

REPORT OF PROCEEDINGS BEFORE

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

**INQUIRY INTO TWELTH GENERAL MEETING WITH THE NEW SOUTH
WALES OMBUDSMAN**

At Sydney on 30 November 2004

The Committee met at 2.00 p.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

The Hon. P. J. Breen
The Hon. J. C. Burnswoods
The Hon. D. Clarke

Legislative Assembly

Mr G. Corrigan
Ms N. Hay
Mr M. J. Kerr

BRUCE ALEXANDER BARBOUR, New South Wales Ombudsman, Office of the Ombudsman, 580 George Street, Sydney,

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, Office of the Ombudsman, 580 George Street, Sydney,

STEPHEN JOHN KINMOND, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner, Office of the Ombudsman, 580 George Street, Sydney,

GREGORY ROBERT ANDREWS, Assistant Ombudsman, General Team, Office of the Ombudsman, 580 George Street, Sydney, and

SIMON JUSTIN COHEN, Assistant Ombudsman, Police Team, affirmed and examined:

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

CHAIR: Welcome to this Committee hearing. I particularly welcome you, Mr Cohen. I think this is the first time you have appeared before the Committee.

Mr COHEN: Thank you.

CHAIR: Mr Barbour, the Committee has received a submission from you in the form of answers to some questions on notice. I take it that you seek to have those answer incorporated as part of the evidence.

Mr BARBOUR: Thank you.

CHAIR: I also formally table the letter from the Premier to this Committee, dated 13 October 2004, which has been referred to in one of the answers.

Document tabled.

Mr Barbour, do you wish to make an opening statement?

Mr BARBOUR: Yes, thank you. As you have correctly pointed out, the Committee is meeting Simon Cohen for the first time today. He now holds the position of Assistant Ombudsman in our police area, which was previously held by Steve Kinmond. Steve, who was the Assistant Ombudsman for police for seven years, is the new Deputy Ombudsman, Community Services. As a consequence, he also holds the position of Community and Disability Services Commissioner. Robert Fitzgerald, who previously held that position, left the office to take up a position with the Productivity Commission. I take this opportunity to publicly recognise his considerable contribution not only to improving the provision of community services in this State but also to the successful amalgamation of the Community Services Commission with the New South Wales Ombudsman's Office.

As the Committee has seen from the detail contained in the most recent annual report, our office continues to be very busy. I do not propose to duplicate this afternoon what is set out in the annual report or in the extensive answers that we have provided to the Committee in response to its questions on notice. However, I will mention some highlights in relation to the work we have undertaken since our last meeting with the Committee. We finalised more than 9,000 formal matters in 2003-04. This included dealing with more than 3,000 complaints about police officers and more than 1,600 allegations notified to our office pursuant to our child protection jurisdiction. We also dealt with more than 26,500 informal matters, wherever possible striving to provide quick and effective resolution or advice to those

seeking our assistance. In the five months since 30 June not covered by our annual report, we have received more than 3,400 additional complaints, including approximately 1,700 about police officers and more than 600 notifications of reportable allegations to our child protection area. We have in this period handled more than 10,000 matters informally.

Over recent years, we have substantially increased the number of formal investigations that we have undertaken. Since July 2001, we have finalised more than 150, 42 of which were in 2003-04. These are generally large projects that are both time consuming and resource intensive. As honourable members know, we made a strategic decision to conduct more formal investigations several years ago. In the majority of cases our recommendations made at the conclusion of those investigations have been implemented. We also have a high success rate in resolving complaints without the need for a formal investigation. These are cases in which we may have some written correspondence with an agency to ask questions, clarify issues or explain obligations. In more than 60 per cent of the complaints we received about the public sector the agency concerned made a new decision, apologised to the complainant or took some other action to address the concerns raised.

We have made with two special reports to Parliament in the past 12 months. One related to those people particularly vulnerable who require assistance from the supported accommodation assistance program and who in our view were being improperly excluded from those services. We made extensive recommendations on how agencies could improve their policies and practices and how the Department of Community Services [DOCS] should support that change. The other special report to Parliament raised our concerns about the inadequacy of services being provided by the Department of Ageing, Disability and Home Care [DADHC] to family with children and young people with a disability. In our answers to the Committee's questions on notice we have supplied an update on the progress we have made with both DOCS and DADHC to address the problems highlighted in both of those reports.

We have also continued to make our presence felt in regional New South Wales. In 2003-04 we have made almost 50 visits to correctional centres and juvenile justice centres and we have conducted more than 70 workshops and briefings, making more than 80 presentations and speeches, many of them throughout regional New South Wales. In addition, we have distributed more than 14,000 information kits, guidelines and newsletters. This work is particularly important for those who are isolated because they are either incarcerated or because they live in remote parts of New South Wales. We endeavour to ensure that our services are easily accessible to all people within the State.

This year we also published a range of reports, including discussion papers relating to four of our 12 legislative reviews: Police Powers (Drug Detection Dogs) Act; Police Powers (Internally Concealed Drugs) Act; the Children (Criminal Proceedings) Amendment (Adult Detainees) Act; and firearm and explosive and detection dogs legislation. I have available for the Committee copies of our most recent brochure on our current legislative reviews, which will provide the Committee with full and updated information on the progress of each of these reviews. We have also published this year two issues papers, one on the Protected Disclosures Act based on the experience that we have in interpreting and trying to implement the scheme and from our interaction with staff in other public sector agencies, and the other on complaint handling in universities, which utilised the results of surveys conducted of each New South Wales university in respect to their own complaint handling practices and procedures.

Clearly, it is the public interest that underpins our work. We feel that it is important at times to put ideas out in a discussion format to facilitate debate and to encourage discussion on significant policy issues that affect many people. As honourable members are also aware, we now prepare four annual reports: our traditional annual report, which looks at the work of the entire office; a report on the work of the official community visitors, which is about to be tabled; a report on our role in respect of controlled operations, which has been tabled; and on our newest function, reviewing the deaths of certain children and young people and people with a disability. Our report in relation to reviewable deaths I expect to table in Parliament next week. This jurisdiction has led to the review of the deaths of 247 people until

the end of December 2003. Given that this is the newest function of the office, I thought it might be appropriate to provide a little more information about this role.

Since December 2002, we have had the responsibility for reviewing the deaths of people with a disability in care and certain children. Children's deaths that are reviewable are those where the child or their siblings was reported to the Department of Community Services within three years of their death, the child died while in care or in detention, or the child may have died from abuse or neglect or in suspicious circumstances. The deaths of people with a disability are reviewable if the person died while living or temporarily absent from residential care or a licensed boarding house. Our work in this area focuses largely on systemic issues and recommending changes to policies and practices that might prevent or reduce untimely deaths. We also have the capacity to review and as necessary inquire into the circumstances of individual deaths. This new function, as honourable members can imagine, has provided some significant challenges to the office. Unlike other areas of our work, our role in this area is supported by two specialist advisory committees.

On the corporate front we have reviewed our corporate plan this year and in its place have developed a new statement of corporate purpose, a copy of which has been provided to the Committee with the questions on notice. The statement of corporate purpose sets out the purpose of our organisation and reflects our functions and work in improving the provision of community services. We are currently in the process of finalising team plans and action plans that will underpin this statement and which will together create our corporate plan.

You will see from the statement of corporate purpose that we maintain our core focus on promoting better administration and provision of services for people in New South Wales. One of our goals is also, however, to be a leading watchdog agency. I believe that in part our progress in achieving this goal is demonstrated by the regard in which our office is held around Australia and, to some surprise I discovered earlier this year, around the world. Since our last meeting with the Committee we have experienced a significant increase in requests for technical advice and support from other ombudsman offices around the country as well as from other State and Territorial governments. Our expertise in the areas of protected disclosures, non-criminal investigatory practices, complaint handling and good administrative practice as well as with ombudsman legislation generally, appears to be well recognised and entrenched throughout Australia.

As you know, we have a significant publications program to provide guidance not only to agencies within New South Wales but which also we now see are used outside of New South Wales. We are the largest ombudsman office in Australia and I believe there is significant benefit in our maintaining close relations and a supportive relationship with other offices. This year I attended the quadrennial conference of the International Ombudsman Institute. That conference had over 400 delegates representing over 100 ombudsman offices from around the world. During the conference I was pleased to be re-elected the Regional Vice President for that institute, and was pleasantly surprised to hear very positive comments from a number of people attending about our publications and the fact that they were used by many agencies overseas as templates or model guidelines for agencies within their own jurisdiction.

We have also continued to host this year a number of visiting international delegations. We continue to do this on a cost-recovery basis and we charge an appropriate fee for the use of our services. In my view there is little point in organisations reinventing the wheel where their functions and practices are largely the same as ours. If other offices are able to use our material it is a further indication that we are getting it right here in New South Wales and that we continue to help improve public administration beyond our own jurisdiction. It is a credit to the staff of our office, both past and present, that we have developed this reputation and are in such good standing.

We have also commenced work this year on what is likely to be a long-term project designed to assist ombudsman offices in the south-west Pacific. The Committee members

who were on our Committee at the time will recall that our office hosted the 20th Australasian and Pacific Ombudsman Regional Conference here in Parliament House in November 2002. At that conference it was decided that formal arrangements were needed to provide smaller Pacific ombudsman offices with support to give them an opportunity to share experiences and to improve in terms of their involvement with their particular countries. That discussion led to the formation of a new group called the Pacific Islands Ombudsman Forum and a proposal from that group that Australia should undertake and assist those member countries with an institutional strengthening project to help their offices.

Because of the unique cultural, social and political realities facing each of those offices, the first stage of this project is identifying each of those office's precise needs. We are working with the Commonwealth Ombudsman's office, which has funding approved by AusAID, to finance the first stage of this project. Clearly, strong ombudsman offices in the region will help promote good governance in their respective countries and contribute to regional stability, an important goal not only for Australia but also for New South Wales.

I would also like to update the Committee on some of the work that we have done to address an issue that I specifically raised with the Committee at our last meeting. You may recall that I talked about my developing concern that some people in the community, including members of Parliament, did not have as good an understanding of the role and functions of our office as I would have liked. Some of the things that we have done to try to address this include doing considerable work on our web site to not only redesign it and make it more user-friendly but also to allow more information to be placed on the site and to make it more comprehensive and easy for people to use. We have also created a new newsletter called *Communicate*. All of you would have received several copies of that by now. Its focus is to provide information about our work in the community sector. We have a circulation list of 6,000 for that particular publication.

As I indicated earlier, we have continued to make regular presentations to community and other interest groups about our office, and we have recently held two briefing sessions for staff of members of Parliament, giving them information about our work, what we do and how we do it, and providing them with sufficient contact information should they need our assistance. Most of the attendees were electorate staff and we understand from feedback received to date that they have found that process very beneficial.

I mentioned in one of my earlier addresses to the Committee that one of the things I have learnt as Ombudsman over the years is to always expect the unexpected. Regrettably, one of the challenges that we have had to face this year, which was unexpected, was a budget cut of approximately 3 per cent, or \$500,000. This cut was not only applied to our office but was also applied largely and reasonably uniformly across most agencies in the State. As the Committee knows, the majority of our budget is directly related to salary cost for our staff and as a relatively small organisation, a cut of this magnitude means that we must develop strategies for both the short and long term to manage the shortfall. Unfortunately, those strategies have included a reduction of staff in the office through not filling contracts that conclude, and in some cases not replacing staff when they leave.

We will, as always, continue to evaluate the way in which we do our work to try to achieve continuing efficiencies, but in the business of handling complaints and the oversight of government and non-government agencies, a budget cut of this size will mean that in the longer term we will have to cut down in some areas the work that we currently do. One of the strategies that we may need to employ will be to decline more complaints that we receive at first instance. Of course, I am reluctant to do this and I will only do it if it becomes absolutely necessary to do so.

Lastly, an opportunity like this in the public arena provides me with the facility to talk about the good work and achievements of my office, not because of me as such but really because of the continuing and significant support and work of my staff. I commend them to the Committee for their continued effort and enthusiasm, which they bring unflinchingly to this

difficult work. Thank you for the opportunity to make that address, Mr Chair. Myself and senior staff are most happy to answer any questions the Committee has.

CHAIR: Just a couple of issues arising out of your opening address. You indicated the decision to increase the number of formal investigations. What was the basis of that change in approach, and has it been justified? Have the aims you hoped would be achieved been achieved?

Mr BARBOUR: I think we have developed a more strategic approach to investigations. I think that until the latter part of the 1990s investigations were traditionally done as a last resort and where we were not able to achieve particular outcomes that we were seeking through informal means. That was partly due to the fact that they required a great deal of additional resources and there was a question about the validity of them. My view, and the view of my senior staff, has been over the last few years that there are significant benefits in doing investigations, particularly in areas where we identify systemic issues. So the focus, in a strategic sense, has been on being very clear about identifying cases or matters that are brought to our attention through any number of areas of our jurisdiction and targeting those areas so that we do very targeted investigation work.

You will have seen in our annual report that we provide a lot of detail about the investigations undertaken this year and some of the ones that were concluded last year, and those give a flavour, I think, for the very strategic approach to those particular investigations.

CHAIR: One of the other issues you raised in your opening remarks related to the legislative reviews carried out of the various bits of legislation. As I read the answers you provided to the questions on notice, the best turnaround time between a review going to a Minister and it been tabled in Parliament was about a month; there was one where there was a four-month delay, one where there was a seven-month delay, and one where it still has not been tabled some considerable time since. I am wondering whether you think there is some merit in having all of those legislative reviews done on a standardised basis, that is, that there be a statutory period in which it must be tabled in Parliament? I am also wondering whether you were given any reasons as to why there were delays of four months and seven months in some of them finding their way to being tabled?

Mr BARBOUR: Certainly our preference is for any legislative review that we undertake to have within the legislation that provides for that review, provision for the report to be tabled in Parliament as soon as possible. My preferred position would be for the Ombudsman to table it in Parliament once it is concluded. We always conduct appropriate discussion and communication with those parties that have an interest in the matter. So by the time we finalise our report there will have been a copy of our provisional thinking and our provisional report provided to those agencies and/or Minister relevant for the particular task.

If our preference is not met then certainly I think the next preferable course would be for there to be a time period set out in the legislation under which the Minister ought table the report in Parliament. Ideally I would think that would be within a 28-day period. In relation to some reports I can see there being a benefit for the Minister to obtain advice and to be in a position to be able to respond to the issues that are raised in the final report. So that would be my second preference. We have been provided with reasons why the reports have not been tabled expeditiously; those reasons are not necessarily reasons that I would believe necessarily preclude the tabling of the report more expeditiously.

CHAIR: While we are talking about reports being tabled and given to Ministers, in those cases where you directly table the report in Parliament are they often given to Ministers prior to that?

Mr BARBOUR: You mean a standard report to Parliament?

CHAIR: Yes.

Mr BARBOUR: Generally, if the report is a report which has come out of an investigatory process, under the Ombudsman Act we are obliged, where we have done an investigation, to provide a draft report to the Minister and provide an opportunity to the Minister for a consultation. So if a report to Parliament has come out of that process then the Minister is certainly aware of the matters the subject of the report. It is my general practice prior to tabling a report to Parliament to advise the relevant Minister that we are proposing to do that and our practice with our full annual report, and also with other reports, is to provide a copy of that only shortly before we table it.

CHAIR: And it is a copy of the final report?

Mr BARBOUR: That is correct.

CHAIR: That cannot possibly be altered and it is more as a matter of courtesy that it is given to a Minister shortly before it is tabled?

Mr BARBOUR: That is correct. If we were under any concerns about content in the report and we believed that the Minister was an appropriate person to consult about that content, then I would have no hesitation in doing that. But, generally, that would not be the case.

CHAIR: I think the only other thing I wanted to raise out of your opening comments was about the 3 per cent budget cut. What impact has that had to date?

Mr BARBOUR: It has had a fairly significant impact. This particular budget cut comes after a range of small cuts and also unfunded salary increases to employees within the office. The net effect of these has meant that over the past three years our budget, in net terms, has been decreased by in excess of \$1 million. That is a significant cut. To date, we have managed the budget cut by not renewing contracts for some contract staff that we have had in to do specific projects, and also with any temporary staff or people that are leaving particular positions we assess whether or not those positions are vital to particular work we are doing before we automatically refill the positions.

At this stage we are managing, but my concern is that as we get more and more work, which is traditionally the role of the Ombudsman now, and also as these cuts across the public sector perhaps bite into other agencies, we might see them in themselves causing an increase in the work referred to us, which will place us in a more difficult position again.

CHAIR: I take it these concerns have been relayed to the Government prior to this?

Mr BARBOUR: Yes, they have. However, I have not taken the view, to date, that I should mount a significant campaign against them because they were cuts that were applied to all public sector agencies with very few exceptions. However, if they become more significant in terms of consequences, certainly we will raise the issue more formally and seek some sort of budgetary supplementation.

CHAIR: When you say they were applied to all government agencies, were they applied also to the other investigative agencies?

Mr BARBOUR: My understanding is that they were applied to all investigative agencies. With the larger agencies it is a much more significant impost. For example, NSW Police had to find savings of about \$30 million, which meant a significant number of staff were not reappointed.

CHAIR: I do not pretend to be an expert on that, but my recollection was that that related particularly to administrative staff within NSW Police, which means that you could be

a bit more specific in those cuts and a bit more targeted than they seemed to have been with the Ombudsman.

Mr BARBOUR: Clearly large agencies have a lot more flexibility in how they apply the cuts. In an agency like us, where our administrative costs are very lean, the significant cost is salaries, as I said in my opening. They represent usually between 70 and 80 per cent of our total budget. It is very difficult with the remaining 20 per cent, which is already very lean, to find additional savings. That means that those sorts of cuts, of necessity, translate to staffing positions.

CHAIR: Question on notice No. 2 relates to special reports to Parliament. With regard to the report on assisting homeless people, you have indicated that the Department of Community Services [DOCS] did not support the recommendation that the revised Supported Accommodation Assistance Program [SAAP] standards should prescribe minimum standards in addition to articulating best practice solutions. How does the recommended model differ from the continuous quality improvement model supported by SAAP agencies? Has DOCS moved towards identifying clear requirements in service specifications?

Mr BARBOUR: I suggest that Mr Kinmond answer that.

Mr KINMOND: We are reasonably comfortable with their response in the sense that we simply said that there should be minimum benchmarks. They have come back and said that they propose a continuous improvement process. Essentially we have said that our position in that regard, provided that there are some basic minimum standards, the idea that services will be assessed against whether they are improving over time is probably an acceptable process. But the devil will be in the detail and we will need to follow up that issue to see how it works in practice.

Mr BARBOUR: Also, this is a particularly problematic area because the SAAP agencies, DOCS, a range of advocacy groups and our own office do not necessarily agree on the way forward. There is no doubt that there needs to be some greater degree of co-operation with the Commonwealth, which is involved in this process, also the SAAP agencies in terms of ensuring that the group that we largely focused on are appropriately supported, whether it be in SAAP agencies or in some other form of assisted accommodation.

CHAIR: One of your answers was that DOCS had allocated resources to SAAP peak agencies for the development of a risk assessment tool for SAAP agencies. Which agencies are the SAAP peak agencies? How many SAAP agencies would be expected to utilise such a tool? Will you be monitoring the success or otherwise of that initiative?

Mr KINMOND: There are the women's refuges, and the representative of the youth agencies, which might well be Youth Action and Policy Association of New South Wales [YAPA], and also the agency that represents the general SAAP agencies. Essentially they have set aside \$40,000 for the development of a risk assessment tool. We see that as an important step, because it will be able to be rolled out to all agencies so that they can make an informed decision as to whether they should exclude an individual from a SAAP service. So it should be a much more rigorous process.

Mr BARBOUR: There was a, if you like, a chicken and egg situation. SAAP services felt that because of occupational health and safety, lack of training of staff and various other issues they needed to have a policy in place which basically did not drill down the actual risk of a person. They were judged, if you like, superficially. That process will allow a more sophisticated approach to assessing whether someone who can be described as having, for example, a mental illness really has a mental illness which will cause difficulties for other residents or staff in a particular program.

Mr MALCOLM KERR: You mentioned that there was no agreement in relation to the way forward. Have people identified the paths that they want to follow?

Mr BARBOUR: The difficulty in this area is that the nature of the people for whom SAAP are providing accommodation do not easily or comfortably fit within one particular area of responsibility. There are women who are escaping from abusive households, people living on the streets, people with mental illness and so on. The reason it is difficult to get agreement on the way forward is because it is difficult to get agreement on who is ultimately responsible for each category and where their support ought properly arise. One of the really interesting consequences and outcomes of our report to Parliament and the work we have done in this area is that we have been able to bring parties together much more, to sit down and work through some issues. As I said earlier, we need to engage the Commonwealth to some extent, because it provides a great deal of funding to support those programs.

Mr MALCOLM KERR: Do the parties advocate different directions forward?

Mr BARBOUR: They provide different views around what ought to be the priorities and what the models are. As we indicated in our answer to the questions, DOCS has suggested that there needs to be a program to improve the way in which those places are managed, rather than actually deal with some of the existing problems. Others have different views. I am not sure whether there is necessarily a right or wrong way of doing it. The really positive thing for us is that everyone is talking and we are now able to move forward on some of those disagreements.

CHAIR: Question on notice No. 3 deals with the DOCS Helpline. Despite the measures taken by DOCS to address the issues with the management and processing of risk of harm reports faxed to its Helpline, the Ombudsman has continued to receive complaints about Helpline delays in acknowledging facsimile risk of harm reports. Are you concerned about those delays? What has been DOCS' response to those complaints? Is the Audit Office carrying out an audit? Are you involved in that audit? Will you get the final audit report?

Mr KINMOND: We have had several meetings with the Audit Office. Our current review is that as the Audit Office will do an extensive audit of that particular area, it should be well placed to comment on delays in relation to the Helpline and also to look at a whole range of systems issues dealing with the assessment of notifications that come in. The approach we have taken is to give the Audit Office a good briefing on the information we have to hand and then the timetable is that probably in March or April next year the Audit Office should be in a position to have completed its work.

Mr BARBOUR: We are assisting the Audit Office with those matters.

CHAIR: In relation to DOCS policy for managing and prioritising workloads, I infer from your answer is that DOCS is yet to replace its "Priority One" policy with a case-closure policy. How did that happen? What was the nature of DOCS most recent advice on the current position of that?

Mr BARBOUR: As we understand it, DOCS is trialling, commencing next month, December, a new case-closure policy in three CSCs, and it is also using targeted CSCs to roll out a range of new initiatives, including staff levels and case-management practices. We do not have a significant amount of detail about the new policy at this stage. We understand that it has recognised the concerns raised not only by the Social Issues Parliamentary Committee but also by us in relation to a number of the reports that we directed at "Priority One". My understanding is that it will not deal only with the level one matters in assessing matters, but will actually deal with matters at a lower level as well, and different priorities will be in place.

Mr KINMOND: This is an important area and we are keen to see how DOCS moves on this.

Mr BARBOUR: It will be an area that we will touch on in the annual report we are to present to Parliament next week in relation to our reviewable death function. Clearly this particular policy has come up in relation to our reviews in particular cases.

CHAIR: DOCS has reported to your office that it cannot draft regional protocols for the Foster Care Support Team until it has settled on its policy and practice framework for dealing with allegations against employees. Are those two issues as inter-dependent as DOCS seems to suggest? In your answers you indicate that advice has been sought from DOCS about the likely date for the completion of those initiatives? Where is that up to?

Mr BARBOUR: On the face of it does not seem as though there is a link, but there is. For the purposes of our child protection legislation, foster carers are employees of the Department of Community Services. There have been ongoing challenges for DOCS in relation to how it addresses complaints about foster carers, particularly when they come within the terms of our legislation. The process DOCS has put in place to improve systems for dealing with allegations about employees, they have set up a centralised unit that is headed by a person who previously was a member of staff of the Ombudsman's Office. I hope that augurs well for it. That unit is actively developing practice and procedure for the proper investigation of allegations against employees. We have had a great deal of input into that process and we are receiving feedback about its development. To date we are pleased that it is heading in the right direction.

Ms BARWICK: We have a copy of the draft framework and are looking at it at the moment. It looks good. I guess the challenge is putting it into practice. We are seeing small changes which we are pleased about. There are still a few sticking points and we hope to continually discuss those, particularly around making a finding.

Mr BARBOUR: One of the challenges that DOCS has put forward is that it already has difficulties maintaining numbers of foster carers and attracting people to be foster carers. They want to ensure that not only do they meet their obligations in terms of having a proper system in place, but that they do not make it so onerous or so intrusive or so unpalatable to foster carers that it reduces the number of people prepared to take on that very difficult role. We clearly have indicated to them that they must have effective systems in place, but we recognise that there is a tension there. We will continue to assist them to ensure that they have proper procedures in place.

Ms BARWICK: Certainly the value of the centralised unit that we are seeing now is a reduction in delays in receiving information. The centralised unit is actually chasing up with the areas the information we require. We are seeing improvements there.

CHAIR: In your answers you have indicated that the resources presently available for the Official Community Visitor Scheme enables visits to only 80 per cent of accommodation services to ensure a satisfactory level of visiting frequency and duration. How many services do the non-visited 20 per cent represent? What level of additional resources would be needed to enable all accommodation services to be visited to a satisfactory level?

Mr BARBOUR: I will get Steve to give you the precise number, but I think there are approximately 900. We will check that. It is in our annual report. I recently put forward a submission to Treasury to have the funding for the official community visitor program increased. I have done that on previous occasions unsuccessfully. One of the benefits we have in relation to the visitor services is that many of them are run by the same agency. They are umbrella organisations. So we try strategically to ensure that when we are not visiting services as regularly as we would like, nonetheless we are visiting services run by the same organisation, so there is still a presence felt and we are still going to an appropriate range of organisations. Recently the hourly rate of the official community visitors was also increased, not by a significant amount, but that also is potentially going to have an impact on the number of visits we can do unless we are successful with our application to Treasury.

Mr KINMOND: The number of services visited is 1,169. That is a report of the visits. That represents 80 per cent of the services.

Mr BARBOUR: I am happy to provide the Committee with more details on that. I do not have a copy of the official community visitors annual report so I am not comfortable to give you an actual figure. But I am happy to take that on notice and provide you with those details if you would like.

CHAIR: Yes, thank you.

Mr KINMOND: With each of the services that are visited, the visiting time is four hours. If they are going to be visiting a service during that year, if it is a designated service, they try to have two visits every six months so they get a bit of a feel for the issues.

CHAIR: You indicated in the answers that the focus of the senior officers group on intellectual disability and the criminal justice system has changed in developing a whole-of-government policy to overseeing and reporting on a collection of interagency projects. Why do you think that has occurred? What do you think its significance is and is it a good idea?

Mr BARBOUR: This investigation has been conducted by Steve, so I am happy to hand over to him.

Mr KINMOND: The view we have taken is that the whole-of-government approach to dealing with people with intellectual disability in the criminal justice system was a good approach. Probably due to a range of other issues that DADHC was dealing with at the time, 12 months into the establishment of the process the whole-of-government approach had not been developed. Instead, it was more a matter of individual agencies coming along and providing a report card on their individual activities. So, we took the view that the preferred approach was to go back to the whole-of-government approach so the agencies could in a seamless way look at delivering services to people with an intellectual disability involved in the criminal justice system. In response, DADHC has indicated that it wants to revitalise the activities of the Committee and to review the terms of reference. We hope that they head back down the original path, which is to look at a seamless, integrated approach to a group within the community that is particularly vulnerable.

Mr BARBOUR: Mr Chair, I do have those figures for OCV visits available, if you would like them.

CHAIR: Yes.

Mr BARBOUR: The total number of services is 1,169, comprising 111 children and young people; 62 young people with disabilities; 37 children, young people and adults with disabilities; and 959 for adults with disabilities, and that includes boarding houses. In respect to those numbers of services, there were a little over 6,500 residents, and the number of visits undertaken last year was 3,121.

CHAIR: Does the Ombudsman know whether DOCS has completed its review of the service known as Aboriginal Children's Services Inc? If that review is complete, have you been provided with a copy of the report? What was the nature of the serious issues in relation to the performance of the service's functions identified by the office in 2001?

Mr KINMOND: It is my understanding that that review has not been completed. That is an issue we have taken up with them and indicated we are disappointed at this stage that things have not been taken further. We see it as an important issue because they are the major providers of out of home care for Aboriginal children, so it is obviously a service that will need to be reviewed. We believe it is a service that needs to be well supported.

Mr MALCOLM KERR: You indicated you were disappointed. Did they say when they would complete the report? Are they going to complete the report?

Mr KINMOND: It is my understanding that they intend in that situation to undertake a review. There have been issues to do with funding, and so on, that needed to be worked through. So, at this stage they have not moved on that.

Mr MALCOLM KERR: Those issues with funding have not been resolved?

Mr KINMOND: I think it is also to do with funding related to changes to the Aboriginal and Torres Strait Islander Commission in the Commonwealth sphere and to enter into discussions on the Commonwealth level as well. Beyond that I would need to take that question on notice.

Mr MALCOLM KERR: Perhaps the question on notice would be will the review be completed and, if so, when will it be completed? At the moment there is a great deal of uncertainty, I would have thought?

Mr KINMOND: I understand they have indicated the review will be completed. As to why they have not been able to move I would like to provide more particulars at a later stage.

CHAIR: Absolutely. Moving on to question 4, in relation to an alternative to the Catholic Commission for Employment Relations [CCER], what progress has been made by the working party convened by the Bishop Toohey? Have you received a positive response from the Cabinet office to the request for a change to the Ombudsman Regulation to give effect to the agreement of New South Wales bishops?

Mr BARBOUR: The working party has only met once, as I understand it. I understand that things are working very effectively. I had a report on that. We were very pleased with the decision taken by the bishops to accept responsibility as head of agency rather than CCER. We think that it is a significant step forward in appropriate accountability under our legislation. The challenge for us will be to ensure that we now proceed in that vein appropriately and that we work effectively with them. I think the working party is an indication of goodwill on the part of the church to meet our concerns and to ensure that the system that is put in place is effective. We have notified the Cabinet office. We have not received a direct response but it was not a notification that would require a response as such. The regulation was up for review. We asked the Cabinet office to delay that while these negotiations were under way. We advised them once the negotiations were concluded that there was agreement about the way forward and we recommended the wording to be used in the amendment to the regulation. We imagine that will be just a formality.

CHAIR: In relation to audits of Catholic education offices, what findings were arrived at as a result of the nine audits of diocesan offices that have been concluded? I think there are still two more to come by mid-December?

Mr BARBOUR: That is right. Those audits have been conducted under the supervision of Ms Barwick. I might ask her to answer the question.

Ms BARWICK: We were looking at two aspects. One was the role of CCER in particular in supporting the agencies, but also the systems the agencies had in place. The findings regarding CCER's role as head of agency, we found they were providing pretty much a telephone service. They were advising agencies who rang them about the way forward but policy development, training and auditing the agencies had been lacking. Hence, we looked at an alternative model for head of agency.

With the dioceses there are varying findings. There were some excellent practices in two dioceses in particular, and they were dioceses that were looking at child protection and developing appropriate practices even before the Wood royal commission, so they had

significant work and we were very pleased that we were able to identify good practice. It was disappointing that that had not happened before, because that sort of good news should have been spread across the other dioceses. In other areas there were fundamental problems. For example, as mentioned in the annual report, we entered into extensive discussion with CCER about matters that were not required to be notified to the Ombudsman, and that was seen to be a relief for employees who were the subject of low-risk matters. We found that employees were being advised, despite the fact that the matters were not notified to us, that the matter had been notified to us. So our attempts to defuse anxiety for some employees were not exactly working, so that was some concern.

Another area was around reporting matters to the Commission for Children and Young People and there were some that had not been notified. They would be the most significant. In summary, there was some excellent practice down to some rudimentary mistakes being made. We made some significant recommendations. They are all being addressed and we will be revisiting those dioceses to do a compliance audit.

Mr BARBOUR: If I could add to that. It might be helpful to the Committee for me to explain a little bit of background here. On the face of it one would assume a centralised body assisting a large agency in its responsibility in this area would be desirable. That was certainly the theory behind CCER being identified early on as the central agency for Catholic schools. What transpired, though, and what we saw and identified was that they were not performing their role effectively. There was a duality of reasons for that, one reason being that they were not doing what they ought to have been doing, but secondly that they had no real power to implement processes and to call to account particular dioceses, because for each diocese the Bishop who headed that diocese was the person who was responsible.

So, that is what has led to us seeing in the different dioceses different quality systems. In some dioceses, where this issue has been taken very seriously, they have employed good staff and put in place good systems. We are seeing first-rate best practice in some of them. In others there is next to nothing there. That demonstrates to us really that CCER as a central body has not had the impact or the outcomes it was intended to achieve. That is the reason, in part, why we are moving away from that. However, a centralised model in the Department of Education and Training works extremely well because that body is able to direct how school principals and other staff within the department relate to that agency and they are able to direct what systems are employed by all staff, so there is consistency of practice.

The Hon. JAN BURNSWOODS: I notice that you say you are also going to be having discussions with the heads of religious congregations. I cannot remember whether the CCER covered independent schools or those where the congregations ran them and the bishops had very little authority. Could you clarify that for us?

Mr BARBOUR: There is a range of parties that are involved in terms of responsibility.

Ms BARWICK: Most of the religious orders delegated head of agency authority to the CCER and we will be talking to the heads of religious orders to change that arrangement so that they will become head of agency for that particular order.

The Hon. JAN BURNSWOODS: So that will mean 11 diocesan bodies?

Ms BARWICK: And the religious orders, yes.

The Hon. JAN BURNSWOODS: Some of which will be quite small?

Ms BARWICK: Yes.

The Hon. JAN BURNSWOODS: Does that create likely problems?

Ms BARWICK: It will be more work in the first instance, but I think it is an effective way to go, long term. We have expended significant time working with the CCER, this year in particular, through the audits and through a number of investigations. We believe that we can, notwithstanding the problems that the Ombudsman has articulated or identified, better use the resources we have for better outcomes with a changed head of agency arrangement. I might also say that the number of notifications from the independent schools is quite low, so we are not expecting a huge volume of work. I think it will be a more efficient way to go. Where we have had direct contact with agencies, we have seen improvement and growth in their practice over time, and we believe that having that direct contact with the religious orders will achieve that same improvement.

Mr BARBOUR: One of the other things we are exploring in the working party framework is to provide for, within the church itself and perhaps from some of the dioceses that have effective systems in place, a mentoring and advisory role as well, so that it is not simply us that is providing advice, where necessary; but where there is good practice and clear understanding of the principles related to child protection, that within the church it can be understood who they should approach within particular dioceses to get assistance and support information. So that will be another important part of that process.

Mr GEOFF CORRIGAN: I note in today's paper, either the *Daily Telegraph* or the *Sydney Morning Herald*, there is a story about a case overseas where a young girl of 15 was allegedly raped, and she complained to the teachers who did not take any notice of that. Would that be a matter that would be of interest to you?

Mr BARBOUR: It would not necessarily fall within our jurisdiction because it is not an allegation against a teacher, as such, and of course it is complicated by the particular circumstances. However, I suppose, arguably, if there was psychological trauma or something of that sort caused by the conduct of the teacher, then there may be the capacity to make allegations, but on its face, it would not be the sort of matter caught by our legislation, no.

Mr MALCOLM KERR: I think that is a court case at the present time.

Mr GEOFF CORRIGAN: Yes, that is right.

Mr MALCOLM KERR: That may well be the basis of the cause of action in terms of the trauma because of the failure of the school to exercise its duty of care.

CHAIR: Perhaps I should remind everyone that that is technically sub judice. I do not know that we should be spending too much time talking about it in open session.

Mr MALCOLM KERR: There are probably not too many jurors here, actually.

CHAIR: Yes, but it may well be reported, as you would well know, Mr Kerr.

Mr MALCOLM KERR: I do not know. I think you overemphasise the profile of this Committee. But, anyway, if I might move on: I think Ms Barwick mentioned in terms of two dioceses, their excellent practices at one end of the scale, but fundamental mistakes that were made at the other end of the scale—I am sorry, rudimentary mistakes, I think was the expression you used.

Ms BARWICK: I think that was in respect of the incorrect information being given to employees who in fact had not been notified to the office, and notifications to the Commissioner for Children and Young People, and I think just some basic issues around file keeping, security of files, et cetera, security of evidence—very basic information that they should have had many years ago.

Mr MALCOLM KERR: Those have all been corrected?

Ms BARWICK: They have.

Mr MALCOLM KERR: And I think you mentioned apprehension by staff, too. Has that been addressed?

Ms BARWICK: That is around the class or kind, so there is some nervousness around low-risk matters been notified to us, yes. We made a recommendation that those staff who had been advised that the matter had been notified to us should be sent correspondence correcting the mistake, and that has been done.

Mr GEOFF CORRIGAN: I was interested to read your comments in relation to *Carter v New South Wales Netball Association* at the bottom of the reply. You talked about homestay and so on. Is this showing any implications for groups such as Rotary and Lions which organise overseas visits and look after young people? My experience of sporting organisations these days is that they are very careful in ensuring that all coaches are aware that they have to go through the child protection checks. Obviously there is a balance between what you can do and what those community groups can do. Do you believe that we need to provide more guidelines for those groups, or do you need to increase the power of the Ombudsman to investigate?

Mr BARBOUR: The comments made in that particular case—and of course a lot of public discussion around a range of activities that currently do not come within a formal scheme such as ours but would simply be in terms of notifying the Department of Community Services [DOCS], for example, if somebody comes to attention—raise a range of significant issues. I think in answer to this question we have tried not only to talk about what would be necessary in terms of resources to deal with this but also to give a few examples of some of the areas that we have been made aware of which raise particular concerns for us because they are perhaps not as obvious as the matters that you are suggesting. I think there is a much greater awareness within sporting areas—within Scouts, Girl Guides, and those sorts of areas than in things like homestay, billeting, and those sorts of activities. So it is really alerting the Committee to the fact that there is probably a significant range of areas that one could look at, without wishing to be interpreted as advocating that we ought get those responsibilities.

Ms BARWICK: Could I just add that the issue around Carter was around the way the investigation was undertaken and a lack of experience that organisations like sporting associations have in dealing with these matters, so that was quite an important aspect of that case—hence the suggestion that we might come in and look at it, and not so much because they do not have good preventive strategies in place. It is more because, when they do get an allegation, the capacity to investigate just is not there because they do not have the expertise, and similarly with the other organisations that we have mentioned.

CHAIR: In relation to the dispute between the Ombudsman and the Department of Juvenile Justice about what constitutes sufficient evidence to determine an allegation is false, the department says that it is not an option to make a finding that an allegation against an employee is not sustained due to insufficient evidence; that is, they only wanted one of two options rather than make it an immediate option. Does that mean that a significant proportion of allegations about employees would fall within that middle category and are not been notified to the Commission for Children and Young People [CCYP] as relevant employment proceedings for the purpose of the screening functions?

Mr BARBOUR: I will deal with the latter part first. We are unaware of too many cases where the consequences of this particular view have led to an outcome of concern. What we are concerned about, however, is the view that the agency believes that unless you can definitively prove a particular allegation, then there ought be no continued assessment or opportunity to assess the behaviour of the individual, the subject of the allegations, or any risk that they might present. As the Committee would well know, in areas of child protection, often children recant their allegations, notwithstanding that they in fact believe

wholeheartedly what they are saying. Secondly, sometimes it is very difficult to get sufficient evidence to prove a matter beyond doubt, but that does not mean that there may not be a further risk presented in relation to a particular employee.

Our concern around this practice was not only the conclusion that was being drawn but that, in those circumstances, it would mean that they would not have to report those matters to the CCYP, thereby ensuring that if an employee moved to a different area of work, they would be screened appropriately, as they should in the circumstances. But I do not believe that we have dealt with a significant number of matters where there has been a particular cause for concern. We have tried to deal with it very quickly once the department started to develop this policy. Is there anything you want to add to that?

Ms BARWICK: No. I think that is adequate.

CHAIR: If there are no other questions from Committee members, I will turn to police. Is c@tsi ever going to work?

Mr BARBOUR: Good question. We remain optimistic, we do. There is a significant additional sum of money that has been provided by Treasury to support further work on it. We remain committed to participating in that process and using c@tsi once it delivers what it is supposed to deliver. As we have indicated in answer to these questions, we cannot afford the resource wastage inherent with using two systems when one is not working the way it should. We have been very supportive of police throughout the process. We have articulated very clearly what it is not delivering and what it was intended to deliver and there is further action in train as a result of the additional funding to police to try to deal with some of these problems. But I do not have a crystal ball and I wish I could say that it is definitely going to be fixed, but we are not in a position to do that, though we remain optimistic.

CHAIR: It is just extraordinary. I remember being a member of this Committee before I was Chair and being told how wonderful this new information technology system was going to be for the police because the Ombudsman and everybody else could get everything they would need out of it and it has tremendous anti-corruption benefits. And years later—

Mr BARBOUR: Yes.

CHAIR: Anyway, was the Ombudsman's office satisfied with the progress made by the working party on the administration of police officer profiles? There was a meeting, I think, with the police on 25 November. Where is all that going?

Mr COHEN: The Professional Standards Command has primary responsibility in terms of progressing that project and has given an undertaking to complete it at the end of this calendar year—by December of this year—and we understand that a draft report should be made available in early 2005. My latest report is that there has been some very significant progress recently on it and some of the outcomes of it are likely to be quite positive for NSW Police.

Mr BARBOUR: I raised my concern at the last Standing Committee meeting with the Commissioner about the time it was taking and was assured that these time lines would be met and they appear now to be in train. The most recent delay was occasioned by the need for somebody involved in this project to travel overseas and to get some additional information from overseas, and that has happened. I understand that information has been factored into the processes now.

CHAIR: Turning to controlled operations, has the Ombudsman's office received and been consulted upon the draft bill to amend be controlled operations legislation?

Mr BARBOUR: The last meeting we had in relation to this particular matter was on 15 September when a number of the proposals were discussed. Since that time, it is my

understanding we have not received any further information. But Mr Andrews was at that meeting and he can perhaps provide you with a further update.

Mr ANDREWS: We were simply advised that the bill was in preparation and it was with the Parliamentary Counsel at that time. The general outline of what the police favoured was put to us, which was basically what was in the report of the review that had been tabled in Parliament, and we really have no further information.

CHAIR: So you are not in a position to make any further comments about the desirability of what has been proposed?

Mr BARBOUR: No. As we have indicated in our answers to questions from the Committee, we raised a number of concerns in respect to what was being proposed, but we have no idea whether they are going to be proceeded with or not.

CHAIR: Are there any further questions from Committee members? I have one further point about freedom of information [FOI] and the police. You indicated that the Commissioner of Police had set out what steps had been taken towards the proposed review of the NSW Police FOI process. Did the NSW Police indicate what issues it considered should be part of the review? When are they expecting the review to be undertaken?

Mr BARBOUR: The background to that particular issue is easily explained by the extraordinary increase in the number of FOI applications to NSW Police. Without a doubt, our figures suggest that they now receive more FOI applications than any other agency in this State by a long shot.

The Hon. PETER BREEN: That is because they provide so little information: you have no choice.

Mr BARBOUR: There is a range of reasons for it but certainly the proclivity of people seeking criminal records information has escalated significantly. The strategy that has been looked at by police encompasses a range of things from additional staff through to what is anticipated to be the situation once Crimtrack is up and running, and various other initiatives. Dick Adams, who is executive director, corporate services, has responsibility for managing this review and that particular area, and he has advised us where they are at at this stage. However, we do not have details of the broader review at this stage.

Mr MALCOLM KERR: Following on from Mr Breen's question, is one of the options being considered by the police providing information?

The Hon. PETER BREEN: When Michael Costa was Minister I used to do FOI claims to get replies to my letters.

Mr GEOFF CORRIGAN: Those days are long gone for Michael.

The Hon. PETER BREEN: I do not have much to do with railways.

CHAIR: Are there any more sensible questions?

The Hon. PETER BREEN: There was a very interesting reference in the annual report to an inspection of the HRMU. I was very pleased to see that. Getting information about the HRMU is a bit like getting information out of the police. The fact that the Ombudsman is carrying out an inspection or some kind of report would suggest that I am not the only person that is concerned about the HRMU. Are you able to provide information about whether the inspection was prompted by inmates or by some other group?

Mr BARBOUR: As the Committee is aware, we have jurisdiction over all prisons and juvenile justice within the State. Part of our practice is to visit all correctional facilities,

usually at least twice a year. We certainly do that with the HRMU. We go down and we visit and inspect. HRMU prisoners, just as all prisoners within the State, are entitled to complain to our office about any of the issues they believe we are able to assist them with. Certainly we get complaints from prisoners that are housed within the HRMU. It is my understanding that the particular matters that we are investigating were the subject of complaint by prisoners, not from somebody outside. The department is assisting us with that investigation and providing us with appropriate information.

The Hon. PETER BREEN: It is not likely that your report will be made public, is it?

Mr BARBOUR: No.

The Hon. PETER BREEN: On that basis, may I ask you a question about your inspection and the information you have provided in your annual report? At page 90 of the annual report it states that the HRMU is different from other correctional centres. Then it says that the routine is very strict. On page 88 it says that across correctional centres generally most complaints, both written and oral, relate to what is called the daily routine. Given that that is also identified as the main problem at the HRMU, can you just explain what that problem is? It is not something that is self-evident.

Mr BARBOUR: A significant number of subsets would be categorised into daily routine. It would cover a significant range of complaints. I will ask Greg Andrews to answer in detail because he has recently visited the HRMU. It would cover a whole range of things—whether they get enough exercise and so on right through the daily spectrum. All prisons are run under very tight and strict procedures and practices. It is not surprising that prisoners will complain about those if they think that they are not fair or they are not being operated appropriately. The HRMU, of course, houses those prisoners that are considered to be some of the most significant prisoners within the State correctional system, and the practices there are even stricter as a consequence, as well as the building and the design of the building and facilities and so on. Greg, do you want to add anything to that from your perspective?

Mr ANDREWS: Complaints about daily routine are usually about access to facilities. They may be about delivery of mail—all the usual sorts of things that would happen on a day-to-day basis.

The Hon. PETER BREEN: Does it include complaints about lockdowns?

Mr ANDREWS: Yes. Over the last few years there has been an increase in complaints about lockdowns because it has become an institutionalised part of the industrial system in the correctional system. Part of the corrective service's new way forward, which is a current industrial proposal, is that they better manage, in their terms, correctional centres by having serial let goes in the morning. There certainly has been an increase over the last few years of regular lockdowns in order to provide opportunities for staff training days and things like that.

The Hon. PETER BREEN: Getting back to the HRMU, you mention in the annual report that prisoners are incarcerated entirely in air-conditioning unless they open the door to the outside. You indicated that many of them do not open the door. So they live in an air-conditioned environment. My understanding is that even when they go outside they are still in a concrete environment with a cage-type barrier over the yard, which means that they do not get any access to grass. There is no real access to anything except concrete and wire. Is that a problem for prisoners?

Mr ANDREWS: At the HRMU there is a grassed area right in the middle of the unit which has a running track around it. Depending on your level of privilege you get access to that area.

The Hon. PETER BREEN: Of the 60-odd prisoners there, how many would have access to that area?

Mr ANDREWS: I could not answer that at this stage.

The Hon. PETER BREEN: When you inspected the unit were you concerned about air-conditioning, about light, about natural air?

Mr ANDREWS: A number of complaints have been floating around to our office and to various MPs and other bodies about some of the basic conditions at the HRMU. Some of those complaints alleged that there was insufficient natural light and problems with air-conditioning and so forth. I was at the HRMU only two months ago. It is actually quite a light place. All the inmates that I saw that day were in cells where the doors to the outside caged areas were open and there was lots of light coming in. In certain areas in the day rooms that are attached to the cells they can see through corridors and in some sections they can see also through glass I think into the outside grassed area. I am not quite certain of that; you would have to be in the cells to double check. The reality is that this is the most high-security gaol in this State, if not in Australia, and there are restricted movements and restricted access. There is a program in place of a hierarchy of privileges, and that determines how often you get to associate with other prisoners, the number of other prisoners you can associate with, and also your access to different facilities including the sports—there is a half tennis court. It includes access to that and access to the running track in the grassed area.

The Hon. PETER BREEN: That is very helpful, because it is difficult to get information about the HRMU. In your issues paper that was published earlier this year you made the observation that two out of three of the core objectives of the Protected Disclosures Act are not being achieved. Has the issue come up about the prospect of having a designated officer in your department to deal with protected disclosures?

Mr BARBOUR: We do have designated staff that deal with protected disclosures. Chris Wheeler is not only the chair of the New South Wales Protected Disclosures Steering Committee but also co-ordinates our functions in respect of protected disclosures. We have a number of staff that are trained up to be specifically available for people who call in to seek advice about the legislation. That seems to work very effectively. There is no doubt that we are used extensively by those people who are uncertain about how the legislation operates, particularly those that need to investigate or handle particular matters. We provide a facility of providing information to assist them wherever possible.

The Hon. PETER BREEN: I think people would agree that the protected disclosures legislation does not seem to be working very well. I remember that during the contempt proceedings in the ICAC Assistant Commissioner Clarke referred the nurses complaints on to the Ombudsman and it was reported in the paper. I know it did not actually arrive because the Ombudsman does not have jurisdiction over a complaint involving a Minister, but the Assistant Commissioner did refer it on as if he were under the impression that it was a matter for the Ombudsman. It seems to me that it is not generally known in the community that the Ombudsman is and ought to be the first port of call for people with protected disclosures problems.

Mr BARBOUR: It does not have to be. There are several agencies that have the same status as us under the Act. It is just that we are probably the only agency that provides a generalist service to assist wherever possible—the ICAC, the Auditor-General and so on are in a similar position. Depending on the nature of the protected disclosures and what advice was required, it may well be appropriate to refer it to one of those agencies rather than to us. But certainly I agree with your observation about the Act. We prepared the discussion paper to stimulate discussion and to also recommend that the Act, which is supposed to be reviewed every two years, be reviewed. It has not been reviewed for some time and we think it ought to be.

The Hon. PETER BREEN: Is someone looking at the question of whether or not the HRMU is duplicating the problems of Katingal?

Mr ANDREWS: I do not think there is any easy answer to that question. Having been to both of those places, I think if you are going to be incarcerated in a maximum security gaol you would probably prefer to be in the HRMU. It is modern. The facilities are bigger. Each cell has attached to it a caged yard which is open to fresh air, and on the other side it has another room which they refer to as a day room. Those day rooms are of various sizes. Depending on the security risks and the privilege level that each inmate attains, they are moved around from cell to cell at different times so that they have access to larger day rooms, and the larger day rooms are also open to other cells. My understanding is that the program is that when you first arrive at the HRMU you go through an assessment period where they do a risk assessment and so forth. You then go on to the bottom level, which allows you access to a day room by yourself. Progressively you move up the privilege level and you have access rights to fraternise with other inmates who want to fraternise with you. In order to do that they may change the cell where you are being housed so that you can access a room that is open to two cells or more.

The Hon. PETER BREEN: So it is better than Katingal, in your observation?

Mr ANDREWS: Far better. Katingal was a very small, claustrophobic facility.

CHAIR: I visited Katingal some time ago and what you have described sounds significantly better than that. I think that is the end of the formal questions. However, one item has been distributed only recent to Committee members, which is a confidential item. If members have questions we will need to go in camera. Members may not have had a chance to look at the document, so it might be better if we deal with the matter by way of questions on notice.

Mr MALCOLM KERR: That would be preferable.

CHAIR: I had hoped that the document would be distributed at the beginning of the meeting, but that did not eventuate.

The Hon. DAVID CLARKE: What volume of complaints do you get regarding local government?

Mr BARBOUR: In our annual report we have got very extensive statistics around local government. We had an 8.5 per cent increase last year, received 840 formal matters and a total of just over 3,000 informal complaints.

The Hon. DAVID CLARKE: Were many of those directed against councillors?

Mr BARBOUR: No. I think the majority well and truly fit within the customer service category and probably the next most significant area would be around development and enforcement. It is very rare that we get complaints specifically about councillor behaviour and, indeed, councillors, I think, strenuously reject whenever we tend to be involved in that particular area. Greg, do you have a sense of how many? It would predominantly be around conflict of interest issues.

Mr ANDREWS: Yes. I cannot give you a figure offhand, but there are a small percentage of complaints about councillors and we certainly get complaints from councillors about other councillors or the general manager or something to do with the operation of the council.

The Hon. DAVID CLARKE: How do you approach these matters where it is claimed that there is a conflict of interest involving councillors?

Mr BARBOUR: Well, it would depend on the particular matter, but we would approach it like any other complaint. If we believe that it is something that we should make inquiries into, we would seek information in relation to that.

Mr GEOFF CORRIGAN: Would it not be referred to the Department of Local Government Pecuniary Interest Tribunal in the majority of matters?

Mr BARBOUR: It would depend. Some matters may well be appropriately referred to Local Government. Some matters might be referred to the ICAC if there is an issue of corruption involved, but without actually getting enough information, it is difficult to know what area it specifically falls into.

The Hon. DAVID CLARKE: If you found that there was a conflict of interest involving a councillor, what would you see as the powers available to you?

Mr BARBOUR: Well, as you know, our powers are only recommendatory and, indeed, the most recent example of a significant conflict of interest that we took through the investigation process we outlined in our annual report, which related to conduct of particular councillors in Mosman and we actually recommended in that case that we thought the councillors ought to consider resignation of their positions on council. As a result of that particular investigation and our recommendations, our views have subsequently been endorsed by the conduct of the council itself, which has censured those particular councillors and also removed them from particular committees on the council.

Mr ANDREWS: Sorry, could I give an update. I was alerted earlier this morning that at least one of those councillors involved succeeded last night in putting a motion through the council that rescinded that decision.

Mr MALCOLM KERR: So they rescinded that decision.

Mr GEOFF CORRIGAN: Liberals behaving badly.

Mr MALCOLM KERR: It is peer judgment, I take it, and, as the Ombudsman said earlier, it is a matter for the council.

Mr BARBOUR: Well, ultimately we indeed say that to many people who complain about the behaviour of council; that there are just some matters that properly rest with the elected officials in the area, and we might take a different view to it, but at the end of the day they are the people who have been elected.

Mr MALCOLM KERR: In the case of those two councillors who considered resignation and decided not to resign, I take it that would be the end of the matter so far as you are concerned?

Mr ANDREWS: That was the recommendation that we made to the councillors and they considered that. There were two recommendations. One was that one councillor actually resign, which he refused to do. The other was that the other councillor consider that, which she did, and decided not to. The thing I wanted to add is that you would be aware that the Local Government Act was recently amended to provide a new system of discipline for councillors who seriously breach codes of conduct or codes of meeting procedure.

That provides that the Director-General of the Department of Local Government can suspend councillors for a one-month period in certain cases and/or refer a matter to the newly named Pecuniary Interest and Disciplinary Tribunal, which has a range of sanctions, including suspension up to a period of six months. The amendments also provide that the Ombudsman, if they investigate a case, would be able to forward the report to the director-general, who can then refer it on to the tribunal. The Mosman case is a good example. If that

law had been available at the time I made the report, that would probably be the recommendation I would have made.

The Hon. DAVID CLARKE: Is the Mosman council case the first occasion that you have suggested to councillors that they consider resigning?

Mr ANDREWS: I think it is, yes.

The Hon. DAVID CLARKE: It is the first, so, therefore, you would say that the circumstances in the Mosman case were far more serious than any other case that you have had involving councillors?

Mr ANDREWS: This was a case of a non-pecuniary conflict of interest. In my view, it was serious and it did corrupt the decision making of the council in relation to the particular development applications that were involved. In cases of pecuniary interest, the Department of Local Government has built up a special expertise and we have a protocol with them that if we receive complaints of pecuniary interest, we generally refer them to the department because they are matters that usually get prosecuted in the tribunal and Ombudsman officers are not competent or compellable witnesses, so there is a problem for us if we are the sole investigator in a matter like that.

The Hon. DAVID CLARKE: So the Mosman situation is the only case where there has been a non-pecuniary interest situation where you have suggested that a councillor consider resigning?

Mr ANDREWS: I think it is the only report that I have made where I have recommended that.

The Hon. DAVID CLARKE: Does that mean, therefore, as it is the only case where you have recommended resignation, that it is, in fact, the most serious case? Would that therefore follow?

Mr ANDREWS: I do not think it necessarily follows. That recommendation was made in the light of available sanctions.

The Hon. DAVID CLARKE: There could be other cases that were more serious than this particular one where you did not recommend that the councillor consider resigning?

Mr ANDREWS: I cannot think of one offhand.

Mr MALCOLM KERR: I think Sutherland Shire Council set up an ombudsman and your office was involved in that. Have any other councils have set up their own internal ombudsman?

Mr GEOFF CORRIGAN: Yes, we met them at their third national investigation symposium. Warringah has.

Mr BARBOUR: We have had advice that Parramatta and Auburn are thinking of a joint ombudsman process and, of course, some universities have ombudsmen, and so on. It is a bit of a dilemma and there is a bit of tension. On the one hand, we see it as being a very good practice for them introducing an effective complaints handling system but, on the other hand, we do not want them to be named in a way that is going to cause confusion in the public about where they ought to go. So we try to be persuasive where ever we can for them to come up with a different title because we do not want people to be confused out there about exactly whom they are going to.

Mr ANDREWS: Wollongong City Council also set up an ombudsman some years ago but it has now decided not to proceed with that.

(The witnesses withdrew)

(The Committee adjourned at 3.40 p.m.)