a timetable for its further work. However, there was very little detail in terms of what progress had been made and we have had to follow it up further with DOCS.

**CHAIR:** Regarding the consultant's review of the community services division, are you satisfied that 65 per cent of those surveyed felt that they were kept informed about the progress of the complaint?

**Mr BARBOUR:** I think all the results of the survey were extremely pleasing. They were a comprehensive set of questions that covered not only individual complainants but also stakeholders and peak agencies. The results we found to be overall extremely positive. What we have done is we have addressed what we see as being further work that we can do as a result of the results of the survey and we have looked at ways we might be able to further improve our information provision to complainants and to others who might make a complaint. Also we have streamlined some of our complaint handling processes to take up some of the concerns that were raised in the review. I am not sure whether we have given the Committee a complete copy of the survey. If we have not, I would be very happy to provide the Committee with a copy of that document.

**CHAIR:** That was to be my next question—could a copy actually be provided to the Committee—so thank you for that. Do other members have questions?

**Mr PAUL PEARCE:** Firstly, in relation to legal professional privilege, I would be interested to see your arguments in relation to that. The question that immediately springs to my mind is if the claim of professional privilege by the agency is based upon potential criminality or liability of an individual, what would be the consequence then of your overcoming that legal professional privilege if there is subsequent legal action? Would that information which has been obtained be able to be used in subsequent court proceedings?

**Mr BARBOUR:** No, it would not, and it certainly does not present any problems to the other agencies that have access to the information. We do not see this used frequently in what we would regard as being genuine circumstances of the kind you are describing. What we do see happening is agencies obtaining legal advice and as a consequence of obtaining legal advice arguing that that is material or information that should not be provided to us. What we have demonstrated in the paper is that that serves no good purpose whatsoever.

**Mr PAUL PEARCE:** No.



**Mr BARBOUR:** Indeed, in our freedom of information [FOI] jurisdiction, we do not have a similar impediment and there has been no issue that I am aware of where any agency has been able to claim an adverse consequence as a result of us having access to that information.

**Mr PAUL PEARCE:** So you consider the agency is simply using this as a device to block access to information that is legitimate to your inquiries?

**Mr BARBOUR:** I do not think all agencies do, but I think in the large majority of cases where it is put forward, it is done in an attempt to prevent us from looking in more detail at a particular matter.

**Mr PAUL PEARCE:** In the report you have prepared, do you cite examples of when this has occurred?

**Mr BARBOUR:** Yes. We have actually included two case studies—one which relates to a professional standards board and one which relates to New South Wales Police—to give you an indication of the sort of flavour of the issues. I have copies here. I am happy to provide them to the Committee.

#### **Documents tabled.**

**Mr PAUL PEARCE:** I refer to the questions on notice on the fourteenth annual general meeting, 2006-07, page 16, question 5, covert operations, where you mentioned the issue of B-party warrants. I have a couple of issues with that, combined with the chart on the next page. Do you consider you have adequate oversight powers to ensure there are not potential abuses in relation to these B-party warrants? Possibly related to that, I notice from the number of applications for telecommunications interception warrants Australiawide that there is a general trending down in the number of warrants but New South Wales is going in the opposite direction. Are you comfortable or satisfied you have oversight powers to ensure that the various agencies are not simply going to warrants as a matter of first call rather than other forms of investigation and policing?

**Mr BARBOUR:** I will ask Mr Andrews to address the bulk of your questions, as he is the manager responsible for that particular area and function, however before doing that if I can just make the observation that much of our oversight responsibilities in relation to these types of operations are an audit type function. So, it is incumbent upon us to make sure that the particular legislative steps or procedures that are in place that must be complied with are complied with. So, we can look at the material and the warrants and the information to assess whether or not those steps have been complied with and bring to the agency's attention any concerns we have. As to the issue of whether there is merit in the issuing of the warrant, that is not an area we would be able to look at. Indeed, in most cases that is the responsibility, for example, where a court or tribunal has to authorise the issuing of it, up to the member who makes that decision. But I will hand over to Mr Andrews to deal further with the numbers.

**Mr ANDREWS:** The telecommunications interception regime is the oldest one in terms of the Ombudsman being the authority who checks on compliance. It dates back to the early 1980s. Our compliance function there is strictly an audit of records. It does not go into the merits of whether the warrant should have been issued in the first place. As the Ombudsman said, that decision is made by a judicial authority when they grant the warrant. The biggest problem with the telecommunications interception regime is that the New South Wales Act, which empowers the Ombudsman to oversight the record-keeping of the agencies, is now out of step with the overarching Commonwealth legislation because the New South Wales Act has not kept up with amendments that have been made progressively with the Commonwealth legislation. So, at the moment, for instance, in regard to named person warrants, while they get checked at the Commonwealth level in other States, we are currently not authorised to report on that. The Act just does not require you to give the extended information and detail about them as happens in other jurisdictions.

**Mr PAUL PEARCE:** Hence the lack of information in the answer to the question?

**Mr ANDREWS:** Yes. What we can say about the trending down is that the biggest users of telecommunications interception warrants in New South Wales are the police and the Crimes Commission. Particularly the Crimes Commission works at a very high level of law enforcement investigation and you will find its effectiveness is largely dependent on information that comes from telecommunications interception, surveillance devices and controlled operations. Most of the big successes in high-level corruption and crime come from those investigative tools because the normal investigative tools are not appropriate because of the sophistication of those criminal conspiracy organisations.

**Mr PAUL PEARCE:** The point you made in relation to the oversight audit in relation to B-party warrants, would you be able to supply the Committee with information as to where the inconsistency lies between the Federal overarching legislation and the New South Wales legislation?

**Mr ANDREWS:** Yes, we can do that.

**The Hon. CHARLIE LYNN:** Mr Barbour, you mentioned the issue of legal professional privilege that you previously addressed to this Committee. How long ago was that and how many times have you addressed it?

**Mr BARBOUR:** It was raised in the context of the 10-year police oversight review that the Committee conducted at the end of 2006. It was raised as one of a raft of issues. It was not highlighted as a specific issue but that was because police were relying on it to some extent as they continue to do. The example I provided in the document we prepared for members relates to advice being obtained about whether police were able to exercise particular powers. The police denied us access to the advice on which they based their decision regarding their investigation and we then had to get

supplementary and separate advice to determine what our view would be. It is unproductive. There is no reason, I believe, that that should take place. Certainly, in terms of the rationale behind the oversight role of the Ombudsman, to not have access to all that information really can potentially limit the quality and efficiency of the oversight we are able to perform.

**The Hon. CHARLIE LYNN:** I see that, and I see in the submission you presented to us that both the ICAC and the Police Integrity Commission have similar sections but they do not have the exemption, which is other than a claim based on legal professional privilege, that you have.

**Mr BARBOUR:** Yes, and interestingly that exemption does not arise in our freedom of information jurisdiction either. So, in relation to the handling of matters pursuant to our FOI jurisdiction, when we get complaints in that area we are not similarly limited.

**The Hon. CHARLIE LYNN:** Are you aware of any problems this causes in other States that have that exemption?

**Mr BARBOUR:** No. I think if it did cause any problems, those provisions would not last very long in that legislation. I think it is an anomaly. I do not know why it is there. I think it was precautionary probably from the first point of time, but time passes on and it should be amended.

**The Hon. CHARLIE LYNN:** You mentioned that you received 6,000 formal applications and 16,000 informal matters. How are the resources of the Ombudsman, your organisation, equipped to handle this amount of requests for investigation?

**Mr BARBOUR:** That number is relatively consistent with the past few years, if you extrapolate it on a 12-month basis. So, you will see from the figures presented in our annual report for the past 12-month period up until June, they would represent almost double the figures I just quoted. We have a range of systems in place to deal with those matters. Certainly the informal matters are dealt with most effectively by our inquiries area, which is our front point of call if you like. That area is now very sophisticated. It is well staffed and we try to manage that area in an effective and efficient way. I think we get results. The formal matters are those that are the subject of writing. What those figures do not indicate, of course, is the percentage of matters that might be outside the jurisdiction, where we need to refer people to other avenues. They might also present areas that we would traditionally decline at the outset and then a subset would go on to preliminary inquiries and potentially further investigation. So, the numbers are relatively similar to what we have had over the past couple of years and the systems in place are adequate to deal with those.

**The Hon. CHARLIE LYNN:** Are you happy with the level of cooperation you get from the New South Wales Police with regard to investigations regarding police?

**Mr BARBOUR:** Generally yes. That relationship has come after a considerable amount of hard work and effort on the part of our office, the Police Integrity Commission and the New South Wales Police Force. I think the system works more effectively now than it did several years ago. I think the streamlining trial that I indicated in my opening was progressing well is an example of how that process has been enhanced. The police had been advised by us for many years that we saw the processes of the complaint management teams as a potential bottleneck. They finally accepted our view that they could look at doing things that were less significant complaints in a different way, and the trial is demonstrating that we are apparently getting similar outcomes with a much quicker and much more streamlined process as a result of taking those matters out of the CMT structure. So, that is indicative of the fact that we are working reasonably well together to try to get positive outcomes for those who have complaints about police.

**The Hon. CHARLIE LYNN:** One of the issues I came across was in regard to Operation Retz. As much as one could go through that extensive amount of documentation in that investigation, one of the points that seem to come up for me from time to time was that police could effectively stonewall the Ombudsman and often, given the pressure of time and the pressure of resources, it seemed to me by the Ombudsman representative investigating, they come up with recommendations such as, " Well, I should have interviewed policeman X or policeman Y, however he was not made available or I could not get around to it or I did not have the time, and therefore, based on the evidence I have, I have had to make this finding." It seemed to me if the representative got to interview them, he probably would have made a different finding. Have you any comment on that?

**Mr BARBOUR:** I am not sure they would have made a different finding. Certainly, the issue of delay in police investigations is something that we are very vigilant about and mindful of. We have a regular audit process in place to look at all matters older than six months that are the subject of investigation by police, and we are beginning to check very closely with police once that time point is reached what is causing the delay. Like any area of investigation, there are straightforward minor matters that do not require a great deal of work and then there are others—you mentioned Retz, which is a matter that went on for several years and involved an enormous amount of investigation. Obviously there are going to be cases of the latter kind, which will take some time. In addition to that issue, the availability of officers sometimes becomes problematic when they are off on leave, particularly when they are off on stress leave, and currently the rules require that they are not able to be forced to be interviewed unless there is the potential for criminal charges to be laid. So that standard will often not be reached in many investigations.

The investigator and also our office are then left with the task of trying to balance what is in the public interest and what is best. Should the investigation without that interview be concluded to the best of the officer's ability who is conducting the investigation or is that interview so crucial to the investigation that we need to hold off and delay the matter? Many factors will

come into play in relation to that, not the least of which is the seriousness of the matter that has been referred, whether the complainant is taking legal proceedings or not, the complainant's own concern around timeliness. All of those have to be weighed up. It is not a black-and-white situation so I cannot give you a black-and-white answer but certainly we are mindful of those issues.

We have through our audit process—and we have provided information to the Committee about this—been satisfied that the deficiency is relatively low in relation to these investigations by police. Any matter where we are concerned about the outcome of the investigation—whether it be because of failure to interview someone or for some other reason—we look at that matter very closely. They are the very matters that we might investigate ourselves or send back for further work, depending on the nature of the particular problem. So, they are issues we are conscious of and we are very focused on.

**The Hon. LYNDA VOLTZ:** One of the first things I would like to ask is what is an Aboriginal specific genogram project? It is in response to Aboriginal, children and young people.

**Mr BARBOUR:** What page are you referring to?

**The Hon. LYNDA VOLTZ:** Page 5 of annexure B.

**Ms BARWICK:** It is a map of family relationships. It is like an organisational chart for a family.

**The Hon. LYNDA VOLTZ:** Has DADHC provided any of the completed or draft forms on its child protection policies? It advised you in August 2007 that it would?

**Mr BARBOUR:** We will take that on notice and get back to you. I am not specifically clear what particular policies they are, so I do not want to mislead you.

**CHAIR:** Mr Barbour, have you been briefed by the New South Wales Police Force regarding progress made in implementing the recommendations arising from Ms Chris Reynolds' inquiry into sexual harassment and discrimination in the New South Wales Police Force?

**Mr BARBOUR:** We have had ongoing contact with New South Wales Police in relation to those issues. As a result of our special report into the police college in 2006 and also that review, considerable work has been undertaken. The establishment of a workplace equity unit has occurred, and it is proposed that harassment and discrimination complaints will be the subject of consideration by that unit. We have participated in a working party examining arrangements for handling workplace harassment and discrimination matters, and we are awaiting further advice about the final proposals the police are putting forward in relation to that.

We did have some limited concern about this because it was going to take these matters out of the traditional complaint path. But, given the findings of Ms Reynolds and our own concerns about the way these matters were dealt with, there was a challenging balancing exercise to be undertaken in terms of what the appropriate mechanism would be, so we have decided to have a look at what New South Wales Police come up with and then we will assess to see whether we are happy with it or not.

**CHAIR:** Has the workplace equity unit been fully staffed?

**Mr BARBOUR:** I do not believe it is fully staffed; I think there are still positions vacant.

**CHAIR:** The Committee notes that you have been involved in correspondence with the Department of Education and Training regarding policy of a disclosure or school accident reports and that you intended writing to the director general in relation to this matter. Have you received a response from the director general?

**Mr BARBOUR:** If I could take that on notice. This has been a longstanding issue and one where the department appears to be continuing to attempt to find a way around the advice that we jointly obtained in relation to this issue.

**CHAIR:** You may wish to take the next question on notice. Would you be able to update the Committee on any progress the department has made in implementing the recommendations of the review of the department's handling of freedom of information applications?

**Mr BARBOUR:** I have just been advised by the Deputy Ombudsman, who has had carriage of this matter, that there is a meeting scheduled soon to discuss these very issues. So we will be in a position to further advise you in due course.

**The Hon. LYNDIA VOLTZ:** With regard to underlying data systems, for example, under the Austrak transaction reporting regime there is an underlying data system that allows police to access bank statements, and social security and taxation details, and other agencies come up as a flag. Across these agencies, that appears to be part of the issue, does it not?

**Mr BARBOUR:** The quality of information exchange and access to information has come up time and time again in relation to so many areas that we are involved with. There is a range of significant impediments, unless there is the will of government and the Legislature to introduce laws to change existing situations. You run into difficulties with privacy, and you run into difficulties with agencies in terms of putting up barriers around their own areas of work and responsibility.

If I can take the area of child protection, for example, it is very clear from our across-agency work that holdings in relation to children and families that are potentially in crisis are held by multiple government agencies. The notion that those agencies should be prevented from exchanging that information where it is necessary for the care and protection of children seems extraordinary, and I have gone public on many occasions to say that every effort should be made to ensure that any limitations around those issues are removed. It is certainly one of the areas that I know the Wood commission will be looking at.

In terms of our own systems, we also approach, on a much smaller scale, the very issues which underpin the question you have asked; that is, about using our information holdings in a way which is intelligence-based. For example, in the policing area we will often use the information we have in relation to police complaints to try to do project work to identify and target problem officers so that we might identify them and speak to local area commands about what strategies are going to be in place to prevent other problems arising in relation to particular officers.

To answer your question, yes, across a whole range of areas it would be very good to have a greater degree of cooperation in terms of data and access to that data—ensuring, of course, that there is proper privacy, where it is necessary, and there are proper safeguards in place about the use of that information.

**Mr PAUL PEARCE:** I refer to attachment D, at page 45-46: "It is interesting to note that the UK legislation has only one ground for the making of a care order—that the child has suffered or is likely to suffer significant harm. There is then a reference to the attitude of the Children's Court on this. Do you have a view as to the appropriateness of that?"

**Mr BARBOUR:** Is that the Children's Court paper?

**Mr PAUL PEARCE:** In relation to care proceedings in the Children's Court.

**Mr BARBOUR:** Once again, this is a very complex area. The Wood commission just recently conducted a public forum about the Children's Court. What is interesting is that when you get a whole lot of people who are actively involved in this particular area, you can bring them in and each one will have a different view about what ought to happen, in relation to care proceedings, for example. I do not want to put a particular view in relation to that. If that is an area of particular interest to the Committee, I am certainly happy to provide you with a copy of the Children's Court paper that we have prepared for the Wood commission, which it already has.

One of the things we have found particularly challenging is looking at the relevance and applicability of what happens in other jurisdictions, whether it be within Australia or overseas. It is very hard to look at something that appears to be working in another jurisdiction without having a very good

understanding of what underpins it and whether or not it is applicable here. If I could use an example—which is quite different from the one you are talking about but nonetheless of interest, I think, to the Committee—and that is around access and visiting foster carers. Our visitable service legislation prevents us from being able to do that. We have official community visitors; we have about 34 visitors with a budget of a little under \$800,000. Queensland has 175 visitors, with a support staff of 35 and a budget of \$11 million, and they do visit foster carers. There are a lot fewer of them, but it is also a much more financially supported system and one that is supported in terms of other resources than what we have here. Would that translate to here? I do not know, but it is not going to be able to unless we have double those resources, given the number of foster carers we have.

In looking at other jurisdictions and what is in place, I think we need to be very careful about how we emphasise whether or not they might be useful here. One of the things we have been cautious about with the Wood commission, for example, is to in any way put forward particular views about what ought to happen. I am much more comfortable about putting the range of options and what we are seeing as being some of the pluses and minuses in relation to those.

**Mr PAUL PEARCE:** At page 60-61 of the same document, there is a comment that the Legal Aid Commission reports that section 82 reports are often inadequate or incomplete, or even inaccurate. Further, the Legal Aid Commission said that while the system requires that orders are made for the long-term placement of children in out-of-home care, no actual placement is identified or even guaranteed. Would you like to comment on that?

**Mr KINMOND:** In terms of the monitoring of placements, last year we conducted a review of 49 children under five and we had a look at how well the monitoring of these placements was taking place. We found that on a number of occasions, whilst the court had ordered that a monitoring report be provided back to the court, that did not take place and it did not seem to be picked up by the court. So in our recent submission to James Wood in terms of his special commission of inquiry, we have raised that issue and said that if this system is to be in place, obviously there needs to be some rigour applied to it.

**Mr PETER DRAPER:** Mr Barbour, in the comments on the 2005-06 annual report your office suggested some methods that councils could use to reduce complaints made about developments. The response provided said that basically you are relying on general managers of councils reading your annual report and delving into it. Given the recent incidents in Wollongong, would it be appropriate to circulate that sort of information as a matter of course to all councils, rather than just relying on the general manager reading something online?

**Mr BARBOUR:** I think we certainly could. We provide a lot of information to all areas of government, including local government, about appropriate codes of conduct, about appropriate investigation and complaint-



handling systems, and that information we make readily available. Given the number of councils, it is very difficult for us to have a one-on-one contact with them, and also we see the Department of Local Government having a direct role in relation to this as well. But I am certainly happy to look at any opportunities we have to improve the quality of governance within local government.

**Mr ANDREWS:** May I also add that we make good use of our annual reports and we reuse a lot of information, so when similar complaints crop up in the future often we will quote those same suggestions back to people, sometimes fine-tuned. But just because we said something at one point in history does not mean we do not have an ongoing campaign to push those ideas forward.

**Mr BARBOUR:** Interestingly as well, the association at one point was very concerned that we publish the statistics we have in our report about the number of complaints and what happens with them for each council. I resisted that approach, and will continue to publish those details. Local councils do not like it. Often they are misinterpreted by the press, but if we do get 25 complaints about Gosford council or about Sutherland council, I am quite happy for that to run in the local press.

**Mr MALCOLM KERR:** In relation to legal professional privilege, Mr Barbour, you said you assumed it was just precautionary. Have you made any inquiries as to why that provision exists?

**Mr BARBOUR:** No. I do not think there is any information in any of the second reading speeches or any of the information relevant to the introduction of the legislation. I think what is very telling, of course, is the fact that it no longer is the case in any other jurisdiction for any other Ombudsman's Office. If there were problems with removing it, we would certainly be live to that from those issues arising in other jurisdictions, but we are unaware of any.

**The Hon. LYNDA VOLTZ:** Community visiting officers have the ability, I understand, to take an issue to the Minister or the Ombudsman. If they were taking a complaint to the Minister, what do you believe would be the process there?

**Mr BARBOUR:** It is difficult for me to comment on behalf of the Minister. Technically, the official community visitors are the Minister's visitors and they work for the two Ministers that have portfolios in relation to disability and community services. We work to administer the program, and we use the information that comes in; we are involved in the training and the support and assistance to the visitors. I am unaware of the visitors regularly making complaints to the Minister. In fact, I think that probably does not happen all that often. I am aware that on a several-times-a-year basis Ministers will organise and convene a meeting with the visitors, and I think that is often used as an opportunity to raise particular concerns. But certainly any concerns that the visitors have come to us and we use that information, as

well as our complaint-handling information, to gain a very clear picture of what is happening in particular services.

The visitors do a remarkable job, and in very isolated conditions in rural New South Wales, travelling long distances and visiting very challenging locations. They do a really good job in terms of keeping eyes and ears open on the ground for us about what is going on in services.

**The Hon. LYNDA VOLTZ:** There is that two-pronged approach with the two areas that they can report to the Ombudsman or the Minister. Is there a level—

**Mr BARBOUR:** It is not an either/or. Reports of their visits always come to us. It is discretionary as to whether they believe they should agitate a particular issue to the Minister or not. That would be a question best asked of an official community visitor. As I said, I am unaware of them raising particular issues with Ministers but built in to the legislation is the capacity to do that if they feel it appropriate.

**The Hon. LYNDA VOLTZ:** I asked the question because an official community visitor who came before the Committee said that they had raised a complaint with the Minister but had not received a response from the Minister. In fact, it had come back from the department about which they were making the complaint?

**Mr BARBOUR:** Yes, I remember reading a briefing about that. I cannot speak on behalf the Minister, nor are Ministers within my jurisdiction—there are often times I wish they were.

**The Hon. LYNDA VOLTZ:** I am just wondering whether that needs clarification. That is more my question?

**Mr BARBOUR:** Traditionally, my understanding is the way that Ministers work would be if a particular issue was raised by anybody, whether it be an official community visitor or a complainant or a family member, and they wrote to a Minister, the Minister would normally seek a briefing from the department and it would be up to the individual Minister as to whether they would author a response back themselves or whether they would get the agency to do it. I think different Ministers have different practices in relation to that.

**Mr MALCOLM KERR:** Can you give examples of the times when you wish that Ministers were under your jurisdiction?

**Mr BARBOUR:** I do not think the meeting could go that long.

**CHAIR:** Mr Barbour, regarding legal professional privilege would you be prepared to take some questions on notice from the Committee on this matter?

**Mr BARBOUR:** Absolutely. We would welcome the Committee taking the issue on board for us. We think that would be of advantage.

**CHAIR:** In relation to the brief that was provided to the Committee earlier, would you like to table that as a public document or would you prefer it to be kept confidential?

**Mr BARBOUR:** The legal professional privilege brief?

**CHAIR:** Yes.

**Mr BARBOUR:** I think at this stage it would be best to keep it confidential and we could consider making it public—only because of the particular examples. If we are going to be tabling things, I have an updated copy of our brochure on our legislative reviews for the Committee. The brochure gives up-to-date information about where our current legislative reviews are at and also gives the details historically of some of the reviews and what has been happening in relation to those. In addition I have a one-page briefing document on the progress on our unreasonable complainant conduct project.

**CHAIR:** Thank you for providing those to the Committee. That concludes the 14th general meeting with the New South Wales Ombudsman and statutory officers from his office.

**The Committee adjourned at 11.19 a.m.**