TENTH GENERAL MEETING WITH THE NSW OMBUDSMAN

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

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FUNCTIONS OF THE COMMITTEE

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in s.31B(1) of the Act as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;

- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;

- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;

- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

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

Section 31B(2) of the *Ombudsman Act* specifies that the Committee is not authorised:

- to investigate a matter relating to particular conduct; or

- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or

- to exercise any function referred to in subsection (1) in relation to any report under section 27; or

- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or

- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- to monitor and review the exercise by the Commission and the Inspector of their functions;

- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;

- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and

- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- to investigate a matter relating to particular conduct; or

- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or

- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The *Statutory Appointments (Parliamentary Veto) Amendment Act*, assented to on 19 May 1992, amended the *Ombudsman Act* by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the *Ombudsman Act* provides:

"(1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

(2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

(3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.

(4) A referral or notification under this section is to be in writing.

(5) In this section, a reference to the Minister is;

(a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
(b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
(c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*."

CHAIRMAN'S FOREWORD

During the time since the Committee's last General Meeting with the Office of the Ombudsman, there have been a number of developments that have impacted on and increased the Ombudsman's jurisdiction. This expanding role has lead to a shift in the Ombudsman's approach to dealing with individual complaints with a focus on matters that have broad, systematic application.

The Ombudsman's jurisdiction has expanded into conducting reviews of the first year of operation of a number of pieces of important legislation, such as *Crimes (Forensic Procedures) Act 2000*, *Police Powers (Drug Detection Dogs) Act 2001* and on its commencement, *Police Powers (Internally Concealed Drugs) Act 2001*.

More significantly, the Ombudsman gave evidence at the General Meeting about the proposal currently before Parliament to merge the Community Services Commission with his Office. Discussion of the additional powers and independence that such a merger would give the Community Services Commission is contained within the Commentary of the Report.

Other important matters raised in the Commentary include the Ombudsman's investigations into Department of Community Services, an increase in formal investigations into universities, some positive developments in the police oversight area and the review of the *Police Integrity Commission Act 1996*.

The matters discussed in the Commentary of the Report are all matters of public interest. Most of them are complex, ongoing multi-agency matters that will require further monitoring by the Committee. The views expressed in the Commentary are consensus views shared by the Committee.

I would like to thank the Ombudsman and his staff for their participation in the General Meeting. The General Meeting is a public process, and is one of the principle ways in which the Committee conducts its statutory oversight and review role.

Paul Lynch MP
Chairperson

COMMENTARY

Since the establishment of the Committee on the Office of the Ombudsman in 1990, successive parliamentary committees have overseen the Office through a number of mechanisms, including General Meetings involving the Committee and the Ombudsman, Deputy Ombudsman and Assistant Ombudsmen. The General Meetings provide a public process through which evidence can be taken from the Ombudsman on a wide range of topics relating to the functions and operations of the Office. The Ombudsman provides answers to Questions on Notice from the Committee in advance of the General Meeting and this information is tabled as part of the Ombudsman's evidence. During the public hearing, Members of the Parliamentary Committee ask supplementary questions and questions without notice of the Ombudsman and the Office's statutory officers. The transcript of evidence of the General Meeting with the Ombudsman, held on 12 June 2002, and the answers provided on notice form the basis for this report.

DEVELOPMENT OF THE OFFICE OF THE OMBUDSMAN IN NEW SOUTH WALES

In his opening address to the Committee, the Ombudsman referred to the constant state of change that has characterised the development of the Office and the flexible strategies that the Office has adopted as a result. At the time of the Office's establishment in 1975, the Ombudsman was seen as:

> an independent official who will approach in a consistent way, having regard to justice and the merits of each individual case, complaints made to him on administrative decisions.[1]

The then Minister cited the virtues of creating the Office as twofold: first, "the citizen who feels he has been unjustly treated as a result of an administrative decision or perhaps, so he thinks, not treated at all, may refer his complaint to an independent official and feel satisfied that his case has been reviewed by a fresh and independent mind"; and second, "public officials will gain satisfaction in the vast majority of instances in knowing that the decisions they made were viewed by an independent official as just and fair".[2]

While this early description contains some of the inherent features of the Ombudsman, namely "independence, impartiality and accessibility"[3], the Office in New South Wales has significantly changed in terms of the Ombudsman's jurisdiction, the structure of the Office and the work it performs. The Office's approach to overseeing the Executive and reviewing public administration has become increasingly strategic and is marked by a shift toward a more systemic focus. While the Office still deals with individual complaints, it does so with a focus on matters that possess a broad, systemic application.

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1 Legislative Assembly Hansard, Ombudsman Bill, Minister's second reading speech, 29 August 1974, p.773.

2 ibid, p.774.

3 Ombudsman's *Annual Report 1999-2000,* p.2.

In order to maximise its impact, and "[do] the most good for the most people", the Office has employed a number of strategies. For example:

- more serious matters across all areas of the Office are scrutinised more closely;
- innovative audit techniques are used to ensure the quality of investigations is being monitored in the police and child protection areas;
- training, advice, and resources are provided to agencies to assist them in developing workable internal complaint handling systems so that the majority of complaints can be referred back to agencies, and the Ombudsman can serve as an avenue of last resort.[4]

In the period since the last General Meeting, the Office has tabled three special reports to Parliament in relation to police and DoCS, completed over 70 formal investigations with 50 more underway, resolved over 2000 matters through informal preliminary inquiries and attended to more than 37,000 oral inquiries. Almost all of the recommendations in the Office's reports had been adopted.[5]

The growing role of the Ombudsman in New South Wales is evidenced by the Office's new monitoring role in the area of child protection, in the legislative review roles that the Ombudsman has recently acquired in relation to several statutes, and in the proposed merger of the Ombudsman's Office with the Community Services Commission. These topics are discussed in detail below.

MERGER WITH THE COMMUNITY SERVICES COMMISSION (CSC)

The Ombudsman gave evidence that the existing CSC legislation provided that there should be no duplication of complaint work between the Office and the CSC. However, since early 2001 the Office has been required to deal with some complaints, rather than the CSC, because of legal advice obtained by the Minister for Community Services in November 2000 that certain matters were outside the CSC's jurisdiction[6]. The proposal for the Office to merge with the CSC had arisen from a review, prompted in part by the jurisdictional issues concerning the CSC, which was aimed at improving the current system of monitoring community service providers in New South Wales.

In his opening address, the Ombudsman indicated that the Office had undertaken extensive consultation and negotiations towards facilitating a merger with the CSC

4 Ombudsman's opening address, 12 June 2002

5 ibid.

6 The Crown Solicitor initially provided the Ombudsman with advice that the child protection functions carried out by DoCS do not fall within the definition of 'community service' for the purpose of community welfare legislation. The Government then received its own advice in November 2000 from the Crown Solicitor's Office indicating that the CSC had no power to deal with statutory breaches of child protection services by DoCS and other service providers. Commissioner Fitzgerald described the 'jurisdictional impasse' as stemming from the advice that the term 'services' in the *CRAMA Act* did not include 'statutory functions' and the CSC's ability to deal with complaints about statutory functions, as distinct from services, was suspended. Arrangements were made between the CSC and the Ombudsman for the Ombudsman to investigate such matters. NSW Parliamentary Library Research Service, *Child Protection in NSW: A Review of Oversight and Supervisory Agencies*, by Gareth Griffith, Briefing Paper No. 16/2001, pp.9, 35-7.

should this proposal proceed. The Ombudsman had dealt with the complaint and investigative work arising from the CSC's jurisdictional problem within existing resources but this had involved diverting a significant amount of resources away from other work.

In the Ombudsman's opinion the proposed merger is in the public interest and offers significant benefits as it would provide for:

- more streamlined, comprehensive and effective oversight by expanding the legislative powers, skills and resources available to investigate community service providers;
- strengthening the independence of the monitoring, review and complaint handling functions, especially through independent reporting to Parliament and this Committee;
- economies of scale;
- a more coordinated response to systemic issues relevant to the community sector and other agencies already within the Ombudsman's sector;
- a reduction in the chance of people falling through the gaps and clearer access to the oversight system for clients through a single entry point;
- a maximum opportunity for using information from individual deaths to inform monitoring and review of service providers and to recommend changes to systems and practices;
- an increase in the credibility of investigations and reports, by removing any perceived lack of impartiality arising from advocacy functions (which also would be likely to increase the uptake of recommendations).[7]

The Ombudsman anticipated that the proposed merger would involve a staff increase of approximately 40 staff who should be able to be accommodated in the additional floor space recently acquired by Office. The Office currently has approximately 130 staff. Training also will be needed to ensure consistent approaches and practices throughout the Office and a significant amount of work has been undertaken in preparation for the merger.[8]

Community Services Legislation Amendment Bill

This bill was introduced and read a second time in the Legislative Council on 18 June 2002 by the Hon. Carmel Tebutt, Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment.

The Bill provides for significant reforms to the system for overseeing community service providers in New South Wales, including the merger of the CSC with the Ombudsman's Office. Under the proposals the Office of the Ombudsman would be the major body for investigating complaints against, and overseeing, community service providers in New South Wales.

7 Ombudsman's opening address, 12 June 2002

8 Evidence 12 June 2002.

The Minister stated that the Bill has been the subject of extensive consultation and has the support of the Ombudsman, Community Services Commissioner, Commissioner for Children and Young People and the Coroner. She also indicated that the legislation has been formulated on the basis of the following fundamental principles:

- that the independence of oversighting agencies, the transparency and independence of the review and reporting process and the potential to share information should be strengthened wherever possible;
- that any gaps or uncertainties in the current system should be remedied;
- that client access and complaint handling are to be improved;
- that none of the current protections in the review and monitoring systems of community services should be weakened.[9]

Under the Bill, the *Community Services (Complaints, Review and Monitoring) Act 1993* will be amended to make the Ombudsman, through the Community Services Division, responsible for the systemic review of individual deaths of children and people with disabilities in care: a role currently performed by the Child Death Review Team and the Disability Death Review Team. The Ombudsman is responsible for the review of all such deaths and will examine the circumstances of, and the potential for preventing, these deaths. The Ombudsman's review function is distinct from the role of the Coroner under the Bill who has exclusive jurisdiction to hold an inquest into a reviewable death.[10] The Child Death Review Team retains certain functions concerning the deaths of children, except for those children in the categories to be reviewed by the Ombudsman. Consequently, the bill provides for information sharing between the Ombudsman and the Child Death Review Team. The Ombudsman intends using independent members of the existing Child Death Review Team as expert advisers for at least the first twelve months of his new jurisdiction.[11]

Role of the Ombudsman

Insofar as it affects the powers and functions of the Ombudsman, the Bill:

Community Services Division

- will abolish the Community Services Commission and the office of the existing Commissioner of Community Services and confer their functions under the *Community Services (Complaints, Review and Monitoring) Act 1993 (CRAMA Act)* on the Ombudsman and a new Community Services Division of the Ombudsman's Office;
- will provide for the appointment of a Deputy Ombudsman as the Community Services Commissioner and the establishment of a Community Services Division of the Ombudsman's Office, to perform the Ombudsman's functions under the new legislation, subject to direction and delegation by the

[9] Legislative Council, Hansard, 18 June 2002, p.45.

[10] The definition of these terms is the same as that used in the *Coroners Act* and includes the deaths of people in licensed boarding houses and children in juvenile detention centres. Minister's second reading speech.

[11] ibid.

Ombudsman. (It is proposed that the current Commissioner for Community Services be appointed as the Deputy Ombudsman for a period of 3 years);

- will amend the *Ombudsman Act* to enable the Ombudsman to appoint one or more Deputy Ombudsman and a deputy to the Deputy Ombudsman or Assistant Ombudsman.[12]

Systemic review of deaths in care

- will confer on the Ombudsman the function of reviewing the deaths of: children in care; children who have been (or whose siblings have been) the subject of notifications within a two year period before their death; children in children's detention centres, correctional centres and lock-ups; certain children at risk; children whose death may have been caused by abuse or neglect or that occur in suspicious circumstances; and the deaths of persons with a disability in residential care, or who receive assistance to live independently in the community (ie reviewable deaths);
- will confer on the Ombudsman the functions of: maintaining a register of reviewable deaths; reviewing causes and patterns of reviewable deaths; formulate recommendations regarding policies and practices to prevent or reduce such deaths; undertaking research towards formulating strategies for the reduction or prevention of reviewable deaths;
- will require service providers, including the State Coroner, the Commissioner of Police and other persons and bodies to notify the Ombudsman of reviewable deaths and provide information and assistance to the Ombudsman in relation to such deaths;
- will require the State Coroner to make a written report to the Ombudsman about a reviewable death after concluding or terminating an inquest into the death of the person concerned and provide other information to the Ombudsman[13].

Monitoring and review of community service providers

- will make the Ombudsman responsible for the monitoring and review of community service providers, including the review of the statutory functions of community service providers as well as the services they provide, both generally and in particular cases;
- will enable the Ombudsman, on his own initiative, to inquire into matters affecting service providers and a child or person, or a group of children or persons, in care;
- will enable the Ombudsman, on his own initiative or on application, to review the situation of a particular child or person, or a group of children or persons, in care**[14]**;

[12] Explanatory note to the Bill.

[13] Schedule 1[30] of the Bill (proposed Part 6 of the *CRAMA Act*), explanatory memoranda to the Bill and Minister's second reading speech.

[14] Schedule 1[21] of the Bill (proposed Part 3, s.11 of the *CRAMA Act*).

- will require the Ombudsman to make a report on the results of a review and any recommended changes to the care being received, and provide a copy of the report to the relevant Minister and service provider[15];
- will recommend appointments of community visitors to the Minister for Community Services and coordinate the Community Visitors Scheme;
- will be responsible for the existing powers in the *Community Services (Complaints, Review and Monitoring) Act* in relation to the promotion and assisting in the development of standards for the delivery of community services, and the education of service providers about those standards.[16]

Complaints handling and review of complaint systems

- will make the Ombudsman responsible for complaints handling (complaints are currently handled by both the Ombudsman and CSC);
- will enable complaints to be made direct to the Ombudsman, orally or in writing, about the conduct of a service provider in respect of the failure to provide, withdrawal, variation or administration of a community service to a particular person or group (complainants will still be able to complain to the Ombudsman under the *Ombudsman Act* about the conduct of a service provider);
- will confer on the Ombudsman the function of reviewing the causes and patterns of complaints and identifying ways in which those causes could be removed or minimised;
- will require the Ombudsman to review the complaints systems of service providers and enable the Ombudsman to report on this function and make recommendations concerning the complaint systems.[17]

Ombudsman's powers and procedures

Essentially, the Bill proposes that the powers of the Ombudsman for the purpose of conducting reviews relating to children in care, persons in care, complaint handling systems and deaths, and for inquiries and investigations, are those afforded the Ombudsman under the *Ombudsman Act.* It is further proposed that any powers previously available to the Community Services Commissioner in the performance of his functions also should be provided to the Ombudsman for the performance of functions under the *CRAMA Act*. The grounds on which a complaint can be made re community service providers under the proposed CRAMA legislation will be the broad grounds under the *Ombudsman Act* (rather than the current limited grounds of unreasonable action under the *Community Services (Complaints, Review and Monitoring) Act*).

The Bill proposes that ss.17-24 (excluding s.21B) and s.36 of the *Ombudsman Act 1974* will apply to the Ombudsman's proposed functions under the *CRAMA Act* for the purpose of:

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15 Schedule 1[21] of the Bill (proposed s.13 of the *CRAMA Act*).

16 Schedule 1[30] of the Bill (proposed Part 6 of the *CRAMA Act*) and the second reading speech.

17 Schedule 1 [21] & [22] of the Bill (proposed Parts 3 and 4 of the *CRAMA Act*) and the second reading speech.

- monitoring and reviewing the delivery of community services and other programs (both generally and in particular cases);
- making recommendations from improvements in the delivery of community services;
- inquiring into matters affecting service providers, visitable services and persons receiving or eligible for community services;
- reviewing the situation of children and other persons in care; and,
- reviewing complaint handling systems.

These powers will be subject to modification by regulation where necessary.[18] Presumably, this enabling provision concerns modification in relation to the way in which such powers are given effect rather than the nature of the powers themselves. The Ombudsman's powers will apply to a community service provider in the same way as they apply to a public authority.

This means that for these particular purposes the Ombudsman will be able to: conduct an investigation in private, require a public authority to give information, conduct an inquiry using Royal Commission powers (s.19), enter and inspect premises, limit available privileges in certain circumstances, obtain a Supreme Court injunction to restrain a public authority from conduct the subject of an investigation, and engage expert assistance. However, the Bill will not provide for the Ombudsman to exercise Royal Commission powers, as provided by s.19 of the *Ombudsman Act*, for purposes under the *CRAMA Act* such as general advisory and monitoring functions, which do not relate directly to investigations and complaint handling.

The Bill also will provide the Ombudsman with powers, previously held by the Community Services Commissioner, for the purposes of performing functions under the *CRAMA Act*.[19] These powers would be additional to the Ombudsman's powers under the *Ombudsman Act* and would provide for the Ombudsman to obtain and execute a search warrant, a power not previously held by the Ombudsman, and to enter and inspect premises, and obtain records and information. Section 20 of the *Ombudsman Act* currently provides the Ombudsman with the power to enter and inspect premises and any document or thing on the premises, but only in relation to a public authority. The proposed *CRAMA Act* provisions would apply to any community service provider, which may include private sector and non-government agencies.[20]

Where there is ground for adverse comment, the Ombudsman must provide an individual or public authority with an opportunity to make submissions. Where the Ombudsman has required a person to give an incriminatory statement the statement will be inadmissible in any proceedings against the person, with the exception of proceedings in relation to an offence of giving a false statement to, or of misleading, the Ombudsman.

[18] Schedule 1[21] of the Bill (proposed s.15 of the *CRAMA Act*).

[19] That is, ss.84-89 of the *CRAMA Act*.

[20] Schedule 1[21] of the Bill (proposed ss.17 and 18 of the *CRAMA Act*)

The Committee considers that the proposed powers of the Ombudsman, in relation to the exercise of the Ombudsman's functions under the *CRAMA Act*, would be appropriate and sufficient to enable the effective performance of those functions.

Advocacy functions – It is proposed that one of the Ombudsman's functions will be to promote access to advocacy support for people who are receiving, or who are eligible to receive, community services to ensure adequate participation in decision-making about the services they receive. This proposed function would replace the functions of the CSC at s.83(1)(h) and (i) of the *CRAMA Act* which provided for the CSC:

(h) to promote, liaise with and assist advocacy services and organisations for persons receiving, or eligible to receive, community services;

(i) to support the development of advocacy programs.

The proposed legislation may involve a less prominent or direct role in relation to advocacy services, reflecting the different functions and responsibilities traditionally afforded an Ombudsman. Given that advocacy functions may not readily be able to be combined with complaint handling and investigative functions, the Committee considers that the proposed role is more consistent with the Ombudsman's overall functions and responsibilities and the impartial exercise of these functions. The Committee is satisfied that the proposed role for the Ombudsman in relation to advocacy is appropriate.

Review of the proposed Act – Schedule 1[48] of the Bill will confer on the Committee on the Office of the Ombudsman and the Police Integrity Commission power to review the *Community Services (Complaints, Review and Monitoring) Act 1993* to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate to secure those objectives. The review is to be undertaken as soon as possible after five years from the date of assent to the Community Services Legislation Amendment Bill 2002. The Committee considers that this proposed role is in keeping with its existing statutory role to monitor and review the exercise of the Ombudsman's functions and also acknowledges its experience in conducting legislative reviews. Moreover, at the end of the specified five year period, the Committee would be able to draw on the experience gained in oversighting this area of the Ombudsman's proposed expanded jurisdiction to assist it in conducting the review. Accordingly, the Committee concurs with both the statutory review and general oversight roles that have been proposed for it.

Comment

The benefits associated with the proposed Community Services Division would be that:

1. as an officer of the Ombudsman's Office, appointed by the Ombudsman, the Deputy Ombudsman for Community Services would have the status of an officer of the Parliament, independent of the Executive and accountable to the Parliament through this Committee. (By contrast, the Community

Services Commissioner is appointed on the recommendation of the Minister for Community Services[21]).

2. the Deputy Ombudsman responsible for the Community Services Division would be able to exercise the same Royal Commission powers as the Ombudsman, in addition to the existing powers of the CSC regarding powers of entry and the power to obtain a search warrant, in relation to investigative and complaint handling functions under the proposed legislation. (At present the Community Services Commissioner possesses less extensive powers).[22]

3. the Ombudsman reports directly to the Parliament, and may make a special report to the Parliament under s.32 of the *Ombudsman Act*, and a report to Parliament under s.27 on a failure to implement recommendations made by the Ombudsman. (The Community Services Commissioner may only request the Minister, to whom he reports in the first instance, to table a report by the Commission in the Parliament.[23])

4. the Ombudsman's Office has experience in the performance of investigative functions and powers in relation to a range of relevant community service agencies, including DoCS, and both government and non-government agencies.

5. the proposed legislation would remove the current restriction placed on the Community Services Commissioner of making recommendations or determining issues so that they do not conflict with the resources appropriated by Parliament for community services, the allocation of resources by Government agencies, in accordance with Government policy or Government policy. (Currently, s. 5 of the *CRAMA Act* restricts any decision or recommendation on a matter arising under the Act from going beyond existing resource appropriations and allocations or from being inconsistent with Government policy.)

6. the Ombudsman will have under the proposed legislation an information-sharing capacity currently not available to the Community Services Commissioner.

7. the Ombudsman will have responsibility for recommending appointments to the Minister of Community Services for the Community Visitors Scheme. (This differs to the current arrangement in which the Minister appoints Community Visitors following consultation with the Community Services Review Council[24].)

The Committee supports the additional powers and independence that the Bill affords the proposed Deputy Ombudsman for Community Services and the proposed Community Services Division of the Ombudsman's Office. The proposed new

[21] s.78 of the *CRAMA Act*.

[22] See ss.84 and 85 of the *CRAMA Act*. The application of the Community Services Commissioner's coercive powers to self-initiated inquiries has been called into question by the NSW Law Reform Commission in its report on the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. NSW Parliamentary Research Service, op. cit., pp.22-23.

[23] s.83 of the *CRAMA Act*.

[24] s.7 of the *CRAMA Act*.

functions for the Office of the Ombudsman complement the Ombudsman's existing functions in relation to child protection, established through the *Ombudsman Amendment (Child Protection and Community Services) Act 1998*. The Bill will resolve the jurisdictional problems which had arisen for the Ombudsman and CSC, by clarifying that both the statutory functions of, and the services performed by, community service providers will be covered by the legislation.

The Committee notes that the Minister has indicated in the second reading speech on the Bill that the Office will receive additional funding for this extension to the Ombudsman's jurisdiction. The Ombudsman gave evidence to the Committee that additional funding is essential to give effect to the proposed extended jurisdiction and that he understood the entire budget of the Community Services Commission would be given to the Office in order that it will be adequately resourced to do these functions.[25] The Office had investigated those matters outside the jurisdiction of the CSC within its existing allocation while waiting for the merger proposal to eventuate. It is the view of the Committee that the provision of adequate additional funding is a necessary pre-requisite for the proposed merger to operate successfully.

The Committee also notes that there will be no right of appeal to the Ombudsman's decisions under the new legislation although the existing avenue of appeal to the Supreme Court on questions of jurisdiction will apply. The Committee considers these arrangements to be appropriate.

However, there is one issue associated with the Ombudsman's jurisdiction under the proposed legislation that the Committee considers should be clarified. For instance, the Bill provides for the repeal of Part 8 of the *CRAMA Act*, which establishes the Community Services Review Council. The Review Council's functions under s.108 of the *CRAMA Act* are:

(a) to encourage coordination of the functions of the Administrative Decisions Tribunal, the Community Services Commission, the Community Visitors and other persons and authorities where those functions relate to the provision of community services; and

(b) to provide the Minister for Community Services with strategic advice regarding the operational effectiveness of the review and monitoring system established under the *CRAMA Act*.

The Council has not been funded since 1996-7 and is considered to be effectively defunct. In its review of the *CRAMA Act*, the NSW Law Reform Commission proposed that the Review Council be abolished and replaced by a Parliamentary Joint Committee. It has been argued that the proposed establishment of the Community Services Division of the Ombudsman's Office would make the proposal for replacement by a Parliamentary Committee redundant, as the Ombudsman is oversighted already by this Committee.[26]

It would be useful to clarify if it is envisaged that the functions of the Review Council are to be performed under the new legislation by this Committee. The Parliamentary

[25] Evidence 12 June 2002.

[26] NSW Parliamentary Library Research Service, op. cit, pp.41-2.

Committee's functions are of a monitoring and review nature and do not extend to promoting coordination between key agencies under the community services legislation. It would be more appropriate for the Committee to monitor and review the extent of coordination between agencies and report on its findings. However, the Committee's functions could accommodate provision of strategic advice to the Ombudsman regarding the effectiveness and operation of the review and monitoring system to be established under the new scheme. The Committee considers that, providing regard is had to the differing functions of a Parliamentary Committee, it would seem that the Committee would be able to fulfil the main functions previously performed by the Review Council.

CHILD PROTECTION

Under Part 3A of the *Ombudsman Act 1974* the Ombudsman performs a number of child protection functions in relation to the oversight of systems for dealing with child abuse allegations and convictions against employees of designated government and non-government agencies. Part 3A provides the Ombudsman with the following child protection functions and powers:

- to scrutinise systems for preventing child abuse by employees, and for handling and responding to child abuse allegations and convictions involving employees (s.25B);
- discretionary power, in the public interest, to monitor the progress of the investigation by a designated government or non-government agency concerning a child abuse allegation or conviction against an employee of the agency (s.25E);
- power to obtain additional information, where considered necessary, in order to determine whether a child abuse allegation or conviction was properly investigated and if any resulting action was appropriate (s.25F);
- discretionary power to conduct an investigation into any child abuse allegation or conviction against an employee of which the Ombudsman is notified or becomes aware (s.25G);
- discretionary power to conduct an "own motion" investigation into any inappropriate handling of or response to a child abuse allegation or conviction against an employee of a designated agency (s.25G).

Agencies within the Ombudsman's jurisdiction are required to notify the Ombudsman of:

- any child abuse allegation or child abuse conviction against an employee with that agency (must be notified to the Ombudsman within 30 days of the head of the agency becoming aware of the allegation or conviction);
- whether or not disciplinary or other action against the employee is proposed and the reasons for this decision;
- any submissions by the employee concerned in response to a proposal for disciplinary or other action (s.25C);

- the results of any investigation into, and action taken against, an employee in relation to a child abuse allegation or conviction – includes provision of a copy of the investigation report, statements and other documents to the Ombudsman (s.25F).

During the General Meeting the Ombudsman gave evidence that the Office's child protection team has expanded to more than 20 staff.

The Office has commenced an auditing program to monitor the extent of agency compliance with their statutory obligations and whether or not appropriate policies and procedures have been established to properly investigate child abuse allegations.[27]

Several trends were noted by the Ombudsman in relation to this area of jurisdiction:

Nature of allegations received

- the majority of notifications were about allegations of physical abuse;
- twice as many boys as girls were reported as the alleged victims of child abuse;
- the alleged offenders were males in 61% of physical abuse allegations and 81% of sexual abuse allegations;
- allegations of physical assault were more likely to be preceded by resistant, disruptive or challenging behaviour of the child or young person.

Agency compliance with notification obligations

- showed low reporting in a number of agency types including agencies providing substitute residential care, services to children with disabilities and independent schools;
- there was a slight decrease in the reporting of allegations of sexual abuse;
- these agencies are more likely to report allegations of sexual abuse and less likely to notify allegations of physical abuse or behaviour causing psychological harm;
- some agencies are slow to finalise matters once they have made a notification to the Ombudsman;[28]
- despite some improvements during 2000-1 in the time taken by agencies to complete investigations and to forward investigation results to the Ombudsman, the average times for 2001-2 have increased, especially in relation to the Department of Juvenile Justice and Substitute Residential Care services.[29]

In response the Office has developed several strategies including:

[27] Ombudsman's opening address.

[28] Answer to QON 33.

[29] Answer to QON 32.

- auditing a number of special schools for children with disabilities and a large agency providing substitute residential care;
- undertaking an extensive education project, in conjunction with the Association of Independent Schools, to ensure that principals of independent schools are clear about their reporting obligations and the advances of operating within a sound risk management framework.

The Office also is taking the following steps to address its concerns about the apparent incapacity of some agencies to finalise matters once they have been notified (this includes some cases where the matters are over 18 months old and involve less serious allegations:

- close monitoring of DET's case closures;
- conducting an audit of the CCER's incomplete matters;
- consideration of investigating the failure of the Department of Juvenile Justice to comply with statutory reporting requirements.[30]

Of particular concern was the Ombudsman's observation that agencies with responsibility for providing services to children with disabilities:

- did not understand that allegations of physical abuse must be notified;
- are still grappling with the concept of risk management, both at the time a notification is made, and more generally in determining and managing the level of risk posed by individuals in their organisation who are the subject of an allegation.

The Ombudsman also observed that there were patterns of over-use of restraint of children with disabilities.[31]

The Committee finds the trends and observations of the Ombudsman in relation to the child protection area to be of ongoing concern and will closely monitor these trends, and the outcome of the Ombudsman's initiatives to address current problems regarding notifications and investigations of child abuse allegations.

SPECIAL REPORT TO PARLIAMENT ON DoCS

The Committee asked the Ombudsman a range of questions concerning the Special Report to Parliament on DoCS. The Committee notes that the Ombudsman provided the following evidence in relation to this report:

- reform of the existing system in relation to reporting requirements and notifications should be approached cautiously;
- the notification system is new and it may be premature to make any assessment of the system until reliable information about the proportion of trivial notifications and the operation of the system is available;

[30] Answer to QON 33.

[31] Ombudsman's opening address and subsequent evidence.

- investigations into DoCS are ongoing and the Office will continue to look at systemic issues;
- the Office will monitor the action taken by DoCS in relation to the recommendations made by the Ombudsman in accordance with usual practice;
- the Ombudsman retains the option of making a special report to Parliament on any deficiencies in implementation;
- the Office will be interested in the outcomes of the parliamentary inquiry into DoCS and the working party chaired by Ms Kibble.[32]

The Committee will examine the outcome of the Ombudsman's inquiries into DoCS at the next General Meeting, having regard to the findings of the parliamentary committee inquiry and the working party, and the proposed new community services legislation, if enacted. In the interim, the Committee notes that the Ombudsman's inquiries are ongoing and that there are sufficient avenues for the Ombudsman to report should DoCS fail to take action in response to recommendations made by the Ombudsman.

POLICE COMPLAINTS AND OVERSIGHT

The Committee was pleased to note a number of positive developments in relation to the Ombudsman's police oversight jurisdiction. These include such initiatives as the establishment of the External Agencies Response Unit by the Police Service. The Ombudsman reported to the Committee that this has lead to a significant improvement by the Service in responding to major issues raised by external oversight agencies. In particular, the Ombudsman notes, the External Agencies Response Unit has "greatly improved the prospects for relevant and constructive outcomes"[33].

Similarly, the Police Service's endorsement of a new position statement for Professional Standards Managers (PSMs) following a number of workshops to clearly define the role and responsibilities of PSMs, and to ensure their consistent use across the eleven regions, is encouraging. The Ombudsman described these developments in his Annual Report for 2000 – 2001 as "crucial to ongoing reform".[34] The Ombudsman gave evidence to the Committee that due to the current Police Service restructure, through which the number of regions will be reduced from eleven to five, the Police Service has initiated a further review of the PSMs. The Ombudsman expected that any changes arising from this review are likely to strengthen the capacity of PSMs to support the complaints process. The Committee will follow up the results of this review with Ombudsman during the next reporting period.

[32] Answers to QON 26-27.

[33] Answer to QON 12.

[34] NSW Ombudsman *Annual Report 2000–2001*, p 24.

Improving the management of complaints: identifying and managing officers with complaint histories of significance

In his answers to Questions on Notice concerning the Special Report to Parliament *Improving the management of complaints: identifying and managing officers with complaint histories of significance*, the Ombudsman reported on a planned trial to develop innovative complaint handling techniques as a joint initiative of his office and the Police Service. This trial was initially expected to start in April 2002, but has been deferred until the Police Service organisational restructure and complaint handling initiatives associated with the restructure have been put in place. As a result, a plan including a timeframe and evaluation has yet to be developed.

The Committee is concerned that of the sample 450 officers selected for the Ombudsman's Special Report approximately 25 per cent of those had a significant complaint history, and that preliminary research by the Ombudsman's Office indicates that over 200 police have complaints histories that indicate they may be a serious risk to the community. The planned trial of complaint handling techniques assumes an increased level of urgency in light of this. While the Committee is pleased that the Police Service has agreed to implement all of the recommendations made in the Ombudsman's report, the status of the trial of complaint handling techniques will be an issue it will be monitoring closely.

Vexatious complainants

During 2001 the Ombudsman supported legislation to allow the prosecution of those individuals who make vexatious complaints about police officers. In supporting this legislation, the Ombudsman warned that the Police Service "should take care to avoid discouraging those with genuine concerns from blowing the whistle on corruption".[35]

In his response to Question on Notice 2, the Ombudsman advised that he has provided the Police Service with advice on handling vexatious complainants. The Committee supports this advisory role assumed by the Ombudsman in assisting the Police Service to develop guidelines in relation to the prosecution of individuals who knowingly making false complaints and in relation to safeguards for internal complainants. The Ombudsman also advised in his response to Question on Notice 2 that his Office is currently reviewing the Police Service's targeting of suspected repeat offenders in order to assess the potential for such a strategy to generate additional complaints against police. The Ombudsman will be reporting on the results of this review and the Committee will view the results with interest.

Police Oversight Data Storage (PODS) and customer assistance tracking system (c@ts.i)

These two information technology systems will enhance the way in which Special Crime and Internal Affairs (SCIA, NSW Police Service), the Police Integrity Commission and the Ombudsman will work together on police complaints and police oversight.

[35] NSW Ombudsman. 2002. *Improving the management of complaints: Identifying and managing officer with complaint histories of significance.*

c@ts.i will replace the Police Service Complaints Information System (CIS) in September 2002. c@ts.i will enable easier tracking of complaints by the Police Service and will also allow the Ombudsman to enhance the quality of available information about each Local Area Command (LAC). The Ombudsman advised the Committee that his Office has begun developing a detailed profile on complaint handling issues affecting individual LACs, beginning with Commands where intelligence reports indicate there are significant issues in need of attention.

In response to Question on Notice 16, the Ombudsman advised the Committee that PODS development is all but completed, and the project will be completed within the next reporting period.

Clearly the implementation of PODS and c@ts.i means that the need for the old system of formal referrals between the Ombudsman, the Commission and the Police Service is no longer necessary. As such, the Committee considers that some form of rationalisation of the complaints referral system between the three agencies would be appropriate once implementation of PODS and c@ts.i is finalised for each of the agencies involved. The Committee previously has indicated its preparedness to undertake a review of the police complaints system and the scheme for notification of complaints.[36]

Ombudsman's evaluation of the Command Management Framework

The Ombudsman advised the Committee in his answer to Question on Notice 14 that a project team has been established to examine the effectiveness of the Command Management Framework (CFM) as an audit tool. The first project will be an audit to review the Service's implementation of measures to ensure effective monitoring of COPS accesses. The project team will examine the twelve month period following the introduction of the CFM in order to evaluate the general effectiveness of the CFM as a management tool, as well as the specific impact of the CFM on unlawful COPS accesses. This project will commence in the latter half of 2002. The Committee understands this project has the potential to assess the impact of a crucial Police Service policy and will be seeking status reports on its progress throughout the reporting year.

Trial of secondary employment of police

In January 2002 the Minister for Police announced a trial of off-duty, uniformed and armed police working second jobs as police. Flemington Markets, Rockdale and Hurstville were proposed as areas for the trial. There have also been media reports of Strathfield Council paying $50 000 for off duty police to guard local shops.

Secondary employment, especially in the security, liquor and transport industries has long been a problematic area for the Police Service. A number of approaches have been adopted:

- 1987 - the ban on police seeking secondary employment was lifted, but executive approval for secondary employment was required.

[36] Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report on the Sixth General Meeting with the Commissioner for the PIC*, June 2002, p.xii.

- 1991 - the Service again banned all secondary employment in the security and liquor industries by police, but this ban was lifted after two weeks, following intervention by the Police Association.
- 1992 - the Ombudsman advocated reinstating this ban, and the ICAC released a report recommending a far more detailed approval process for police in secondary employment in the security and liquor industries.
- 1993 - the Service released a new Secondary Employment Policy which specified that secondary employment must not be undertaken by officers if there is a conflict of interest. Furthermore, secondary employment must not be approved in the security, liquor or transport industries, as police have specific duties in regulating those areas.
- 1995 - this policy was reinforced in the Commissioner's Instructions on secondary employment.
- 1994 to 1997 - Wood Royal Commission hearings showed a number of instances of police officers 'moonlighting' in the security and liquor industries, and using opportunities arising from this work to engage in corrupt behaviour.
- 1997 – Wood recommends that secondary employment be prohibited in areas where police play regulatory roles such as commercial and private inquiry agents, transport, liquor, security and gaming and racing.
- 1997 – new Code of Conduct and Ethics introduced.
- 2001 – Secondary Employment Policy and Guidelines introduced, emphasising that secondary employment in the security, liquor, gaming and racing and transport industries and as commercial and private inquiry agents, is high risk and approval for secondary employment in these industries will only be granted in those cases where it can be clearly demonstrated that there is no conflict of interest.

The Committee raised this issue with the Commissioner for the Police Integrity Commission during the Sixth General Meeting on 16 May 2002. The Commissioner gave evidence that the PIC had not been involved in any way in formulating the parameters of the trial or providing advice on anti-corruption measures. The Committee was most concerned that given the well documented risks of secondary employment for police there appeared to be no apparent involvement of the PIC. The Committee resolved to raise this matter with the Ombudsman during their General Meeting with his Office.

The Ombudsman gave evidence that his Office had been provided with some information about the trial and had indicated to the Police Service the sorts of safeguards that need to be in place in terms of the potential for corruption or other types of misconduct. However, the Ombudsman gave further evidence that his Office was not involved in any ongoing way with the trial and was not involved in evaluating and reviewing the outcomes of the trial. The review of the trial of secondary employment is to be conducted internally through the Ministry for Police.

The Committee is reassured that the Ombudsman has been consulted by the Police Service about appropriate safeguards, but holds concerns about the method for

evaluating the trial. While the Ombudsman has given evidence that he understands his Office will be involved in the review in an advisory capacity, the Committee feels that a formal, external review would be a far more appropriate way of evaluating and reviewing the trial of secondary employment.

Review of the *Police Integrity Commission Act 1996*

The Ministry for Police, on behalf of the Minister for Police, has recently undertaken a review of the *Police Integrity Commission Act 1996* in accordance with s.146 of the Act. The methodology for the review of the Act was to invite submissions from the various stakeholder agencies, including the Office of the Ombudsman, with the intention of further consultation with key agencies as required[37]. Correspondence to stakeholder agencies and advertisements in the *Daily Telegraph*, *The Sydney Morning Herald* and *The Australian* inviting submissions, occurred in late October 2001. The closing date for submissions was 31 December 2001 with the report due in Parliament on 21 June 2002.

Following an initial briefing from the Ministry in November 2001, the Committee sought an update on the progress of the review of the Act early in April 2002. The Ministry advised on 16 May 2002 that submissions had been received from all the key agencies and that the submissions were generally supportive of the operations of the Police Integrity Commission. The Ministry further advised that consultation with key agencies had been undertaken and that the only proposed legislative changes were of "a technical and procedural nature". Any approved legislative amendments would be progressed during the next Parliamentary session.[38]

During the Tenth General Meeting with the Office of the Ombudsman, it became clear from the Ombudsman's evidence that the consultation process undertaken by the Ministry was unsatisfactory. The Committee is particularly concerned that the Ombudsman stated that the Ministry had received a submission from the Police Service in February 2002 but had not provided a copy to the Office until 22 May 2002. The Ombudsman was requested to respond to the submission within five days. The Ombudsman was of the view that this was insufficient time to respond to the changes proposed within the Police Service submission.

During the review process the former Commissioner of Police, Mr Peter Ryan, departed as Commissioner and was succeeded by Assistant Commissioner Ken Moroney. Obviously, this period involved a number of policy changes within the Police Service relevant to police complaints oversight. Commissioner Ryan was on the public record criticising the level of police oversight within New South Wales. The Police Service made an initial submission to the review that was largely reflective of the former Commissioner's outlook on police oversight. The Committee understands that the Police Service recently has revised its submission.

It must be noted that the current Commissioner, Ken Moroney, was responsible for Special Crime and Internal Affairs and Organisational Policy and Development, both

[37] Correspondence from Mr Les Tree, Director General, Ministry for Police to Mr Paul Lynch, Chair, Committee on the Office of the Ombudsman and the Police Integrity Commission, Received by Committee 18 October 2001.

[38] Correspondence from Mr Les Tree, Director General, Ministry for Police to Mr Paul Lynch, Chair, Committee on the Office of the Ombudsman and the Police Integrity Commission dated 16 May 2002.

of which are heavily involved in the complaints system. Mr Moroney was Acting Commissioner from the date of Mr Ryan's departure. The Ombudsman gave evidence at the 10th General Meeting with the Committee of Mr Moroney's desire to ensure the complaints process is handled appropriately. In these circumstances, it is difficult to understand why the Ministry for Police took so long to circulate the Police Service submission to one of the key stakeholders in the police oversight system.

The Office of the Ombudsman is an independent statutory office whose operation is closely linked with the Police Integrity Commission. Any effective review of the policy objectives of the *PIC Act* must involve meaningful consultation with all of the key stakeholders in the police oversight system, including the Ombudsman. Any proposed changes to the operation of the PIC will invariably affect the jurisdiction of the Ombudsman and the operation of the Office. The Committee previously voiced its opposition to any proposed expansion of the PIC's jurisdiction that would compromise its targeted corruption investigation focus.[39]

Further, the Committee considers that the consultation process adopted by the Police Ministry was deficient, especially in terms of the delay involved in advising the Ombudsman of proposals to reform the police oversight system, which would have a direct impact upon the Office of the Ombudsman. The period allocated by the Ministry for the Office to comment on the Police Service submission was inappropriate and there does not appear to be any adequate reason for the four-month delay in advising the Office of the nature of the Police Service submission. The Committee is critical of this delay and considers that it detracts from the open consultation that normally characterises the approach of the Office of the Ombudsman, Police Integrity Commission and Police Service to issues affecting the police oversight system. The Committee will consider the findings of the review after the Minister for Police has presented the report on the review to the Parliament.

Universities

The Ombudsman identified universities as one of the areas of jurisdiction where formal investigations had increased, partly because the matters raised were too serious and systemic to be resolved appropriately on an informal basis or by monitoring the agency's conduct. He told the Committee that the Office's focus on universities intensified following the receipt of several protected disclosures which raised concerns about "widespread lack of policies and procedures, widespread failure to follow policies, nepotism in recruitment, and clear, yet unrecognised, conflicts of interest".[40]

In response to Question on Notice 21, the Ombudsman advised that the then Minister for Education and Training circulated to all universities in NSW the recommendations of the report of the Ombudsman's investigation into Sydney University, entitled *The conduct of the University in handling applications for special consideration, complaints against staff and incidental conflicts of interest*, and sought a response to those recommendations. All universities within jurisdiction responded that their policies generally accorded with the recommendations in the Ombudsman's report; a number are either making the appropriate changes or

[39] *Report on the Sixth General Meeting with the Commissioner for the PIC*, op. cit, p. xi.

[40] Ombudsman's opening address.

considering making those changes to bring their policies into a more specific alignment with the recommendations. The Committee was pleased to note that the Catholic University, while outside jurisdiction, also responded to the report, advising that they will take the Ombudsman's recommendations into account in developing their student complaint procedures and a code addressing conflicts of interest.

Implementation of effective internal reporting systems for dealing with protected disclosures in universities remains a matter of concern for the Committee. The Deputy Ombudsman gave evidence that he is not confident that there is a full and proper understanding of the *Protected Disclosures Act 1994* by the full executive of universities. Further, he noted that universities tend to only request advice and training once a problem arises. The Ombudsman added that he saw this area as one that required educative exercise. He noted some improvements had been made but that one of the particular difficulties was the lack of direct lines of control and reporting within universities.

Although it appears that all universities in NSW, with the exception of Southern Cross, have an internal reporting system for protected disclosures, some have not addressed flaws in their systems as advised by the Deputy Ombudsman. The Office is aware of only five universities that possess adequate internal reporting systems, namely, UTS, Newcastle, New England, Charles Sturt and Sydney. [41]

During the General Meeting the Deputy Ombudsman also gave evidence that the University of Sydney had incurred expenses totalling close to $1million in relation to the handling of a protected disclosure and subsequent legal processes relevant to this matter[42]. It appears to the Committee that the commitment of such funds to the handling of a protected disclosure is significant and excessive. Consequently, it intends to monitor the level of resources which universities commit in dealing with protected disclosures, particularly funds spent on legal action.

The Committee also plans to closely monitor:

- the extent to which universities adopt the Ombudsman's recommendations, with particular reference to the adequacy of university internal reporting systems and procedures;
- the treatment of public officials who make protected disclosures in this area.

LEGISLATIVE REVIEW ROLE

One of the areas in which the Office of the Ombudsman's role has expanded significantly has been in relation to statutory reviews of particular pieces of legislation. In his opening statement to the Committee, the Ombudsman said that his Office is currently reviewing eight new pieces of legislation, and another piece that is imminent. Six reviews are under way and two are pending.

The Ombudsman is currently monitoring the implementation of the following Acts:

[41] Answer to QON 23.

[42] See Appendix 2

- *Crimes (Forensic Procedures) Act 2000*
- *Child Protection (Offenders Registration) Act 2000*
- *Police Powers (Vehicles) Amendment Act 2001*
- *Police Powers (Drug Premises) Act 2001*
- *Police Powers (Drug Detection Dogs) Act 2001*

Additionally, the Ombudsman will review *Police Powers (Internally Concealed Drugs) Act 2001* and *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* once they commence. It has further been proposed in the draft *Crime Legislation Amendment (Penalty Notice Offences) Bill* 2002 that the Office of the Ombudsman scrutinise the exercise of these powers by police during the first twelve months of operation.[43]

Reviewing the operation of a piece of legislation, particularly those that expand police powers, is an involved process and one that often requires an approach that goes beyond the normal paper-based methods of reviewing legislation. For example, the Ombudsman gave evidence that while reviewing the operation of *Police Powers (Drug Detection Dogs) Act 2001*, two research staff accompanied police officers who were using sniffer dogs to observe the Act in action. The reviews generally include the following:

- inspection and analysis of police records (eg COPS data, information from the Infringement Processing Bureau, intelligence records),
- interviews and focus groups of police, other stakeholders, and members of the public,
- discussion paper and public submission process,
- analysis of relevant complaints held by the Ombudsman,
- examination of court transcripts,
- direct observation of policing using the powers in question,
- surveys of relevant stakeholders and practitioners, eg prison inmates, lawyers and local area commanders,
- examination of legislation and practice in other jurisdictions, and
- review of relevant literature and research studies.[44]

The Ombudsman noted that the new police powers had not resulted in a significant influx of complaints about the conduct of individual police officers. However, the Office's statutory reviews had identified significant procedural, training, policy and other changes intended to promote the responsible and effective use of the powers reviewed.[45]

[43] Answer to QON 19.

[44] Answer to QON 21.

[45] Answer to QON 20.

The Committee was pleased to note that the Ombudsman reported his Office was receiving adequate resources to conduct this expanded role.

The Committee notes that the Office has been able to negotiate consistent reporting provisions under the relevant statutes so that each responsible Minister is required to table the Ombudsman's Report in Parliament as soon as practicable after receiving it.[46] The Committee will continue to monitor the length of time that expires between provision of the report by the Ombudsman to the responsible Minister and its subsequent tabling in Parliament.

[46] Ombudsman's opening address.

QUESTIONS ON NOTICE

TENTH GENERAL MEETING WITH THE NSW OMBUDSMAN
RESPONSES TO QUESTIONS ON NOTICE

Special reports to Parliament under s.31 of the *Ombudsman Act 1974*

Improving the management of complaints: identifying and managing officers with complaints histories of significance

1. The report refers to a proposed complaint handling pilot program that provides for commanders to develop more effective ways of managing officers with significant complaint histories. Who is responsible for conducting this pilot program? How is the pilot program progressing? When will it be evaluated?

The plan to develop and trial innovative complaint handling techniques is a joint initiative of this office and NSW Police. The project is expected to identify, develop and promote best practice in cost-effective complaint handling at the police service's regional and local area command levels, with particular reference to:

- practices which have the potential to improve the quality and efficiency of complaint handling across the state,
- decisions relating to complaint assessment, the progress of investigations and determinations of management outcomes, and
- the selective use of expertise from Special Crime and Internal Affairs, the Employee Management Branch, the Ombudsman, and specialist advice from experts outside the complaints process, to build the capacity and skills of local level decision-makers.

The initial six-month phase of the project should focus on complaint handling in a selection of busy local commands. It was initially expected to commence in April 2002, but has been deferred until the current police service organisational restructure has been completed and complaint handling initiatives associated with the restructure have been put in place.

As a result we have yet to develop a formal plan, including a timeframe for evaluation.

2. The report contains the comment that the power to prosecute vexatious complainants is one that must be exercised with a strategy to ensure that police "avoid wasting resources on pursuing matters without merit" (p 7). Further the Service "should take care to avoid discouraging those with genuine concerns from blowing the whistle on corruption" (p 7).

(a) Has NSW Police taken any steps to develop such safeguards?

The Police Commissioner, Mr Moroney, has indicated that the Employee Management Branch is currently preparing guidelines in relation to the prosecution of persons knowingly making false complaints, which should address the issues of pursuing matters without merit and safeguards for internal complainants.

(b) Given that your Office has already developed protocols concerning the handling of vexatious complaints, would this be an appropriate area for NSW Police to seek guidance from the Ombudsman?

We have already had discussions with the police service and provided advice and information about our own procedures for dealing with vexatious complaints.

(c) Will this be an area that will be addressed in the proposed series of related reports on key issues relating to the Police management of complaints?

This office has long advocated the need for vigilance against any deliberate misuse of the complaints system, especially any misuse intended to disrupt legitimate policing activities. We are presently reviewing the police targeting of suspected repeat offenders to assess the potential for such suspect targeting strategies to generate additional complaints against police. We propose to report on the results of our review at its completion.

NSW Police has advised that it is currently developing and implementing a number of initiatives to raise the standard of internal investigations. Recent changes include:

- the formation of complaint management teams and the development of a training package aimed at getting the teams to improve the standards of internal investigative and management decision-making;
- the introduction of an Internal Investigation Training Course in May 2002; and
- the development of a package on complaint management to be delivered to all local commanders from May 2002, which deals with the responsibility of Local Area Commanders for the conduct of complaint investigations by their staff, and in particular focuses on serious complaint matters.

There are also changes associated with the police service organisational restructure which are expected to include additional support for internal investigators, particularly in relation to managing more serious complaints.

Our strategy for dealing with the issue of vexatious complainants will largely depend on the results of our review and the police service's current initiatives.

3. Has NSW Police made a response to the recommendations contained in the report? If not, when is a response anticipated?

NSW Police has agreed to implement all recommendations in the report. The Commissioner, Mr Moroney, wrote to this office on 29 May 2002 indicating that he has already taken steps to address many of the issues raised.

We plan to meet with the police service in the next few weeks to discuss its approach, particularly in relation to the specific outcomes it expects the current reforms to deliver. Of particular importance is the need to develop measures that can be used to evaluate the impact of its initiatives in this area.

Law Enforcement (Controlled Operations) Act Annual Report 2000 – 2001

4. Has the Commander of the Internal Affairs Unit, NSW Police, addressed the various inconsistencies identified by the Ombudsman in relation to a number of applications for controlled operations during the reporting period? If not, why not, and has any timeframe been offered by NSW Police for doing so?

In general the quality of the notifications made to the Ombudsman of the granting of applications, variations made to approved controlled operations and reports of completed operations by the Internal Affairs Branch have improved. However, until the final inspection, scheduled for July 2002, has been completed, it will not be possible to comment in detail on the improvement or otherwise of the record keeping of the Internal Affairs Branch in relation to controlled operations. This issue will be addressed in the Law Enforcement (Controlled Operations) Annual Report for 2001-2002.

5. Legislative amendments to the *Law Enforcement (Controlled Operations) Act* expanded the Ombudsman's monitoring role to include the National Crime Authority (NCA), Australian Federal Police (AFP) and Australian Customs Service. What impact has this had on the performance of the Ombudsman's monitoring role?

Of the Commonwealth agencies now designated as law enforcement agencies for the purposes of the *Law Enforcement (Controlled Operations) Act*, only one has conducted controlled operations under the State Act to date, and only two such operations have been conducted. Consequently the impact on the Ombudsman's role by the inclusion of these additional agencies has been minimal to date.

The Forensic DNA Sampling of Serious Indictable Offenders: A Discussion Paper

6. Has the forensic sampling of young people in juvenile justice centres commenced?

The forensic DNA sampling of young people in juvenile detention centres commenced in October 2001. Between October and December 2001, 38 young

people in juvenile detention centres provided a forensic DNA sample by means of a buccal swab. Six of them were under the age of 18 at the time of the sampling and the forensic procedure was authorised by a court order. The remaining 32 were over 18 years and consented to the procedure.

Both NSW Police and the Department of Juvenile Justice have advised that all of these samples were obtained with the cooperation of the young people involved.

7. Has the sampling process presented issues that differ to those which occur in adult correctional centres?

As part of our review we observed the video recordings of all forensic procedures that had been conducted on young people in juvenile detention centres up until April 2002.[47] We did not observe any major differences between the interactions between the police and the inmates in adult correctional centres and those between the police and the young people in juvenile detention centres.

Submissions received in response to the Ombudsman's *Discussion Paper: The Forensic DNA Sampling of Serious Indictable Offenders* have generally raised similar issues for young people to those raised for adults.

8. Have amendments been made to the *Crimes (Forensic Procedures) Act 2000* and the *Children (Criminal Proceedings) Act 1987* to overcome the inconsistency in the definition of 'serious indictable offence' under each act?

Whilst the definitions in the respective Acts are not strictly inconsistent,[48] it appears that the issue of which juvenile detainees can have forensic DNA samples taken from them under Part 7 of the *Crimes (Forensic Procedures) Act* remains unclear.

We received correspondence from the Director General of the Department of Juvenile Justice, Mr David Sherlock, on 22 May 2002, stating that although it was the view of the Department that only serious children's indictable offenders are caught by the Act, NSW Police holds a different view.

Mr Sherlock also stated that 'it is a matter for the Police and Courts to determine who is affected by the Act', and that he has cooperated with the police in providing the names of all detainees sentenced according to law and subject to orders made pursuant to s.19 of the *Children (Criminal Proceedings) Act*.

In submissions made in response to our discussion paper, the NSW Law Reform Commission and the Legal Aid Commission of NSW also took the view that Part 7 of the Act applies only those children who have been convicted of a serious children's indictable offence and sentenced to a term of imprisonment.

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[47] This is when the Video Audit was conducted.

[48] See page 12 of *Discussion Paper: The Forensic DNA Sampling of Serious Indictable Offenders*. The *Children (Criminal Proceedings) Act* 1987 provides a category of 'serious children's indictable offences' which includes homicide, offences punishable by imprisonment for life or for 25 years and some sexual offences. The *Crimes (Forensic Procedures) Act* 2000 provides for a broader category of 'serious indictable offence' which is defined as an indictable offence that is punishable by imprisonment for life or a maximum penalty of 5 or more years imprisonment.

Submissions from NSW Public Defenders and the Bar Association of NSW stated that it was inappropriate to try to define a class of juvenile detainees who might be eligible for forensic DNA sampling. They argued that the *Crimes (Forensic Procedures) Act* draws a distinction between adult and child offenders in that adult offenders can be subject to sampling simply because they are serious indictable offenders, whereas eligible children can only be sampled if that testing can be 'justified in all the circumstances'.[49]

Police Area

9. What have been the main issues for the Office in the police area since the Ninth General Meeting with the Committee?

In 2001, our police team made the following changes to their work practices:

- we took a more streamlined approach to our oversight of less serious complaints coupled with more rigorous oversight of serious misconduct matters,
- we expanded our use of effective auditing (more details may be found in our answers to Q10 and Q11),
- more resources were devoted to inquiries and projects targeting systemic problems - this is related to our increased focus on fixing problems rather than only identifying them,
- we substantially increased the number of direct investigations conducted, particularly those that highlight very poor investigations carried out by the police service in the first instance, and
- projects to improve the exchange of complaint-related information and intelligence holdings between this office and the police service arising from the work of a joint standing committee comprising senior representatives of both organisations.

A number of our initiatives are aimed at exploring more closely systemic problems with policing practices and developing effective strategies to deal with those problems. Our work has been focussed on various issues, including the following:

- officers with complaint records of significant concern (more details may be found in our answer to Q17),
- the effectiveness of the Loss of Commissioner's Confidence provisions (s.181D),
- common misconceptions held by frontline officers about the complaints system,
- the effectiveness of the Command Management Framework (more details may be found in our answer to Q14),

[49] Subsection 74(5) requires that a court be satisfied that the carrying out of the forensic procedure be justified in all the circumstances prior to making an order.

- the profile of complainants and whether or not a significant number are repeat offenders,
- complaint-handling performance of local area commands (LACs), and
- relationships between police and their local Aboriginal communities.

10. Has the Office's audit capacity in relation to Category 2 complaints been extended? In particular, are complainant surveys now included in the audits as indicated in the response given to Questions on Notice from the Ninth General Meeting?

Current and planned audits by our police team include the following projects:

- audits into the timeliness of complaint handling,
- auditing complaint files held at LACs for compliance with the class and kind agreements,
- reviewing police management outcomes arising from findings of misconduct (this review will be in conjunction with the Employee Management Branch which is contracting an independent HR consultant),
- the tracking of complaint performance data through our trend analysis reports, and
- checking the level of complainant satisfaction against advice provided by the police service.

We are currently reviewing our method for surveying complainants to assess the level of their satisfaction with the police service's handling of their complaints and expect to finalise a new survey within the next few weeks.

11. Are local commands and regions that promote good investigative practices identified as part of the audit process? Will this information be made available to NSW Police to assist in benchmarking best practice?

Information from our trend analysis reports provides a basis for discussions we have with local commanders and executive officers at regional workshops and training days. Those reports compare the performance of local and regional commands against broad indicators such as:

- complainant satisfaction;
- deficient investigation rates;
- turnaround times;
- the range of management outcomes employed; and
- the extent to which alternative dispute resolution strategies are being successfully used.

However, trend analysis reports provide a limited insight into the particular circumstances affecting local command complaint handling. Other issues, including

the number and nature of serious complaints, the size of the command, policing strategies and the relationship between police and their community, will be relevant to identifying effective complaint-handling practices in individual commands. Cultural factors, including the attitude of commanders and senior police managers to complaint-handling, will also play a large part in effective complaints management.

The introduction of the c@ts.i complaint case management system should enhance the quality of available information about each LAC. As an additional initiative, we have begun to develop detailed profiles on complaint handling issues affecting individual LACs, starting with commands where our intelligence reports indicate there are significant issues in need of attention. We are also looking to highlight the work of those commands that are performing well, using initiatives in those areas to demonstrate the potential for improvement.

12. Has the establishment of the External Agencies Response Unit by NSW Police contributed to improving the Police response to major issues raised by the oversight agencies?

The establishment of the External Agencies Response Unit partly arose from the police service's acceptance of the need for coherent, timely and coordinated management of major issues that present a risk to the organisation.

In the complaints area, the unit has served to alert the senior executive of the police service to significant issues raised by the Ombudsman, and has succeeded in drawing much-needed police attention to many of those issues. We can be confident that responses provided via the unit represent the police service's corporate views on the issues raised. This is a vast improvement on the disjointed and ad hoc processes that sometimes applied in the past.

Since the unit's inception, we have also noted a significant improvement in the time taken for the organisation to respond to important issues, greatly improving the prospects for relevant and constructive outcomes.

13. On page 24 of the Ombudsman's Annual Report for 2000-1, reference is made to the review by NSW Police of the role of Professional Standards Managers (PSM). The PSMs are described as "crucial to ongoing reform". How is this review progressing?

In the latter half of last year the Assistant Ombudsman attended a number of police service workshops that sought to clearly define the role and responsibilities of the Professional Standards Managers (PSMs). A key concern related to a lack of consistency in the use of PSMs across the 11 regions of the police service.

As a result of the workshops, the Commissioner's Executive Team was able to endorse a new position statement for PSMs, which reflects the expertise required of that position. Attached is an extract from the revised NSW Police document setting out the role of PSMs. The new description strongly emphasises the key leadership and strategic role of PSMs in monitoring and driving improvements to complaint performance in the areas for which they have responsibility.

Due to the current police service restructure which involves reducing the number of regions from eleven to five, the organisation has initiated a further review of the PSM positions. In early briefings on this issue, it would appear that any changes arising from this review are likely to focus on strengthening the capacity of PSMs to support the complaints process.

14. What is the status of the Office's evaluation of the Command Management Framework? Does the evaluation, or has it begun to, address the issues raised in the investigation into auditing of access to the police Computerised Operating System (COPS)?

A project team from the Ombudsman's police area has been established to examine the effectiveness of the operation of the Command Management Framework (CMF) as an audit tool. The first project of this kind will be an audit to review the police service organisation's implementation of measures to ensure regular and effective monitoring of COPS accesses. Part of the audit will check:

- police service compliance with guidelines in relation to regular and effective monitoring of COPS accesses (examine the 12 months following the introduction of CMF), and
- that CMF is an effective management tool generally (for related projects) and specifically in the area of unlawful COPS access.

We chose the third quarter 2002 commencement date for the project in order to allow teething problems to be ironed out before we assessed the CMF's effectiveness.

15. Has the policy for commanders seeking advice from the Director of Public Prosecutions been finalised? If so, when will it be implemented?

While the agencies with an interest in this area are yet to agree on a final policy on referrals to the Office of the Director of Public Prosecutions (ODPP), there is now broad agreement on the general principles that should apply. This is a significant advance on the ad hoc and sometimes arbitrary approach that prevailed when this Office first raised concerns about frontline police investigators making decisions not to charge police officers in quite complex matters.

An important development is the significant role now played by the NSW Police Courts and Legal Service branch in improving the quality of this kind of decision making. One issue that still needs to be settled is the threshold that should apply to the small number of matters that *must* be referred to the ODPP for advice before a decision is made on whether or not to prosecute. The earlier position of the police service is that matters should be referred to the ODPP only in exceptional circumstances. Our view is that a slightly broader range of matters should be referred – that is, where there is any doubt by Courts and Legal Services as to whether a charge should be laid, the advice of the independent prosecutor should be sought.

The Police Integrity Commission has also raised important issues about the technical requirements of the power contained in section 148 of the *Police Service Act* to

institute proceedings against a police officer that should be addressed in the final policy.

16. What progress has been made in the development of the Police Oversight Data Store (PODS)? Is it still expected that the PODS project will be completed within the next reporting period?

PODS development has been significantly completed and is only awaiting finalisation of data extractions from the police COPS database, to complete the full data set for PODS. All other planned development for PODS is now complete.

The delay in provision of data extraction from COPS has resulted in a delay to the launch of PODS by approximately eight weeks; however, it is expected that the project will be completed within the next reporting period.

Training on PODS has been provided to all potential PODS users and the data store will be launched as soon as COPS data is incorporated into PODS.

17. Has the Officers of Concern project yielded any significant results? Is it intended for this to be an ongoing project?

Results of the Project

The Officers of Concern project has been going for about 12 months to date. During that time, the project team has assessed approximately 450 officers against a set of criteria to determine whether the officers represented a low, medium or high risk to the police service.

As at 27 May 2002, there are 112 officers who have been identified as officers with complaint histories of significant concern and assessed as representing a risk if they are not managed or monitored appropriately.

How the risk assessments are utilised

We have used the risk assessments and officer profiles to achieve a number of outcomes including:

- providing intelligence and officer histories to Ombudsman staff to take into account when assessing new complaints,
- providing advice, warnings and feedback to investigators and commanders in relation to high-risk officers,
- referral of high-risk officers to Special Crime and Internal Affairs for internal risk assessment, and
- using the number of high-risk officers in LACs as an indicator for priority in developing LAC profiles, as a high number of high risk officers in one LAC may be an indicator of management or other issues within that command.

18. Has the implementation of NSW Police's policy 'The Commander's Role in Helping to Maintain the Psychological Wellbeing of Their Staff'

progressed? Has the policy had any impact on improving the level of support for officers under stress?

The policy has been progressed and now specifies the particular obligations of supervisors. For instance, the *Job Stream Responsibilities* of commanders imposes a requirement that commanders and supervisors play an active role in relation to monitoring the welfare of officers under their command.

As to the impact of the policy, it appears that there is increasing recognition by commanders of the need to seek professional support for officers in their command who are experiencing stress. Nevertheless, there is still considerable room for improvement.

The Assistant Ombudsman recently gave a presentation on this issue to a conference of the Police Association NSW. The feedback from conference delegates was that commanders and supervisors are generally playing a much more active role in identifying officers in need of support. However, delegates did express the view that commanders and supervisors would benefit from training to assist them in deciding how to best support their colleagues. As a result of this feedback we intend to take this issue up with the police service.

19. The Office is required to oversight the implementation of a number of new acts that increase police powers. These include *Police Powers (Drug Premises) Act 2001* and *Police Powers (Internally Concealed Drugs) Act 2001*. Has the Office begun monitoring the implementation of these Acts and will the Office employ a methodology similar to that used in the report on the implementation of the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*?

We are currently monitoring the implementation of the following Acts which impact on policing:

- *Crimes (Forensic Procedures) Act 2000*
- *Child Protection (Offenders Registration) Act 2000*
- *Police Powers (Vehicles) Amendment Act 2001*
- *Police Powers (Drug Premises) Act 2001*
- *Police Powers (Drug Detection Dogs) Act 2001*.

In addition, the Ombudsman has the responsibility to review the following Acts when they commence:

- *Police Powers (Internally Concealed Drugs) Act 2001*
- *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

It has also been proposed in the draft Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002 that this office keeps under scrutiny the exercise of powers conferred on police by the proposed amendments for 12 months.

The Ombudsman employed a range of research approaches in the review of *Crimes Legislation Amendment (Police and Public Safety) Act 1998*. This multi-faceted research approach aims to produce a comprehensive and balanced review of legislation in accordance with the particular review provisions of each Act.

A research plan is tailored to each Act under review, but generally includes strategies such as:

- inspection and analysis of police records (eg COPS data, information from the Infringement Processing Bureau, intelligence records),
- interviews and focus groups of police, other stakeholders, and members of the public,
- discussion paper and public submission process,
- analysis of relevant complaints held by the Ombudsman,
- examination of court transcripts,
- direct observation of policing using the powers in question,
- surveys of relevant stakeholders and practitioners, eg prison inmates, lawyers and local area commanders,
- examination of legislation and practice in other jurisdictions, and
- review of relevant literature and research studies.

20. During the Committee's recent General Meeting with the Police Integrity Commission, the Commission advised that in their opinion recent legislative changes to police powers may have enhanced the opportunity for police misconduct. Does your Office have any evidence to support this opinion?

The potential for legislative changes to police powers to enhance or reduce opportunities for misconduct depends on factors such as the nature of the particular powers, the extent of the change and the range of existing practices affected by each change. Of the recent legislative changes that this Office has been required to review, none have resulted in a significant influx of complaints about the conduct of individual police officers. However, all of our reviews have identified significant procedural, training, policy and other changes intended to promote the responsible and effective use of the powers reviewed.

It is important to recognise that changes of this kind often occur in the context of long established police policies and practices. For instance, the *move on* or *reasonable directions* powers introduced as part of the *Crimes Legislation Amendment (Police and Public Safety) Act 1998* were the first of their kind in NSW. Yet there was clear evidence that officers routinely gave directions of this kind prior to the legislation. Our review noted concerns associated with the use of these powers, many of which

related to entrenched practices. Our recommendations suggested measures aimed at better regulating existing practices and further clarifying the circumstances in which such powers should be used.

Where legislative change does effect a substantive shift in police powers and practices, it is important to view the conduct of individual officers in the context of the adequacy of the training and procedural advice provided to those officers. Without adequate preparation on the part of the police service organisation, mistakes will inevitably occur. Errors of this kind must be distinguished from allegations of deliberate misconduct.

An essential element of all legislative reviews is to consider wider policy and practice issues associated with the introduction of new powers and their impact on policing practices generally. This is consistent with the Ombudsman's broader responsibility to identify practical measures that promote fair and effective policing while protecting the rights and interests of members of the public.

Universities

21. The Ombudsman's Annual Report for 2000-1 contains an account of an investigation into two protected disclosures concerning the award of special consideration to a student enrolled in the Biological Sciences School of the University of Sydney. The report notes "substantial deficiencies in the university's complaint handling procedures and record keeping practices and in their administration of academic assessments". Criticism also is made of the adversarial approach taken by the university to resolve a particular allegation. (p.79) To what extent have the Ombudsman's recommendations arising from this inquiry been implemented by the University of Sydney in particular and by New South Wales universities generally?

The then Minister for Education and Training, Mr Aquilina, circulated to all universities in NSW the recommendations of the report of our investigation into Sydney University entitled '*The conduct of the University in handling applications for special consideration, complaints against staff and incidental conflicts of interest*' and sought a response to those recommendations.

In relation to handling complaints of misconduct about academic and teaching staff our report noted that the University has now signed a new enterprise agreement that governs the handling of such complaints. That agreement provided some improvements over the industrial award it replaced by making it clearer that the process for handling misconduct complaints was inquisitorial rather than adversarial and strengthening procedural fairness provisions to some extent. This office has seen relevant portions of enterprise agreements from three other universities in NSW (Wollongong, UNSW and Macquarie). They appear to contain similar misconduct-handling provisions to the agreement signed by the University of Sydney.

The University of Sydney responded to our recommendations by undertaking the review processes necessary to amend those of their existing policies and procedures that did not already meet our recommendations. In particular the University pointed

to its production (in consultation with the Anti-Discrimination Board) of new Harassment Prevention and Discrimination Prevention Policies. As well, it noted its extensive training programs in record-keeping principles and practices. The University also undertook to seek, during the re-negotiation of the relevant enterprise agreement, amendments that would improve the handling of misconduct complaints about staff to meet the intentions of our recommendations 7.3 and 7.4. I also note that the University's amended Code of Conduct effective from 28 March 2002 incorporates our report's suggestion that enmity as well as friendship can give rise to a perception of a conflict of interest.

Other universities that responded to our recommendations were:

- University of Technology, Sydney—most of our recommendations are in effect and appropriate changes will be made to adopt the remainder;
- University of NSW—relevant policies are generally consistent with our recommendations;
- University of New England (UNE)—apart from pointing to some difficulty for external students, especially in isolated regions, with several of the special consideration model guidelines (for example, the preference for two professional opinions to support stress claims) nearly all policies accord with our recommendations and the University will consider bringing the remainder into line;
- Southern Cross University—similar difficulty to UNE concerning special consideration but otherwise relevant policies accord with our recommendations;
- University of Newcastle – new special consideration policy drafted and other relevant policies are being reviewed in the light of our recommendations;
- University of Wollongong – produced a new set of policies concerning special consideration;
- University of Western Sydney – a broad range of policies including those covered by our recommendations were being reviewed in the course of restructuring the University. Our recommendations are to be integrated into that review;
- Macquarie University – some difficulty with several of the special consideration guidelines but otherwise relevant policies generally accord with our recommendations;
- Charles Sturt University – some difficulty with recommendations as they relate to external students but relevant policies are generally consistent with our recommendations.

In addition, and although outside our jurisdiction, the Australian Catholic University provided a response in this matter to the Minister for Education and Training advising that, inter alia, they will take our recommendations into account in the development of their student complaint procedure and a Code addressing issues of conflicts of interest.

22. What progress has been made within universities in New South Wales towards implementing effective internal reporting systems for dealing with protected disclosures?

From the information available to us it appears that all universities in NSW save one (Southern Cross) now have an internal reporting system for protected disclosures. However some have been slow or have failed to respond to advice from the Deputy Ombudsman about significant flaws in their systems. That advice was provided pursuant to our audit of all NSW public sector agencies' internal reporting systems following Premier's Memorandum in 1996 requiring all agencies to adopt such a system.

From either advice direct to us or our corporate knowledge, only five universities currently have systems that are adequate (UTS, Newcastle, New England, Charles Sturt and Sydney), although the systems at Charles Sturt and Sydney could be improved.

23. Does the handling of a recent case, which attracted some media attention, where disclosures were made by three research workers, indicate that there is a satisfactory level of awareness on the part of academic institutions about how such matters should be dealt with and about the legal obligations which apply?

Because this office has current complaints about the University's handling of the subject case, it would be inappropriate at this stage to say anything specifically about the matter.

More generally, however, universities appear to be becoming more aware of their responsibilities in relation to handling complaints, especially those seen as protected disclosures. Substantial media attention to some recent cases has assisted this process. However, there is still some way to go. It is also only fair to observe that universities are only able to deal with some complaints about staff through the procedures prescribed in the enterprise agreement covering those staff. I should also note that as a result of unhappy experiences within the last 18 months, two universities (Wollongong and UNSW) separately organised for one of our senior officers to address a group of their most senior managers about handling protected disclosures.

Protected Disclosures

24. What general implications arise from case study 61 of the Ombudsman's Annual Report for 2000-1 where threats of legal action by a councillor against a member of the community, employed in another part of the public sector, could be interpreted to have constituted detrimental action under the PDA?

The intention of the scheme established under the *Protected Disclosures Act* was to protect public officials from retribution as a result of speaking out about genuine concerns they have about the operations of a public sector agency.

Experience shows that employees within the public service have a significant risk of suffering retribution for speaking out, particularly (but not only) if the complaint relates to the agency in which the employee works, and it is this threat that the Act addresses.

However, some members of the public who complain about the (mis)conduct of a public official or the deficient functioning of a public sector agency are also at risk of suffering retribution. For example, they may be threatened with legal action (as was the case in the matter reported in case study 61), threatened with refusal of an application (for example, for a licence or for a development approval), or even physically threatened (particularly if the subject of the complaint has access to information about where the complainant lives or works).

It is the long-standing view of this office that people should not be put in a position whereby they feel threatened or reluctant to voice their concerns about the conduct of any public official or the functioning of any public sector agency. It is only if an agency's deficiencies are drawn to its attention that those deficiencies can be improved. This year we proposed changes to a draft Bill to provide protections similar to some of those offered under the *Protected Disclosures Act* to *any* person who complains about a public sector agency.

Case study 61 illustrated the point that although it is not currently an offence for a public official to make threats against a member of the public in retribution for complaining about him or her, it *is* an offence if the complainant falls under the *Protected Disclosures Act*. It is also contrary to good administrative practice for such threats to be made without even attempting to resolve the matter through the available complaint resolution systems.

The case demonstrates that if public officials adhere to principles of good administrative conduct, they can avoid exposing themselves to the risk of committing a criminal offence as well as the risk of criticism from the Ombudsman for misconduct under the *Ombudsman Act*.

Education and Advisory Roles

25. The Office produces guidelines and advisory publications, across a wide range of jurisdictional areas, eg, FOI, child protection, maladministration, and protected disclosures. Do the resources committed to the education and advisory roles performed by the Office detract from its investigative capacity?

Our education and advisory roles complement our investigation role. Essentially, the provision of education and advice is part of a preventative strategy aimed at improving administration and thereby reducing the number of complaints and investigations required.

Investigations are an effective means to identify deficiencies and recommend reform. Education and advice seek to prevent those deficiencies arising in the first place.

Some of the specific benefits of producing guidelines and providing advice and training are that these strategies:

- are proactive, systematic and preventative,
- add value to an organisation, for example, by making suggestions for managing risk,
- widen dissemination of views,
- set standards for best practice in policies, procedures, practices and conduct that falls within jurisdiction,
- assist agencies to deal with their own complaints, which allows them to directly identify improvements needed to their operations and learn from their mistakes, and
- improve awareness of the role of the Ombudsman in the community and the sectors over which we have jurisdiction.

Finally, it should be noted that many of our training courses and publications are made available on a cost-recovery basis.

DoCS

26. The special report to Parliament *DoCS – CRITICAL ISSUES* notes many areas of concern in relation to the operation and management of the Department and the functions it performs.

(a) What long-term strategies does the Office intend to pursue to overcome the systemic problems and deficiencies identified in the *Critical Issues* report, and in any separate investigations undertaken into the handling of specific cases?

The special report *DoCS – Critical Issues* was made in order to provide information to Parliament and the public on significant issues of concern arising from our scrutiny of DoCS. There were no recommendations in the report. Rather, specific recommendations will be made directly to DoCS at the conclusion of each of the individual investigations being conducted.

This is an ongoing process; some investigations have been concluded and recommendations made, others are still in progress. Matters which are currently the subject of inquiry may warrant formal investigation. We will continue to look at systemic issues raised by complainants. Any recommendations we make at the conclusion of an investigation will be designed to be part of a consistent Departmental-wide solution to each problem identified.

It is a matter for DoCS to respond positively both to recommendations made in investigation reports from my office and also to be pro-active itself in addressing clear deficiencies identified in its current practices.

(b) To what extent will the Office monitor the actions taken by DoCS to address the Ombudsman's concerns as outlined in the *Critical Issues* report?

As is our usual practice in relation to all the agencies within our jurisdiction, we will monitor the action taken by DoCS on recommendations made, requiring the department to report to us on the action it has taken and assessing the adequacy of the changes made.

It is open to us to make a special report to Parliament on any deficiencies in implementation.

27. Given the recent reports that the reporting requirements of the present system are leading to trivial and unwarranted notifications overloading the system, does the Ombudsman have any views as to whether modifications of the present requirements might be desirable?

The office is aware that there have been contradictory views put forward about this issue. The outcomes of the parliamentary inquiry into the Department and the working party chaired by Ms Kibble will be of interest.

However, observations made during our investigations would suggest that the Department's systems are so unreliable as to make a proper assessment difficult.

Any consideration of reforming the system should therefore be approached cautiously. It may be premature to make any assessment until reliable information about what proportion of notifications is trivial is available.

28. The Annual Report for 2000-1 outlines that the Office has assumed an expanded role in relation to complaints about DoCS as a consequence of legal advice concerning complaints that fall outside the jurisdiction of the Community Services Commissioner eg certain child protection and out of home care matters (p 71).

(a) Is current funding adequate for the Office to continue to effectively perform this additional role?

We did not receive any additional funding to perform this role. Given the importance of the issues raised by complaints about DoCS, we have had to reprioritise work within the office to ensure that work relating to DoCS could be conducted.

Protracted negotiations involving the Community Services Commission (CSC), the Cabinet Office, the Premier's Department, the Coroner and other agencies as well as external stakeholders about the potential merger between this office and the CSC have delayed the provision of additional funding to date. This issue was determined to be best addressed once a final position was reached in relation to the proposed merger.

(b) What legislative proposals or administrative measures have been suggested to establish a long-term solution to this jurisdictional problem?

The jurisdictional problem was one of the factors leading to the review by the Cabinet Office and the Premier's Department of the current system of monitoring and review of providers of community services in NSW. The review concluded that the system would be enhanced by amalgamation of the Ombudsman and the CSC. Following negotiations with various stakeholders, a draft Bill was prepared to implement this merger. We expect the Bill to be introduced into Parliament this session.

29. What implications will the proposed merger of the Office with the Community Services Commission have for the operation and management of the Office?

As you would appreciate, the merger will have a significant impact on the operation and management of the office. This office currently has approximately 130 staff and the CSC currently has approximately 40 staff. We have secured additional accommodation to meet the office's requirements as well as the possibility of co-location with the CSC.

The other important operational issues include amalgamating record keeping, computer and other office systems, and ensuring consistency in internal policies and procedures. We will need to provide training to ensure consistent approaches and practices throughout the office. We have already done a significant amount of work in preparation for the merger.

Child Protection

30. Has there been a review of the "class or kind" discretionary power, which enables the Ombudsman to exempt matters from the notification requirements of the *Ombudsman Act* and, if so, what was the outcome of the review?

In 2000–2001, we used our 'class or kind' discretionary power to allow the Department of Education and Training (DET) and the Catholic Commission for Employment Relations (CCER) to notify certain types of child abuse allegations made against employees by monthly schedule rather than by the rigorous reporting requirements of section 25C of the *Ombudsman Act*. We still required both agencies to continue the investigation of these matters according to our previously established standards.

It was agreed that we would audit matters reported by schedule to monitor the continued adequacy of the agencies' investigative processes.

We have now completed two audits in relation to both DET and CCER and are satisfied with their investigative processes. During the first audits, we also reviewed the intake and decision-making processes around which matters were notified to the Ombudsman.

DET

Our first audit revealed some flaws in DET's decision-making on what constituted an 'allegation' of child abuse. DET had developed the practice of investigating whether there was substance to an allegation in order to decide whether or not the matter was notifiable to the Ombudsman. This practice is contrary to the obligations under the Act, which requires notification of all allegations, not just those with substance.
In our first audit we also noted a decrease in the number of average monthly notifications made by DET compared to the previous year. We made recommendations to address what appeared to be a failure to notify some notifiable matters.

Our second audit reviewed DET's compliance with our recommendations. We found that all of them had been met in principle. There was also a significant increase in the matters notified by schedule since the first audit. We will continue to monitor DET's decision-making practices at intake and track the number of notifications.

CCER

Our first audit found that the CCER was clear about which matters needed notification to the Ombudsman but did not have a system in place to record inquiry calls nor discussions with principals about notifiable matters. Many of the matters notified by schedule had not been finalised in a reasonable time. In response to the recommendations we made, the CCER introduced a system to record all telephone conversations and to finalise matters within one month.

We have discussed with DET and CCER how effective and appropriate the current arrangement of reporting certain allegations by monthly schedule has been. The DET is satisfied with the present arrangement and is not seeking to vary or scale down the matters to be notified by schedule. The CCER is also largely satisfied. Both agencies believe that any reduction in the kinds of matters notifiable individually would create an undesirable risk to the effective management of child abuse allegations against employees.

31. How often has the Ombudsman scaled down the class or kind of determinations to be reported as the result of improvements in agency responses to allegations?

We have not extended the class or kind determinations to any other agencies at this time.

In considering whether or not to make a class or kind determination with an agency, we use a risk management framework and take into account:

- the size and governance arrangements of the agency,
- the history of the agency's compliance with its reporting obligations under the *Ombudsman Act*,
- the adequacy of an agency's investigative practices,

- the appropriateness of the action the agency takes as a result of its investigations, and
- the agency's compliance with our recommendations.

There are broadly four types of agencies with whom we deal:

1. Agencies whose governance arrangements are changeable

   Many of the agencies which fall under the jurisdiction of the Ombudsman are small, fragmented, and have an assortment of governance arrangements which can change on an annual basis (eg committees of management for child care centres and, to a lesser extent, agencies providing substitute residential care). We are not satisfied that all of these agencies are complying with their reporting obligations.

   It would be unwise to make determinations with these agencies where heads of agency as well as policies and practices can quickly change and where our level of satisfaction with their reporting compliance is yet to be established. Those agencies whose systems we have scrutinised and to whom we have suggested the making of a determination, have themselves expressed reluctance to lessen the rigour of their, and our, processes.

2. Independent schools

   There are over 300 independent schools whose heads report directly to a board of management. Unlike DET and CCER where the head of agency is responsible for a large number of workplaces and where there are centralised policies and procedures in place, the independent schools operate for the purposes of the Act as separate agencies. It would be unwieldy to both make and monitor compliance with determinations with each of 300 schools. Further, we remain concerned about the low level of reporting in independent schools and the quality of the child abuse investigations.

3. Designated government agencies

   There are five designated government agencies that must notify all child abuse allegations against employees, even if the alleged behaviour occurs outside the course of employment. Our assessment of compliance by the Department of Community Services (DoCS) with its responsibilities was referred to in our recent special report to Parliament. We also have concerns about the adequacy of the Department of Juvenile Justice's (DJJ) systems to properly complete investigations in a timely way. The number of notifications from the Departments of Sport and Recreation, Health and Corrective Services are too low to justify the making of a determination at this time.

4. Other government agencies

   Other public agencies are only obliged to notify child abuse allegations against employees if the alleged behaviour occurs in the course of employment with the agency. It appears that those public agencies whose reporting numbers are low perform functions where their employees have limited (if any) contact with children. It would therefore seem unnecessary to scale down their reporting obligations.

32. Have there been further improvements in the time taken:

- **by agencies to investigate allegations**
  In our 2000/2001 annual report we stated that there had been significant improvements in the time taken by agencies to complete investigations and advise us of this. We observed that the average time between receiving the initial notification and the final report was four and a half months, compared with six months in the 1999/2000 reporting year.

  This year, we have seen a slight increase in the average time taken for agencies to forward investigation results to us, to five and a half months. Some agencies are taking significantly longer than others to complete investigations and advise us of the outcome. The Department of Juvenile Justice (7.6 months) and Substitute Residential Care services (particularly those within the jurisdiction of the Catholic Commission for Employment Relations) (7.2 months) took the longest time to finalise investigations. We are currently working with these agencies to improve performance. An improvement in their turnaround times would return the overall average to the 2000/01 level.

- **by the Office to assess notifications and final reports? (Annual Report 2000-1 p 43)**
  In the 2000/2001 annual report, we also stated that there had been significant improvements in the time that we took to complete the initial assessment of notifications (just over a week) and the time taken to assess final reports (33 days).

  This year, we have averaged 5 working days to complete our initial assessment and 21 working days to assess agency final reports. This shows an improvement over the turnaround times we achieved last year. We have found it more useful to measure our turnaround times in working days, rather than calendar days, which was the measure used in our 2000/2001 annual report.

33. What conclusions can be drawn from the Office's analysis of trends and patterns in child abuse allegations (Annual Report 2000-1 p 49) and does this influence the allocation or targeting investigative resources within the Office?

We use information gathered from our analysis of trends and patterns to focus our activities. We analyse both trends in the nature of allegations received and trends in agency compliance with their notification obligations.

Analysis conducted last year indicated that the majority of notifications were about allegations of physical abuse and that there was a slight decrease in the reporting of allegations of sexual abuse. Twice as many boys as girls were reported as the alleged victims of child abuse and the alleged offenders were males in 61% of physical abuse allegations and 81% of sexual abuse allegations. Allegations of physical assault were more likely to be preceded by resistant, disruptive or challenging behaviour of the child or young person.

The data also showed low reporting in a number of agency types including agencies providing substitute residential care, services to children with disabilities and independent schools. It appears that these agencies are more likely to report allegations of sexual abuse and less likely to notify allegations of physical abuse or behaviour causing psychological harm. We have also noticed that some agencies are slow to finalise matters once they have made a notification to the Ombudsman.

Our analysis provides information about which agencies and sectors need to be more closely scrutinised, monitored or investigated, and which ones have a greater need for education and training about agency reporting obligations and about underlying issues concerning child abuse. We have developed several strategies in response, which include the following:

- auditing a number of special schools for children with disabilities and a large agency providing substitute residential care. We have been particularly interested in scrutinising agencies' policies and practices around the management of children with challenging behaviours, the use of restraint, supervision of staff and staff training about child protection. We also provided education to improve the level of understanding amongst staff about matters that are notifiable to the Ombudsman;
- undertaking an extensive education project, in conjunction with the Association of Independent Schools, to ensure that principals of independent schools are clear about their reporting obligations and the advances of operating within a sound risk management framework. We will continue to track reporting trends in independent schools and follow up our education program with targeted audits and investigations;
- we have taken the following steps to address our concerns about the apparent incapacity of some agencies to finalise matters once they have been notified to us (in some cases, the matters are over 18 months old and involve allegations of less serious matters):
  - we are closely monitoring DET's case closures,
  - we are conducting an audit of the CCER's incomplete matters,
  - we are considering investigating the failure of the Department of Juvenile Justice to comply with statutory reporting requirements.

34. In Answers to Questions on Notice for the 9th General Meeting with the Ombudsman, reference was made to barriers that hindered government and non-government agencies sharing relevant information, including lack of legislative or administrative powers. Has any progress been made in overcoming these barriers? (*9GM Report* p 39)

The Committee was previously advised of the establishment of a working party, under the aegis of the Child Protection Senior Officers Group. The working party met several times in 2001 and produced a draft report in October of that year. This was revised in April 2002, following submissions by the representatives of some Departments.

One of the major issues considered by the working party was the ability to exchange information under section 248 of the *Children and Young Persons (Care and Protection) Act 1998.* Many members of the working party considered that the provision could enable the DoCS to obtain information from a wide range of sources and to disclose that information to government and non-government agencies investigating child abuse allegations against staff members.

DoCS has obtained legal advice from the Crown Solicitor's Office suggesting that section 248 only has a very limited operation. The working party is in the process of drafting advice for the Cabinet Office to suggest that DoCS should be requested to obtain further legal advice or that legislative amendments be considered to give the section full effect.

The efforts of the working party seem to have overcome the reluctance previously felt by the police service in releasing information in compliance with requests made by DoCS.

Corrections

35. The Annual Report for 2000-1 notes ongoing difficulties experienced in duplication of work between the Ombudsman's Office and the Inspector General of Corrective Services, despite the negotiation of a memorandum of understanding (p 94). What "operational difficulties" did the Office experience and have these problems been resolved?

The annual report article was commenting upon the nature of the relationship between the Inspector General and the Ombudsman during that particular reporting period, that is, up to June 2001. We originally anticipated that matters such as the appropriate referral of issues and the exchange of information would be sufficiently addressed by the signing of the memorandum of understanding (MOU) to avoid operational difficulties such as work duplication. Initially, it did not have that effect in practice. Complaints that were being lodged with the Inspector General, and that were possibly matters to be addressed under the Ombudsman Act, were not always notified to us (as required under the *Crimes (Administration of Sentences) Act 1999*).

During the current financial year, there has been considerable improvement in this area. The Inspector General now makes requests for advice in the manner set out in the MOU, and we provide data in a general form about matters which have been raised with our office. There has been ongoing liaison with the Inspector General which has enabled the development of clearer definitions of our respective roles and work priorities.

36. The Annual Report for 2000-1 indicates that the Office is prevented by the NSW Health Privacy Code of Practice 1998 from accessing the medical records of inmates, except during formal investigations (p 97). In what circumstances outside of formal investigations and how frequently does the Office require access to inmates' medical records? Has there been any progress in resolving this problem?

Outside of formal investigations, our need to access inmate medical records usually occurs when we visit correctional centres. A part of each visit involves taking inquiries from inmates at interview. Our aim is to resolve as many of the matters brought to us in this way before we leave the centre.

There are occasions when we need to refer to information contained on an inmate's medical record. For example we may take inquiries about a recommendation the Corrections Health Service has made to the department about inmate treatment or transport, or the facilitation of access to medical attention.

Since we wrote our last annual report, we have largely resolved the information access issue. This was achieved in liaison with the CEO of the Corrections Health Service. A protocol for notifying the Nursing Unit Manager at a correctional centre prior to our visit has been established which, along with the provision of informed written consent from an inmate, has allowed us to pursue inquiries where necessary.

37. Has the new incident management system been implemented in juvenile justice centres and is the Office monitoring its application? (Annual Report 2000-1 p 100).

In the Kariong report we recommended the Department of Juvenile Justice establish a system to permit better tracking and monitoring of records about serious incidents. The Department has developed a computerised incident data base which means each incident report is given a unique number and the Department can now obtain reports tracking incidents involving particular detainees, incidents at particular centres and so on. The Department has also amended its forms to include cross references to other associated documents, allowing all reports about a particular incident to be linked more easily. An integral part of our regular visits to juvenile justice centres is the checking of records. In this way we are able to monitor the ongoing, practical implementation of these changes.

Local Council

38. The Annual Report for 2000-1 notes that there is still concern about the number of councils that do not have a complaint handling policy in place, despite the publication of guidelines such as the Office's *Better Service and Communication—Guidelines for Local Government* (Annual Report 2000-1 p 87). Does the Ombudsman have any strategies in place to improve this situation?

To assist public authorities meet their customer service obligations, the office runs courses on a range of topics including:

- complaint handling for frontline staff,
- dealing with difficult complainants, and
- the art of negotiation.

Over the last eighteen months, it has run these courses in Sydney and in regional centres such as Newcastle, Wollongong, Coffs Harbour, Tamworth and Lismore.

These have been attended by staff from a number of councils from all over New South Wales. We have also run in-house courses for a number of councils.

In addition to this, we regularly provide advice to councils that contact us seeking advice on the formulation of complaint handling policies and will provide comment and guidance on any draft policies submitted to us.

Finally, when dealing with complaints against councils that raise customer service issues, we will generally ask for a copy of the council's complaint handling policy. Where a council has no such policy in place we will suggest that such a policy be implemented and provide assistance to the council in doing so, usually by referring them to our various specialist local government and generic publications on complaint handling.

Customer Service

39. Reference is made in the Ombudsman's Annual report for 2000-1 to a proposal put to the Cabinet Office for a Customer Service Act. The proposed legislation would address issues such as ethics, guarantees of service, internal complaint handling, reasons for certain decisions, internal review of decisions, information available to the public and protection from liability.

(a) What was the response of the Cabinet Office to the proposal?

(b) Would the proposal, which appears to involve creating statutory rights and, therefore, statutory remedies, lead to additional and unwarranted litigation?

We have not yet received a formal response to our proposal, however we are aware that, in a separate initiative, the government is giving consideration to a Bill to address certain issues relating to complaint-handling within the public sector. We have proposed changes to broaden the scope of the Bill to cover some of the other issues that we suggested be included in a Customer Service Act. We are optimistic that our proposals will be received positively.

One purpose of entrenching customer service principles in legislation is to reduce the numbers of complaints and consequently the instances of litigation (other purposes are to clarify the principles and set them out in one document accessible to all). The intention is certainly not to provide new opportunities for litigation. We would intend the provisions to be prescriptive, by providing agencies with positive guidance as to how to maximise 'customer' satisfaction and thereby avoid unnecessary complaints and litigation.

Witness Protection

40. What was the nature of the Ombudsman's submission to the five-year review of the *Witness Protection Act* and what were the outcomes of the review?

The Ombudsman's submission to the five-year review of the *Witness Protection Act* raised the following issues:

- the need for the Act to provide that the Commissioner of Police is able, where appropriate, to provide participants and their families with access to psychological assistance or counselling,
- the failure of the current Act to provide for an application process for those applicants who do not have 'referral police' to rely on,
- the need to increase the 72-hour time limit to 7 days for determining appeals from a participant terminated from the Witness Protection Program or from a person refused entry into the program,
- the failure of the Act to provide for the situation where Ombudsman staff are unable, despite taking reasonable steps to do so, to contact the participant to advise that their appeal has been dismissed.

A copy of the full submission is attached.

We understand the review made recommendations for amendments supporting these submissions.

ATTACHMENT TO RESPONSE TO QUESTION 13:

ROLE OF PROFESSIONAL STANDARDS MANAGER

MISSION:

To support Commands, by providing leadership and strategic focus through quality assurance of the professional standards process.

1. Leadership and Innovation

- Foster and maintain relationships with a view to influencing and improving the function of Complaint Management Teams.
- Actively be involved in the induction and ongoing development, mentoring of Command personnel in respect of professional standard issues.
- Maintain linkages with key stakeholders to influence and improve professional standards processes.
- Improve service to the community through promoting high professional standards.

2. Strategy and Planning Processes

- Develop and apply strategies for identifying officers/issues of risk.
- Identify and apply best practice in the management professional standards issues to increase resource availability for crime reduction.
- Ensure the management of professional standards is underpinned by Employee Management policy.
- Develop strategies for applying corporate risk management methodologies to professional standards issues.
- Ensure the integration of professional standards issues in business planning.
- Review and develop strategies of Complaint Management processes and results.
- Review performance indicators and the strategies for promoting professional standards in business plans.

3. Data, Information and Knowledge

- Acquire and maintain a comprehensive and thorough working knowledge of policies, procedures, and information systems relating to professional standards issues.
- Quality assure the integrity of recorded data and develop initiatives for improving data quality.
- Promote the effective use of relevant information in professional standards decision making.
- Brief Region Commander/Specialist Commander on contentious issues.

4. People

- Consult and support those involved in the delivery of professional standards.
- Ensure the education and training of officers in respect of internal investigations.

5. Customer and Market Focus

- Seek feedback from customers on their perceptions of performance of the professional standards process.
- Ensure appropriate support and advice is provided to subject officers, witnesses and complainants.
- Identify customer expectations of the professional standards process.
- Analyse the gap between customer expectation and feedback on performance to improve the professional standards process.

6. Processes, Products and Services

- Provide quality written responses to strategic and corporate issues in relation to professional standards.
- Quality assure the management of the complaint process including management actions and outcomes.
- Ensure consistency and quality in all professional standards processes.
- Continually improve the systems and processes relating to professional standards issues.
- Monitor progress of any appealable management action (sections 73(3), 173(2) and 181D).

7. Business Results

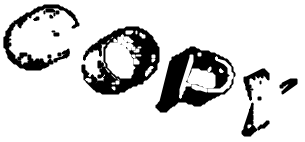
- Based on analysis of performance indicators, plan and predict activities and outcomes.
- Measure support provided to Commands.
- Measure the support provided to the Region Commander/Specialist Commander.

ATTACHMENT TO ANSWER TO QUESTION 40

Enq: Mr Ian McCallan-Jamieson
Tel: 9286 1073

10 May, 2001

Mr Bryce Gaudry MP
Parliamentary Secretary
Ministry for Police
Level 19, Avery Building
14-24 College Street
DARLINGHURST NSW 2010



Dear Mr Gaudry

Re: Review of Witness Protection Act

Thank you for the opportunity to participate in the Review of the Witness Protection Act ('the Act').

As you may know my Office set up a separate unit, the Secure Monitoring Unit, to deal with participants on the Witness Protection Program. This Office has two roles under the Act. Firstly my officers deal with complaints from participants on the Witness Protection Program in relation to matters dealing with the Memorandum of Understanding, between the Commissioner and each participant. This basically covers disputes about any aspect of their protection and treatment by the NSW Police Service. Secondly participants who are terminated from the program and persons who are refused entry onto the program have a right of appeal to the Ombudsman. I have a determinative decision making role in such appeals.

There are several issues I wish to raise as part of the review based on our experience dealing with complaints and appeals over the past four years.

1. I note that the Act provides that the Police Service provide protection and assistance to those on the program. Section 5 of the Act states:

> The Commissioner of Police, through the establishment and maintenance of a witness protection program, is to take such action as the Commissioner thinks necessary and reasonable to protect the safety and welfare of a witness.

The Section then goes on to list some of the assistance which may be provided for example, making arrangements necessary for the witness to obtain a new identity, relocating the witness, providing accommodation, providing transport for the property of the witness and providing reasonable financial assistance.

In our dealings with participants on the program the one failing highlighted is the failure of the Police Service to provide psychological assistance or counselling to participants. It is a very stressful situation for witnesses who place themselves at risk because of their involvement with law enforcement authorities. It is also a stressful situation for family members of witnesses who because of their familial connection are also placed on the program. Participation on the program invariably involves the relocation of persons (often to a completely distant and different environment than they are used to living in). Their employment and income usually changes dramatically. They are usually

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required to cease contact with extended family and friends and not enter the locales that they used to frequent.

The bottom line is their whole lives are turned upside down and their usual support networks are no longer available. Our contact with witnesses on the program is invariably with people under enormous personal psychological stress. Case officers at the Witness Security Unit are also placed under enormous stress trying to deal with the welfare and mental health needs of participants over and above their prime obligation to attend to their safety. In the circumstances I believe it would be appropriate for the Act to include counselling or other welfare services as part of the action Commissioner thinks reasonable and necessary to protect the safety and welfare of a witness.

The Police Service as part of the application process uses a psychologist to ascertain whether the applicant is appropriate for the program. During that interview process it would be possible for the psychologist to suggest whether on going counselling would be appropriate for the applicant or members of the applicant's family. I believe in appropriate cases, such counselling should be made available as part of the program. Failure to attend to the mental health needs of participants often results in conduct that puts participants at risk and in breach of their Memorandum of Understanding.

2. The Act does not set out the application process. It is not clear from a reading of the Act how a person may make an application to the Commissioner for assistance. The Police Service points out that in most cases the application process is handled by the referral police. That is, the police officers that are handling the investigation in which the applicant is to be a witness initiate the process. However in certain situations which we have encountered the applicant had no connection with any police relating to a particular investigation. For example, one application arose from a serious case of domestic violence in which the threat was in a correctional centre but the applicant was being placed under continuing threats through this persons associates on the outside. My officers attempted to facilitate an application through the local area command, which eventually occurred, however it was clear that this situation was not envisaged by the Police to be covered by the Act. Another example occurred where a witness had given key evidence in a murder trial and the person against whom he gave evidence was being released from prison. The witness felt that he needed protection and assistance and yet he had no current contact with the original investigating officers as the case occurred many years previously. He in fact contacted this Office seeking protection and we had to facilitate the making of an application.

The definition of witness under the Act makes it clear that the program is not restricted to "crown witnesses". While the majority of those on the program will fall into this category of witness, the Act should provide for an application process for those who do not have "referral police" to rely on.

The Act could specify that an application may be made to the Commissioner or any police officer. Internal processes could then be put in place so that such applications are referred to the Commander of the Witness Security Unit and the Assessment Team from the Witness Security Unit could then process the application

3. In relation to my role of determining appeals from those participants terminated from the program or those persons refused entry onto the program, in each case the person has three days in which to appeal to my office against the decision of the Commissioner. The appeal must then be determined within 72 hours.

The Secure Monitoring Unit has a staff of two – a Senior Investigation Officer and an Investigation Officer. For reasons of safety and corroboration it is usually necessary for both officers to interview the appellants and they also examine the information obtained by the police in order to conduct each appeal. The Assistant Ombudsman then reviews all the original documentation, transcript of interview and hears oral submissions from the police if they chose to make them (which they generally do). My officers have to be on 24 hour call

and many of the appeals in the past have had to be conducted over weekend periods because of the 72 hour time limit. I can envisage continuing difficulties in relation to the 72 hour time for these reasons.

We have been able to complete all appeals to date within the 72 hour time limit. However, it is an onerous obligation that risks denial of procedural fairness and a fair and complete evaluation of all relevant material. There have been situations where my officers have had to travel interstate to interview appellants and this has presented some difficulties in relation to obtaining all relevant infom1ation in a timely manner in order to make a determination on the merits of the appeal. Our experience is that appeals from witnesses who have had their protection and assistance terminated are usually lodged in situations where they are suffering high stress and quite often are "on the move" making contact and the obtaining of information difficult.

There would also be problems where more than one appeal occurred at any given time. Although this has not occurred in the past it is certainly likely. The Witness Security Evaluation Committee often hears several applications for acceptance onto the program and
on several occasion more than one applicant has been refused at one of its meetings. Because of the strict security regime in which the Secure Monitoring Unit operates it is not possible for security reasons for other officers within the Office to assist with these appeals. Access to the personal details of those on the program and those making applications for acceptance is restricted to the two officers within the unit and the Assistant Ombudsman who supervises the work of the unit.

I believe an extension to the 72 hour time limit would not pose a security threat to the appellants or be onerous for the resources of the Police Service. If the appeal is from someone terminated from the program the Police Service currently accepts responsibility for his or her protection and assistance until the final determination on the matter. Those who are
terminated have a right of internal review to the Commissioner and remain on the program until that review is finalised. Where the review upholds the original decision to terminate them from the program they remain the responsibility of the Service until the time limit for the appeal to the Ombudsman runs out or if they appeal to my office, until a determination is made on the appeal.

In situations where the appeal is from someone making an application to be accepted onto the program, the application process includes a threat assessment and as a result a decision is made whether or not to offer temporary protection. The offer of temporary protection does not preclude the Committee from refusing an application. However, if an application is refused and the applicant appeals they may remain on temporary protection until the appeal is determined. If as a result of the threat assessment, temporary protection is not necessary, there is generally no immediate urgency in which to determine the appeal.

In most cases my officers will be able to conduct the appeal within the 72 hour time limit. It is only in some circumstances, as discussed above, where difficulties may arise. There would appear to be no impediment to increasing the time limit to say 7 days in which to determine each appeal and I would recommend consideration of such an amendment.

4. There is one further technica1 matter I would like to raise. Where a participant on the program is terminated and takes advantage of the right of review contained in Section 12 (2) of the Act, the Commissioner must review the decision and give the participant a reasonable opportunity to state his or her case. If the Commissioner then confirms the decision to terminate protection and assistance he must inform the participant in writing. Section 13 of the Act makes provision for situations where the participants location is not known and provides that where the Commissioner has taken reasonable steps to notify the participant but has been unable to do so, the termination takes effect in a specified number of days depending on the situation. See Section 13 (1) (a-f).

In contrast Section 13 (2) provides that a decision of the Ombudsman that protection and assistance be terminated takes effect when the Ombudsman notifies the participant of the decision. There are no corresponding provisions where my officers are unable, despite taking reasonable steps to do so, to

contact the participant. This may mean that where a participant appeals and the decision of the Ombudsman is that protection and assistance be terminated such a decision cannot take effect. It would seem prudent to provide similar provisions as are included in Section 13 (1), in situations where the appellant cannot be notified. While in practical terms the police may not be providing any protection to them, technically they may be still responsible for their safety and any unforseen events have the potential for embarrassment.

Another point is that participants while on the program may have been re-identified. If that is the case Section 21 of the Act provides for the restoration of a former identity if the Commissioner considers it appropriate. However, one requirement is that protection and assistance under the program is terminated (Section 21 (1) (b). Technically the inability of my officers to notify the participant of my decision to dismiss an appeal from the decision of the Commissioner to terminate protection and assistance may prevent the Commissioner taking action to restore the former identity of a witness.

Thank you again for the opportunity to participate in the review of this legislation. I would be happy to provide further clarification of any of these suggestions or respond to other matters raised in your review.

Yours faithfully

Bruce Barbour
Ombudsman

QUESTIONS WITHOUT NOTICE

REPORT OF PROCEEDINGS BEFORE

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

GENERAL MEETING WITH THE NEW SOUTH WALES OMBUDSMAN

At Sydney on Wednesday, 12 June 2002

The Committee met at 10 a.m.

PRESENT

Mr P. G. Lynch (Chairperson)

Legislative Council	Legislative Assembly
The Hon. R. H. Colless	Mr M. J. Kerr
The Hon. J. Hatzistergos	The Hon. Deirdre Grusovin

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

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, 580 George Street, Sydney, and

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

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

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

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Mr BARBOUR: Yes, I did.

CHAIR: Did you receive a summons issued under my hand to appear before the Committee?

Mr WHEELER: I did.

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Mr KINMOND: Yes, I did.

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Ms BARWICK: I did.

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Mr ANDREWS: I did, Mr Chairman.

CHAIR: Mr Barbour, we have received a submission from you consisting of answers to questions placed on notice. I take it that you wish those answers to form part of your evidence before the Committee?

Mr BARBOUR: Yes, thank you. I would be grateful for that, Chairman.

CHAIR: Do you wish to make an opening address?

Mr BARBOUR: Yes, if it pleases, thank you. Mr Lynch and members of the Committee, as you know, this is the second occasion that I have attended a general meeting of the Committee. I have been in the position of Ombudsman for two years now and it has been both a rewarding and a challenging time.

When I first started, the office had just completed its first year of child protection work and released its first legislative review report, the first of its kind in Australia. The office was at that time undergoing structural changes to deal with these important new functions. What became obvious very early in my term as Ombudsman was that this was not an unusual state of affairs. In fact, this office is constantly in a state of change. In order to be effective we must be flexible in the strategies we apply and we have to have the capacity to respond quickly and appropriately to significant challenges when they arise, both in our core work and in the scope of our work.

Our strength in this area has been clearly demonstrated recently. We have undertaken extensive consultation and negotiations to be in a good position to facilitate a proposed merger with the Community Services Commission, if that goes ahead. Given the priority that needed to be given to the complaint and investigative work that arose as a result of the jurisdictional issues concerning the Community Services Commission, we needed to divert significant other resources away from other work to deal with those issues. We have not received additional funding for that role.

We have successfully implemented a change in strategy in dealing with police matters. We have streamlined our processes to allow closer scrutiny of more serious matters, while continuing effective oversight of less serious matters and have put more resources into projects to identify and remedy systemic problems.

With our special report to Parliament about the Department of Community Services, we confirmed our ability to draw together specialist resources from across the office to provide the public with a holistic view of the operations of that department. I will discuss issues surrounding the Community Service Commission in a bit more detail shortly.

Our work continues to make an enormous difference to the way agencies understand and implement concepts of public accountability and service delivery, but most importantly we also deliver practical results. Since the last Committee meeting, we have tabled three special reports to Parliament expressing our concerns with police, e-mail, police officers with significant complaint histories and the operations of the Department of Community Services. We have completed over 70 formal investigations with a further 50 investigations on foot, and almost all of the recommendations we have made in each of our investigation reports have been adopted by the agencies concerned. We have resolved over 2000 matters through informal preliminary inquiries and are encouraged by the continuing high levels of agency co-operation. We have also attended to over 37,000 oral inquiries.

In addition to this, we have been required to review eight new pieces of legislation and another one that is imminent. Six reviews are currently under way; two are pending. In December 2001 we published a discussion paper on the forensic DNA sampling of serious indictable offenders and received numerous submissions in response.

We have provided more detail about these reviews in our answers to the questions on notice which have been tendered. However, I will say at this stage that we are pleased that we have been able to negotiate more appropriate reporting requirements that address to some extent the Committee's concerns about the inconsistency in reporting requirements under each Act. In particular, most of the relevant provisions now state that the responsible Minister is to table our report in Parliament as soon as practicable after receiving it.

Last year we developed a new corporate plan that appropriately supports the new roles of the office. The plan focuses on doing the most good for the most people. To achieve this we have employed strategies, including scrutinising more serious matters more closely across all areas of the office; using innovative audit techniques to ensure the quality of investigation is being monitored in the police and child protection areas; and providing training, advice and resources to agencies to assist them to develop workable internal complaint handling systems so that the majority of complaints can be confidently referred back to them and we can more effectively fulfil our role of being an avenue of last resort.

These strategies have worked particularly well in the child protection area. The team has expanded to over 20 people, and we have been encouraged by the progress we have made in educating agencies about our role and their reporting obligations. We have now developed a comprehensive auditing program to monitor how well agencies are complying with their obligations and whether or not they have established appropriate policies and procedures to properly investigate child abuse allegations.

Some issues presently of concern include the notification of allegations about children with disabilities. We are still finding that some agencies, including some that provide services to children with disabilities, do not understand that allegations of physical abuse must be notified. We have also observed that there have been patterns of over-use of restraint of children with disabilities and are working with agencies to remedy this. We have found that agencies are still grappling with the concept of risk management, both at the time a notification is made and more generally in determining and managing the level of risk posed by people in their organisation who are the subject of an allegation.

The number of formal investigations conducted in the office in the past 18 months has increased and is in some respects due to matters raising more serious and systemic issues that could not be appropriately resolved informally or by monitoring the agency concerned. Two examples are the systemic problems at DoCS, as outlined in our special report, and our most recent work with universities. Our focus on universities intensified following the receipt of several protected disclosures raising concerns about widespread lack of policies and procedures, widespread failure to follow policies, nepotism in recruitment, and clear, yet unrecognised, conflicts of interest. Let me turn briefly to some corporate projects.

The PCCM project is progressing well and we expect to have c@tsi and PODS operational by September this year. The project required a security review and the establishment of a document management system in relation to police records. We took the opportunity to commission an information and document management review

of the whole office and are now in the process of introducing a document management system that will be consistent across the office. One of our corporate goals is to be accessible and responsive. Since the last meeting with the Committee, I have visited a number of regional centres. We are currently in the process of conducting a review of our access and awareness program with the intention of developing more effective ways of achieving our goals in a less resource intensive way.

Turning from how members of the public view us to how our peers view us, I am pleased that we continue to be seen as a leader in the field of public sector accountability. We have continued to support the establishment of Ombudsman's offices in other countries by providing training and advice and by making our guidelines and other resources readily available. We recently assisted Thailand, Indonesia, Papua New Guinea and Lebanon in their work in this area.

The office itself has also continued to expand. Our staff numbers have increased significantly and we have recently taken over additional accommodation to meet our current needs, and we will of course have the need to expand considerably more if the proposed merger with the CSC goes ahead. As you may know, the legislation establishing the Community Services Commission ensured that there was no duplication of complaint work by stating that the Ombudsman's Office was not to deal with any matter that could be the subject of complaint to the CSC. Legal advice obtained last year by the Minister for Community Services advised that certain matters that were being handled by the Community Services Commission were in fact outside its jurisdiction. This meant that those complaints had to be handled by the Ombudsman's Office. This was one of the factors that led to the review of the current system of monitoring providers of community services in New South Wales, which proposed the merger of our offices as a way of improving the system.

Not surprisingly, initially I contemplated the proposal with some trepidation. Any merger of two completely separate, albeit complementary, organisations involves a great deal of planning and a lot of work. However, the benefits that will flow from the merger quickly became clear, and through extensive consultation with numerous stakeholders we contributed to the development of a proposal that I strongly believe is in the public interest.

Among other things, the merger with the CSC will provide new opportunities to provide more streamlined, comprehensive and effective oversight by expanding the legislative powers, skills and resources available to investigate community service providers, strengthening the independence of the monitoring review and complaint handling functions, especially through the independent reporting to Parliament and supervision by this Committee; providing economies of scale and allowing a more co-ordinated response to systemic issues that are relevant to the community sector and other agencies already within our jurisdiction; reducing the chance of people falling through the gaps and providing clients with clearer access to the oversight system through a single entry point; providing a maximum opportunity for using information from individual deaths to inform monitoring and review of service providers and to recommend changes to systems and practices; and by increasing the credibility of investigations and reports, by removing any perceived lack of impartiality arising from fulfilling an advocacy function and thereby increasing the likely rate of uptake of our recommendations.

Whether or not this merger is approved, what is clear is that the office of the Ombudsman will no doubt continue to be busy. I would like to take this opportunity to put on the record my appreciation for all the hard work and support of my senior officers and the other staff at my office. Thank you for the opportunity of allowing me to make this opening address and myself and senior staff are most happy to answer any questions.

CHAIR: Thank you, Mr Barbour. You talked about the proposed merger between the Office of the Ombudsman and the Community Services Commission. Where is that up to?

Mr BARBOUR: My understanding is that it is still in the process of being considered by the Government. Once it goes through that process, it is anticipated that the bill which is being drafted up will be tabled before Parliament.

CHAIR: Has anyone got any information on the timeframe on that?

Mr BARBOUR: The time has shifted considerably over the past 12 months during which the proposal has been considered. I am hopeful that the process is reaching a conclusion.

CHAIR: If the proposal goes forward and the merger occurs, I think you mentioned earlier that increased staff will be required in your office. What are the implications of that on what your office space currently is? Does that mean a significant increase in the amount of space you need?

Mr BARBOUR: We have already obtained an additional floor within our existing premises, and we needed that for not only the prospect of this merger, but also the expanding staffing situation we have had in existence. We anticipate that we will have enough space as a result of that to house the 40 approximately staff that would come over with the Community Services Commission.

CHAIR: One of the other points that you mentioned in your opening statement was that there are a number of agencies that still do not understand that physical abuse of children has to be notified. Which agencies are you talking about?

Mr BARBOUR: I think it is a range of agencies, but particularly those that have responsibility in relation to disabled children more than any other. I think not just in relation to that issue but in relation to all issues in relation to our child protection function. Our educative role continues to be a primary one.

CHAIR: Is there any apparent reason why those particular agencies have that view, the ones that manifest that behaviour?

Mr BARBOUR: I think with children with disabilities, often the need for particular techniques, for example the use of restraints, a lot of physical application to children, is necessary. There is a lack of understanding that sometimes that can actually constitute abuse if it is not administered in an appropriate way. So we need to educate agencies that have that responsibility to notify us in such circumstances.

CHAIR: When you made those comments about physical abuse, that was largely about restraints rather than something more?

Mr BARBOUR: That is a particular area that we have concerns about.

CHAIR: Are there any particular concerns about matters in a children's home at Liverpool that you recall?

Mr BARBOUR: Not that I am aware of, no.

CHAIR: One of the other areas that you covered in your opening statement was generally the issue of universities. It has been about three or four years now since I recall the Ombudsman's Office expressed quite publicly concerns about universities. Has there been any improvement in the performance of the universities over that period of time or have they just ignored the expressions of concern by the Ombudsman?

Mr BARBOUR: I think to some extent there has been improvement, but certainly the number of complaints and protected disclosures that we are receiving which relate to universities has increased dramatically. Whether that is a reflection of processes deteriorating or, alternatively, people becoming more aware of our role in the area is difficult to say - I suspect the latter - but certainly some of our investigations and recommendations have led to fairly significant changes in processes and policies to do with complaint handling and effective resolution of issues that are raised within universities.

CHAIR: So it is probably fair to say that there has been some improvement in some sections over the last few years?

Mr BARBOUR: Well, I think so, but there is a great deal of room for further improvement.

Mr KERR: You mentioned in your opening statement about a diversion of resources because of Youth and Community Services that you had to take on. Do you recall that?

Mr BARBOUR: Yes.

Mr KERR: And, as a result of that, a number of matters that you were dealing with suffered. Can you say what those issues were?

Mr BARBOUR: I would not say that any matters suffered. What we needed to do when the issue in relation to the jurisdiction of the Community Services Commission became apparent was re-prioritise work in the office as we would normally do with any work. The reality of work for the Ombudsman is that there is always more work than we can handle and there is always a prioritising of work. Clearly complaints which relate to child protection issues and out of home care functions of the Department of Community Services are matters that need to be given appropriate priority, and so that is what we did, and we developed a number of strategies which we thought would minimise

interruption in other important areas of the office's work to deal with those, but certainly we did have to reorganise things and we were not given additional funding for that.

Mr KERR: You were not given additional funding?

Mr BARBOUR: No.

Mr KERR: And you still have not been given additional funding?

Mr BARBOUR: No.

Mr KERR: So a number of matters must have suffered as a result of not getting the priority that they otherwise would have had, I take it?

Mr BARBOUR: I would not actually agree with that. I think that we have been able to manage things quite effectively, notwithstanding that we have had to introduce some different procedures, but those procedures that we have introduced are consistent with our longer term strategies in any event.

Mr KERR: Well, if everything is so satisfactory, why do you need additional funding?

Mr BARBOUR: Well, we cannot continue to do what we are currently doing because the way we are approaching those issues is basically in a stop gap fashion. We are trying to give the best opportunity for those matters to be dealt with as effectively as we can, but we are not able to cover them as we would like to cover them. As a consequence, when significant issues arise, like those we reported on in the DoCS report to Parliament, we need to bring resources from other areas of the office and take them off other projects. Now I think that is appropriate to do if the nature of the matters warrant it, but clearly that is not a desirable occurrence for us to be continuing with.

Mr KERR: Well, how urgent is it that you get additional funding?

Mr BARBOUR: The Cabinet Office and Premier's Department that have been involved in this review have been under no misunderstanding that my position from the outset was that if we were going to be doing this work we needed funding to do it. The reason that it has gone on for as long as it has without funding is because we did not want to put in place a system which would cross over with the proposed merger of the organisation. If that happens, the plan is that the entire budget of the Community Services Commission will come across to the office and we will be adequately resourced to do these functions. If that does not happen and the proposed merger does not go ahead then I will definitely be seeking additional funding to provide us with adequate resources to perform this on an ongoing basis.

Mr KERR: Would you say it was critical, given those circumstances, that you got additional funding?

Mr BARBOUR: I think it would be essential.

Mr KERR: Have you met with the new Police Commissioner at this point in time?

Mr BARBOUR: Yes, I met with him frequently prior to his appointment as Commissioner and subsequent to his appointment as Commissioner.

Mr KERR: Now that he is Police Commissioner, has he given you any undertaking or any expression of his attitude in relation to the reform process?

Mr BARBOUR: My understanding, and certainly the conduct of Commissioner Moroney in my dealings with him over the past two years, has been consistent with a desire on his part to ensure that the reform process, and more importantly the complaints process which we are involved with, is handled appropriately.

Mr KERR: How often have you met with him since he has been made Commissioner?

Mr BARBOUR: I think probably twice, and indeed I have another meeting with him tomorrow.

Mr KERR: What is the nature of that meeting?

Mr BARBOUR: To discuss a report that we are preparing.

Mr KERR: What is the report on?

Mr BARBOUR: The report relates to an FOI matter. It is actually a report under the Ombudsman Act and we would normally consult with any agency in relation to the preparation of reports and it is a standard consultation that we would normally have with the CEO of an agency.

Mr KERR: Can you tell us what the matter is relating to freedom of information?

Mr BARBOUR: The matter relates to whether or not access should be granted under the Freedom of Information Act to police rosters and information contained in police rosters.

Mr KERR: Do you believe it should?

Mr BARBOUR: The preparation of our report supports the fact that there are concerns about the exemptions that have been taken, but I hasten to add that at this stage it is only in draft form and there is the opportunity, subject to further negotiation and consultation, to look at all of those matters, so there is no final report in place and no final view. I think it would be inappropriate to go into too much discussion in relation to that until such time as the report is finalised.

Mr KERR: In the past has there been access to the rosters?

Mr BARBOUR: There has been access to rosters previously.

Mr KERR: When did that change?

Mr BARBOUR: I do not know the precise date of when it changed, but I think it is relatively recently.

Mr KERR: You mentioned legislation that you required to look at, supervise or--

Mr BARBOUR: Well, more to review.

Mr KERR: To review, sorry, and you mentioned that a piece of legislation was pending. What is that?

Mr BARBOUR: It relates to infringement notices. There is a bill in train in relation to many matters being dealt with on the spot by police by way of infringement notices. It has received some degree of public attention. There is anticipated a two year review role, I understand, but that has not commenced yet and we have not been provided with significant details.

Mr KERR: Have you been provided with a copy of the bill?

Mr BARBOUR: We have been provided with a copy of the bill.

Mr KERR: Is that the only one pending?

Mr BARBOUR: Yes.

Mr KERR: I think you have said that in relation to the Ombudsman's report it has to be tabled as soon as practical by the Minister?

Mr BARBOUR: That is right. Generally the review roles require that our report, once it is prepared, is provided to the relevant Minister and in recent times, to deal with some of the concerns expressed previously by the Committee on the reporting process, those concerns have led to the reports being made to the Minister on the basis that, by way of statute, as soon as practical after reporting they are tabled in Parliament.

Mr KERR: Are you aware of any significant delays that have occurred in the past in relation to tabling?

Mr BARBOUR: Well, I think there was a delay in the past, I think it was before my time in fact, but I think there was delay and that was something that caused concern to the Committee previously.

Mr KERR: Do you recall what that was?

Mr BARBOUR: I think it was police and public safety.

Mr KERR: I think you have been in office for two years now.

Mr BARBOUR: Yes.

Mr KERR: You have mentioned a number of changes that have occurred during your tenure. Do you see a different philosophy that you have to the previous administration?

Mr BARBOUR: I do not think so. I think that the point that I made in the opening is what I would say in response to that and that is that what is clear in relation to an office of this kind is that it is an office that must constantly deal with change. You have an enormous number of people who seek assistance, an enormous number of inquiries that are made, an enormous number of written complaints that you get; priorities change, the nature of your work changes, and what you have to do is you have to be alive to and responsive to the need to change as necessary. What I would like to think is that we are putting in place systems which allow for that to happen very effectively.

Mr KERR: I think you have had two meetings with the new Commissioner and you dealt extensively with him prior to his becoming Commissioner and you were happy with his attitude towards the reform process. Is that correct?

Mr BARBOUR: Yes.

Mr KERR: How did you find the previous Police Commissioner's attitude? Did you regard that as satisfactory?

Mr BARBOUR: The previous Commissioner and I met on a fairly regular basis. Under the tenure of the former Commissioner there was agreement reached between him and I to set up a standing committee at a fairly high level between the two organisations to deal with significant issues arising out of the complaints system and those meetings were generally very productive and the relationship was a professional one.

Mr KERR: Did you have any disagreements with him during your meetings or during telephone conversations?

Mr BARBOUR: I have a disagreement with lots of people. I think the relationship between Ombudsman and Commissioner would have to, from time to time, be one where we did not necessarily see eye to eye on everything. I would be very concerned with any Commissioner who agreed with everything I had to say or vice versa.

Mr KERR: So there were disagreements?

Mr BARBOUR: Well, there were differences of opinion, I would not call them disagreements.

Mr KERR: Were there any differences of opinion that were unresolved?

Mr BARBOUR: I think the Commissioner certainly maintained a view about the complaints system which did not accord with our view, but that was a matter of principle

that he had. He certainly accepted the fact that the system was as it was and I did not see any direct attempt to act inappropriately in relation to that.

Mr KERR: What was his view on the complaints system?

Mr BARBOUR: Well, I think his view is perhaps set out to some extent in the police service's submission to the ministry relating to how the police service thought the complaint system ought to operate. I must say that I was disappointed that those issues were not raised with me prior to the submission going through, they came as a bit of a surprise, and perhaps if the Committee wants to go into that in more detail we could do that in camera.

Mr KERR: Was that the only difference that was unresolved?

Mr BARBOUR: I really do not know. There are a range of issues that you talk to someone about; some are important, some are unimportant. Sometimes you agree; sometimes you disagree. I do not believe there were any significant or substantive issues that we failed to reach some sort of negotiated position on.

CHAIR: Just on the submission to the ministry, so that everyone knows what we are talking about, that is a submission to the police ministry on a review of the Police Integrity Commission, that is a review that has to be carried out as a matter of statute. One of the things that I am interested in is the time line of all of that. This Committee was aware that there was a review being conducted of that Act some time last year. I am wondering when the Ombudsman's Office was made aware of the submission by the police service to the ministry and what sort of timeframe you had to respond to it.

Mr BARBOUR: We were aware of the review of the PIC legislation, of course, and wrote to the ministry after receiving a request for any comments that we wanted to make in relation to that in December of last year. We received the police submission to that review which was made to the ministry on 22 May this year. My understanding is that that submission was received by the ministry in February and when one reads that submission there is material in it which is dated November of 2001. When we were provided with a copy of the document we were asked for our comments within five days.

CHAIR: Which would suggest that you were contacted right at the tail end of the process and not given anything like adequate time to respond.

Mr BARBOUR: I think that would be a fair assessment. I am happy to say that we did respond and respond appropriately.

CHAIR: I understand that the original police submission has probably changed somewhat, partly as a result of a new Commissioner, and that is perhaps something we can go into in more detail in closed session, but I understand one of the proposals that is being adhered to by the new Commissioner and seems to have a degree of support is that the prohibition upon New South Wales police being employed by the PIC be removed, that is the New South Wales police would be able to work for the PIC. I must say when this Committee heard that there was a degree of horror around the

table on a cross-partisan basis. I am wondering what the Ombudsman's Office response might be to that?

Mr BARBOUR: We were contacted informally about that issue rather than formally and basically we took the view that it really was a matter for PIC and it was something that we should not involve ourselves with.

CHAIR: I must say that some of us are quite concerned about that prospect. The argument that was put up was that Operation Florida has established that police internal affairs can investigate police corruption quite effectively and not allow things to leak out; therefore, it follows that police can be used at the PIC to continue to investigate police corruption. There would be a number of people around this table who would argue that in fact what Operation Florida revealed is that there is still an awful degree of police corruption in the police service and that it is a little bizarre to say you can now get police employed by PIC. Do you have a view on those arguments?

Mr BARBOUR: Not specifically. My view in relation to employment of former serving officers would simply be that if there were a change to permit that, it would have to be accompanied by very stringent safeguards that went to checking, integrity testing and the backgrounds of those officers of course would need to be very carefully checked and, once employed, would need to be scrutinised on a regular basis.

As to the wisdom or otherwise of using them or the requirements for them, I am not really in a position to argue one way or the other because I am not familiar with the details of what PIC is presenting.

CHAIR: The problem with the vetting process of course is that presumably that is what ICAC went through when they employed the person who started leaking stuff to Rogerson. I mean even the vetting starts to become a problem then.

Mr BARBOUR: I think the sorts of issues that are raised in terms of people who act inappropriately are not restricted to former serving officers of the police and I think it is a problem for any agency, no matter what work they do in this area, to ensure that the integrity of their staff is a paramount consideration, but the sorts of risks you talk about are risks that are generated by potentially any member of staff from wherever they might come.

CHAIR: Just so that I understand the Ombudsman's position on the point, it would be unfair to present your position as one of agreeing to the proposition that former serving police officers should be able to be employed by the PIC?

Mr BARBOUR: No, I certainly have not agreed with that.

The Hon. JOHN HATZISTERGOS: I wanted to ask you some questions about universities. You did a major investigation into some protected disclosures involving the University of Sydney, which you document at page 79 of your annual report. Can I just ask you a first question relating to that investigation.

I note 27 witnesses were examined and I think somewhere in the newspapers it was recorded that a substantial amount of money was spent by the university on this

particular matter and legal processes which flowed from it, I think a figure of around half a million.

Mr BARBOUR: I think it was closer to one million

The Hon. JOHN HATZISTERGOS: Closer to a million was estimated?

Mr BARBOUR: Yes.

The Hon. JOHN HATZISTERGOS: Which the university has vigorously denied. Where did you get the figure that was quoted in the newspaper? Was that just an estimate?

Mr BARBOUR: That investigation was actually conducted by the Deputy Ombudsman, so it might be appropriate for him to answer that.

MR WHEELER: It was partly from information provided by the university, partly from estimates based on the two Supreme Court cases the university fought, the legal counsel that they employed, the estimate of the sort of figures that would be involved in that, but certainly most of the information came from sources within the university.

The Hon. JOHN HATZISTERGOS: The second question I want to ask you is: Before you prepared your final report in relation to that matter, what discussion was there about your report with the university? You made a number of recommendations and a number of findings. I just want to know to what extent those matters that are raised in the report were drawn to the attention of university personnel and with whom in particular?

MR WHEELER: Before the report was finalised, we followed the standard procedures of the office in making the report, in that we prepared a preliminary statement and preliminary recommendations. That went to the university for comment. We then prepared a draft report and the Minister was given the opportunity to consult. We then finalised the report. There were discussions held during the course of the investigation and during the hearings of course with a wide range of university staff. There were some discussions held during the process of the consultation. Partly it was verbal; partly it was in writing. So far as the detail, I would have to take that on notice and go back over our records and see who precisely we may have talked to.

The Hon. JOHN HATZISTERGOS: Who precisely did you send the draft report to at the university?

MR WHEELER: It would have gone to the Vice Chancellor. Before that, if memory serves me, the sections of the report that had adverse comment went to the individuals concerned for their response, and then that was tied together into a preliminary document that went to the university, and then from memory the draft also went to the university at the same time as we sent it to the Minister. So there was a series of interactions between the office and the university. Nothing in there was a surprise.

The Hon. JOHN HATZISTERGOS: But the Vice Chancellor was one of the parties in respect of whom comment was going to be made, was he not? I just want to know who on behalf of the university was responsible for putting in the university's response to the draft report.

MR WHEELER: I would have to take that on notice and check our file.

The Hon. JOHN HATZISTERGOS: Do you know what response you received, what criticisms or comments you received from the university, and from whom, in relation to the draft report?

MR WHEELER: Again, I would have to take that on notice. We had certainly comments that were put in about some of the facts that were stated there. In terms of the recommendations, I think from memory there were certain comments put to us as well, nothing fundamental, but I would have to go back over the file to check.

The Hon. JOHN HATZISTERGOS: And were there any alterations made to the final report as a consequence of the -

MR WHEELER: The negotiations, from memory, yes, we did make some changes, nothing major.

The Hon. JOHN HATZISTERGOS: I want to ask you some questions about this particular investigation if I could. On the basis of what you have written there, correct me if I am wrong, but there is a student out there who has a first class honours degree from the University of Sydney who you would allege was not entitled to it. Is that correct or not?

MR WHEELER: I would prefer to discuss matters like that in the closed session rather than in open session, if you are asking me for my views on that.

The Hon. JOHN HATZISTERGOS: Let me put it to you another way. If the proper policies and procedures, as found by you, were adopted by the university, that student would not have received a mark of 80.

MR WHEELER: I would say that is a fair comment.

The Hon. JOHN HATZISTERGOS: And that would not entitle that student to a first class honours degree.

MR WHEELER: Barring any special consideration that they may have been able to argue, that is also so.

The Hon. JOHN HATZISTERGOS: So the answer to the question that I put to you originally is that there is a student with a first class honours degree who, on the basis of the policies which you have found, would not be eligible to receive it?

MR WHEELER: Again, Mr Chair, I would prefer to answer a question like that in closed session.

The Hon. JOHN HATZISTERGOS: Let me ask you another question. Are you satisfied with the outcomes so far as the individuals are concerned flowing from this investigation?

MR WHEELER: Are you talking about the individual students or the academics at the university?

The Hon. JOHN HATZISTERGOS: The people who were involved in the investigations.

MR WHEELER: I would have to go back and check the file to see precisely.

The Hon. JOHN HATZISTERGOS: Let me just take you to a few of them. You have the university solicitor, whom you found was acting in the form of a prosecutor on behalf of the student, exercising some partiality. No action has been taken against that particular individual?

MR WHEELER: There has, if my memory serves me, been a review of the whole university's solicitor's office arising out of this matter.

The Hon. JOHN HATZISTERGOS: Has any action been taken in relation to the university solicitor?

MR WHEELER: I am not aware if there has been.

The Hon. JOHN HATZISTERGOS: Counselling or otherwise?

MR WHEELER: I am not aware of that.

The Hon. JOHN HATZISTERGOS: Is that the sort of thing that you would have expected to take place?

MR WHEELER: We made a series of recommendations arising out of that report. What we expected to take place was implementation of those recommendations. As far as I am aware, we are satisfied with the steps taken by the university to implement those recommendations.

The Hon. JOHN HATZISTERGOS: There was one pro Vice Chancellor who had been requested by the Vice Chancellor to make some inquiries in relation to the investigation of the matter, who gave advice to the Vice Chancellor along the lines of what he thought the Vice Chancellor was seeking, with a note requesting the Vice Chancellor to destroy the document after he had read it so that it could not be the subject of a freedom of information application. Is that correct?

MR WHEELER: That is largely correct.

The Hon. JOHN HATZISTERGOS: And you deprecated that particular advice?

MR WHEELER: Indeed.

The Hon. JOHN HATZISTERGOS: Has any action been taken against that particular individual?

MR WHEELER: Again, I would need to check the file to be certain, but I understand that that person has been counselled by the Vice Chancellor about the correct approach to take.

The Hon. JOHN HATZISTERGOS: Are you satisfied with that?

MR WHEELER: From memory, that was in accordance with our recommendation.

The Hon. JOHN HATZISTERGOS: There was also an aunt of the student who worked in the industrial relations department but, notwithstanding a clear conflict of interest, acted as her advocate in terms of what she thought the student ought to have been entitled to. Has any action been taken against that individual?

MR WHEELER: I am not aware of the answer to the question.

The Hon. JOHN HATZISTERGOS: Did you recommend any action?

MR WHEELER: I cannot recall what was recommended. I would have to go back and check the file on that matter.

The Hon. JOHN HATZISTERGOS: You have made some comment about the procedures and policies that the university took in investigating that particular matter. Have those been changed?

MR WHEELER: To the best of my understanding they have been changed. Some of those matters dealt with an enterprise agreement. There have been certain changes made there to improve the ability of the university to investigate and also to increase the procedural fairness to the people the subject of the investigation. By and large my recollection is that we were happy with the response taken by the university in response to our recommendations.

The Hon. JOHN HATZISTERGOS: When did those policies become certain, the changes?

MR WHEELER: Sorry?

The Hon. JOHN HATZISTERGOS: Did you examine those policies, those changes?

MR WHEELER: We did examine the changes.

The Hon. JOHN HATZISTERGOS: When did you sign off on them?

MR WHEELER: Again, I would have to go back to the file and come back to you on that.

The Hon. JOHN HATZISTERGOS: Are you satisfied with the outcome of this matter?

MR WHEELER: By and large, yes, given the aim of the investigation, which was to address the procedural problems, to address the attitudinal problems of the university, to try and bring in new procedures, not just in that university, but in all universities in New South Wales, to address this issue. Yes, we are satisfied. The aim was not to go after certain individuals and seek retribution against them. That is up to the university. We have highlighted to the university certain problems that we had found. It is up to the university then to address those from a management perspective. Our primary focus, as you would have seen from the report, is on the procedures, the practices, the approach.

The Hon. JOHN HATZISTERGOS: One individual was the subject of allegations which were not sustained, a student's supervisor. That person has actually left the university, have they not?

MR WHEELER: I would have to check back on that.

The Hon. JOHN HATZISTERGOS: Have you looked at and examined that person's circumstances?

MR WHEELER: No, not that I am aware of.

The Hon. JOHN HATZISTERGOS: Are you satisfied that his position was adequately dealt with by the university?

MR WHEELER: I would have to get back to you on that. I will need further information about which particular individual.

The Hon. JOHN HATZISTERGOS: I am talking about the supervisor who was the subject of allegations of harassment by the student.

MR WHEELER: Right, okay. That person has definitely left the university. They are now I think in England. That occurred before the report was finalised, if memory serves me. That was the person who was the subject of the two Supreme Court cases and that was one of the reasons why we were recommending in the enterprise agreement the change to allow the university to properly address these issues.

The Hon. JOHN HATZISTERGOS: I take it you would not argue that that person was fairly shabbily dealt with in this whole process?

MR WHEELER: Well, no, I would not argue that.

The Hon. JOHN HATZISTERGOS: What would you say, not dealt with as he should have been?

Mr BARBOUR: Can I just perhaps say that these issues highlight the difficulty that we have in relation to our involvement with universities and the investigation of matters concerning universities. For a very long period of time universities have not

really sustained a great deal of scrutiny in terms of their practices and policies, and many of the people that we see that are involved directly in these allegations are merely applying what they understand to be the norm of how things are approached within the academic environment. We are, in a very measured way through our involvement, trying to change that process, without at the same time victimising particular people, unless it is absolutely necessary because their conduct is so patently outside what would be acceptable in the circumstances.

This particular example that you have been raising questions about, and others that we have dealt with at the same university, has raised the same problem over and over again. What we are seeing is that policies and practices are beginning to change. University hierarchies are actually beginning to understand the concepts of procedural fairness, conflicts of interest, the requirement for objectivity, but I think it is going to be a long road because universities are very defensive of their turf, they are very defensive of organisations such as ours coming in and looking at their processes, but I am pleased to say that the changes in procedures that took place after this were further added to in relation to another matter that we dealt with, which is in the annual report at case study 65. Since that was concluded there has been some movement there which I think has been very productive and worthwhile.

The Hon. JOHN HATZISTERGOS: We all know about case study 64, but I would hate to think that anything that happened in that particular case could be regarded as the norm. It would seem to me as anything but the norm for any sort of institution, almost a comedy of errors.

The Hon. DEIRDRE GRUSOVIN: Could I refer to case study 64 and those unfortunate events. We have just had some comment made about the possible shabby treatment of a whistleblower in terms of another university. Would you like to make some comment about your views on the way in which that senior manager was treated by the university?

MR WHEELER: In case study 64?

The Hon. DEIRDRE GRUSOVIN: Yes.

MR WHEELER: One of the things we highlighted in our report was that, while the university did some things that it thought were in the interest of the whistleblower, it certainly did not follow proper procedures and did not take adequate steps to protect that person from retribution, if you like, and certainly retribution did occur within the ETC.

The Hon. DEIRDRE GRUSOVIN: Following that unfortunate case, do you have any confidence at all that the University of New South Wales has improved its understanding of its obligations under the *Protected Disclosures Act* in view of more recent events?

MR WHEELER: I am confident that certain individuals within the university have improved their understanding. As to whether the university as a whole has improved its understanding, that is a matter to be seen.

The Hon. DEIRDRE GRUSOVIN: I gather, when you say "whole", you are speaking of the executive?

MR WHEELER: That is correct.

The Hon. DEIRDRE GRUSOVIN: So you cannot tell me that you have a great deal of confidence in fact that there is a full and proper understanding of the *Protected Disclosures Act* by the full executive of the university?

MR WHEELER: I would not be confident about that with any university.

The Hon. DEIRDRE GRUSOVIN: Would you like to make some comments on the question of the whole culture that does still invade these academic institutions? I know that the Ombudsman has referred to the fact that it is going to be a long hard haul, but to me it is very troubling that in fact we are in this situation and that we have institutions which have not been subject to great scrutiny and are now having scrutiny applied, but it is going to be a long process.

Mr BARBOUR: I really do not think there is anything much that I can add to what I said before. It is going to be a long road and one of the things that we are trying to do with this growing area of complaints that we are receiving and protected disclosures that we are receiving from universities is we are trying to make our intervention, our investigation and our consideration of these matters relevant for universities as a whole. We were very pleased to see that in relation to recommendations we made for Sydney University the Minister provided those recommendations and report to all universities in the State and as a consequence we received notification from many of them that they had changed their procedures and introduced new ways of doing things. I think that it is going to be a building exercise and an educative exercise and it is going to take some time to provide the response that I think you would like us to be able to provide, which is that we do have confidence that there is a better understanding in all universities.

The Hon. DEIRDRE GRUSOVIN: Do you think that the *Protected Disclosures Act* really needs some more looking at in terms of the way in which universities, for example, are responding to that Act? Is it a matter of them gaining a better understanding of their obligations and the way in which the legislation is supposed to work or is there still too much of an exposure of the person who wishes to come forward and make certain allegations?

Mr BARBOUR: The protected disclosure legislation I think is difficult for almost all agencies that need to comply with it and, depending on the agency and the frequency with which protected disclosures are made, there is often a different degree of understanding and application of the principles. One of the challenges for any organisation, whether it be a university or other is, where protected disclosures are not being made that often, ensuring that the systems in place are well-oiled and that people do understand what they have to do. If you only have several protected disclosures each year, it is not as though you get a day to day understanding of how you need to deal with these particular issues and, the moment perhaps the authorised officer who has responsibility for handling that particular issue for the university or any other organisation leaves, they generally take the corporate knowledge with them, so you are

back to square one in terms of trying to train them in terms of their understanding, and it is an area that we have been commenting on for some time. Certainly less complexity in these sorts of areas would be I think helpful. It is an area that the Deputy Ombudsman has particular interest in.

MR WHEELER: One of the particular problems with a university is that it is not like any other public sector organisation where there are direct lines of control and the CEO can get involved at whatever level he likes to address a particular issue. There is a lot more academic independence, small little kingdoms scattered around who are notionally under the supervision of a senior executive, so that it is a bit harder. You have to spread the knowledge and the cultural change much lower in the organisation to achieve anything, so that each individual faculty needs to be aware and understand. At the moment that knowledge would be greatest in organisations that have just been through a bit of grief with protected disclosure investigations than the rest. Organisations that have never had one, as the Ombudsman was saying, or have had very few, would not have that level of knowledge. It is a problem trying to pass this on. Now with at least two universities in recent months we have gone along to provide some training in this area and it is certainly an area that we are going to focus more of our time on to try and explain to them what their obligations are and the benefits to them of dealing with their whistleblowers appropriately.

The Hon. DEIRDRE GRUSOVIN: Do you feel that universities are responding in a way that they are understanding that this is a good thing that you are prepared to provide this advice and training or do you still see some resistance?

MR WHEELER: Well, certainly the requests for advice and training only arise when they have a problem already and it sort of focuses their minds and they ring up and say could you come along and give us some guidance on what we should do. It is never proactive.

The Hon. DEIRDRE GRUSOVIN: Do you see a problem in terms of situations where you have a university involved in a matter of protected disclosure and you also have some employees coming under university's authority and others, for example, coming under Health. Do you see some way of combating the problem when one organisation does its investigation or its thing over here and elects not to cooperate and work in cohesion with the other sector? Do you think perhaps it makes it harder to get to the truth of matters when this occurs?

MR WHEELER: It certainly does make it harder. One of the problems, of course, is the ability of each agency to pass on that information, but certainly in the case I think you are thinking of we are looking at both, so we will ensure that there is proper coordination and a proper result. That is one of the things that this office can do. Because our jurisdiction is so broad and covers most of these agencies, we can look at circumstances where more than one government agency is involved.

Mr KERR: I think you mentioned earlier that you had referred the report to people that were adversely affected by it?

MR WHEELER: Only the section to do with--

Mr KERR: Right. Are there rules for procedural fairness in relation to the Ombudsman?

MR WHEELER: We have section 24 of our Act which requires that before we make adverse comment about a person we give them a chance to comment on it.

Mr KERR: Ombudsman, the report you mentioned in your opening address in relation to the Department of Community Services, that was somewhat critical of the department. Was there any reference to the department before that report or anybody in the department before that report was published or tabled?

Mr BARBOUR: The Department of Community Services report was a compilation of information that had arisen as a result of approximately 11 investigations that we had under way of which the department was fully aware. At a consultation with the Minister about another report and recommendations that we had made, I advised the Minister that we were in the process of preparing a report and that we were proposing to table that in Parliament and, in accordance with our normal procedures, we provided a copy of that report to the Minister the day before it was tabled so that she had notice of what we were saying.

Mr KERR: Are you aware of any criticism of that report?

Mr BARBOUR: From?

Mr KERR: From anywhere.

Mr BARBOUR: I think the report has largely been accepted as being, regrettably, a fair assessment of the current difficulties within the department.

Mr KERR: Have you had any discussions with the Minister since that report was tabled?

Mr BARBOUR: I have had discussions with the Minister since that report was tabled. She was very anxious to discuss the issues and to try to work with the office to deal with some of the problems being identified in our specific investigations. I have also had a meeting with the deputy director-general of the department following on from our report to once again try to develop a plan or a strategy where we might be able to move forward in terms of some of those concerns.

Mr KERR: You have not spoken to Carmel Niland about the report?

Mr BARBOUR: I have not spoken to Ms Niland about the report.

Mr KERR: Have you had any discussions with Ms Niland?

Mr BARBOUR: Ms Niland was on leave, as I understand it, overseas, at the time the report was tabled and since her return I have not had any discussions with her about it.

Mr KERR: In your discussions with the Minister, she did not take issue with any part of the report?

Mr BARBOUR: I think the Minister's focus was not so much on taking issue with the report but rather how we might work productively in terms of dealing with the issues raised in the report. I think the Minister's concern was, if there were problems of the kind that we had documented, how we might work through our investigation process and through our oversight role to try to deal with some of those more effectively.

Mr KERR: And you spoke to Ms Niland's deputy, did you, in relation to the report?

Mr BARBOUR: Yes.

Mr KERR: Did she take any issue in relation to the report?

Mr BARBOUR: There were some minor issues which were raised, but the substance of the report was largely accepted as being an accurate reflection of some of the difficulties. What did concern the deputy director-general, Ms Boland, was that some of the initiatives that the department currently had under way to deal with some of those problems had not been documented in the report. We indicated that we were anxious to have information about any of those initiatives or strategies and that if they were provided to the office we would certainly take those on board in our consideration of the matters under investigation.

Mr KERR: What were the issues she raised with you in relation to the report?

Mr BARBOUR: The department, through Ms Boland, was keen to put forward details about the developments in relation to its computer systems for tracking information and client information details and how, once that system was in place, she believed that many of the types of file related and communication concerns that we raised in our report may well be addressed.

Mr KERR: When did she think they would be addressed?

Mr BARBOUR: When that system was introduced and regrettably the timing of that was less than detailed. There is a system in place for introducing a new computer system. I understand that funding has been provided for it but the design is being done and it needs to be implemented. They were hopeful that during the course of about May or June of next year the system should be up and running.

Mr KERR: May or June of next year?

Mr BARBOUR: Yes.

Mr KERR: So could the problems that gave rise to the report continue until then?

Mr BARBOUR: I indicated that I was very concerned about the prospect of them continuing and I indicated that I thought that there needed to be the development of short-term strategies by the department rather than simply reliance on a system that might be introduced next year.

Mr KERR: When did that discussion take place?

Mr BARBOUR: I think it was towards the end of May.

Mr KERR: Did she identify what those short-term strategies would be?

Mr BARBOUR: No, that is something that we will be monitoring very closely. I made it very clear in my discussions with the Minister and also the deputy director-general that we would continue to focus very closely in terms of scrutiny on DoCS; we would continue through our investigations to look at making suitable recommendations and we would be following up compliance with them and we would be monitoring these sorts of issues very closely.

Mr KERR: So they have told you they would like to put in short-term strategies to identify these problems or to address these problems, is that correct?

Mr BARBOUR: Certainly, it was recognised that the time lag between current problems and the introduction of a new system which might alleviate some of them meant that during that period of time there needed to be strategies introduced to deal with those things.

Mr KERR: But we still do not know what those strategies are?

Mr BARBOUR: We will over the next few months get information from them in relation to each of the specific investigations that we are undertaking, but the report about DoCS to Parliament was a holistic report. It was designed to provide information about a range of issues which we saw as being of enormous public interest. The specific investigations will in more detail address the specific problems that we have identified and also make recommendations that might be able to alleviate to some extent or deal with some of those problems.

Mr KERR: Were you shocked by the report when it came together?

Mr BARBOUR: I was shocked before the report came together, and as a consequence of my shock I set about preparing the report.

Mr KERR: You are not still in a state of shock I take it?

Mr BARBOUR: I am still in a state of numbness, I think, about some of the problems. There is no doubt, as I hope my report is testament to, we have within the office viewed with enormous concern the difficulties within that department. We want to work co-operatively with them to try to deal with those problems. The people that the department assists are some of the most disadvantaged within the community and we want to make sure that our solutions are practical, that they are workable and that we are able to get them on board as quickly as we can.

Mr KERR: And at this point of time, they have said some of those problems will be alleviated come May or June of next year and that they will have short-term strategies to address some of those problems but they have not told you at this point of time what those strategies are?

Mr BARBOUR: No, but in relation to each of our investigations there is regular discussion with senior executives of the department and also responses in relation to the specifics and there may well be details in relation to those strategies coming in. My Assistant Ombudsman in the general area has a meeting with senior executives of the department shortly to deal with these sorts of issues.

Mr KERR: You have given the state of play at the present time. There could be problems occurring at the present time which are not being investigated, and will not be until they come to your notice.

Mr BARBOUR: The systems that are in place at the moment in DoCS do not allow for all matters that should be adequately and thoroughly dealt with to be dealt with appropriately.

Mr KERR: Are those the same systems that your report found to be inadequate?

Mr BARBOUR: That is correct.

Mr KERR: And they are still so?

Mr BARBOUR: There is no short-term solution I think to some of these, and I think that the work that we are doing with the department hopefully will provide better results in the future, but there is no quick answer to this. There is no suggestion that I can provide to the department which will mean that in a week's time everything is going to be right. The sorts of difficulties that we have identified are significant, they are systemic, they go to all areas of the department, and to prepare adequate responses to those and prepare strategies that are going to deal with them effectively is going to take a little bit of time.

Mr KERR: When would you expect to be furnished with the short-term strategies?

Mr BARBOUR: We will be seeking, through our investigation reports, responses to our recommendations, which will be specific recommendations about these sort of things, within particular timeframes appropriate to the recommendations, and we will continue to meet regularly with people from DoCS about their ongoing development of strategies to deal with these issues.

CHAIR: On that topic, do you have a view about mandatory reporting? There is a lot of discussion to suggest that mandatory reporting ought to be removed. Is that a view you share or have you not concluded the review yet or do you think it is a knee jerk reaction?

Mr BARBOUR: We think it is too early to make an assessment about whether mandatory reporting is contributing inappropriately to these problems. The system has not been in place for long and the data which is available in relation to the issues that are raised as a result of the mandatory reporting is so poor that it is very difficult to get a detailed and comprehensive view as to what the situation is. Certainly, it is something that will need to be looked at in the future when there is better material and information to provide a basis for a proper consideration.

The Hon. DEIRDRE GRUSOVIN: We certainly wouldn't wish to throw the baby out with the bath water.

Mr BARBOUR: No, absolutely not, and I think that is a genuine risk. Until such time as we are able to determine categorically that there is a problem, then I believe that the benefits that flow from mandatory reporting have to remain paramount in mind.

CHAIR: The danger must be you get rid of it, then there are a whole range of complaints that aren't made.

Mr BARBOUR: Absolutely.

CHAIR: And you do not solve a problem by saying, "Go away, we don't want to hear about that." You solve it by getting information and dealing with it.

Mr BARBOUR: That is right, and it is a new system. It is a system that has required a great deal of education and involvement with the community, and to remove that and then to have to potentially reintroduce it again, because you realise there is no good reason to remove it, would be catastrophic in terms of the way in which these systems operate. Certainly, my position is that we should not be looking at that until such time as we have got adequate information and the system has been in place for some time.

The Hon. DEIRDRE GRUSOVIN: Could I ask about the question of resourcing that very necessary education in terms of the people who are handling mandatory reporting, both making the notification, and, most importantly, those people who are handling that notification. It seems to me that that is where we can have real problems. If you do not have people with the necessary expertise dealing with these matters, then that is when things start to go badly wrong.

Mr BARBOUR: There needs to be appropriate training of the people that are dealing with these and there needs to be appropriate education for the people who are expected to report. An appropriate analogy can be drawn with our own child protection functions. Despite the fact that they have been in place for some time, we still see education as being a key to the success of the process and we still see examples of people not being aware of their obligation to notify us of child abuse allegations, and we need to be constantly educating to make sure that people are in fact aware of their obligations.

The Hon. DEIRDRE GRUSOVIN: Do you believe there has been any improvement in recent times in situations which I think we encounter fairly frequently, where the Ombudsman was involved in some reporting of problems and it immediately

caused an extra problem for that case because it is seen that DoCS officers totally froze, and nobody at that stage wanted to have to get too heavily involved and continue with the investigation because the Ombudsman was looking at it, and therefore it was all a problem and it just seems to cause a total freezing of people?

Mr BARBOUR: This is in relation to allegations of child abuse coming through our notification system?

The Hon. DEIRDRE GRUSOVIN: Problems with a case where DoCS has been involved, combined police and DoCS workers have been involved in a case, the Ombudsman have been brought in or it has been brought to the Ombudsman's attention and suddenly you find from the other side that in fact nobody wants to know anything about the case any more in terms of the DoCS officers and everyone is hands off because "we are being looked at"?

Mr BARBOUR: I think if there was that attitude, it is certainly changing or has changed. We have done a lot of work in our child protection area to better equip agencies to properly investigate these matters themselves to reduce the need for us to actually directly intervene and take over the investigation or indeed to monitor the investigation. We also offer support and information to the agencies, and I am not aware in recent times of our involvement in those matters leading to a reluctance on the part of the agency to continue with their investigation.

The Hon. DEIRDRE GRUSOVIN: Could I ask you if you see a problem still out there in terms of Family Law Court matters and family relationships, particularly involving children, the fact that there seems to be gaps in the floor boards where people are caught between Family Law Courts, allegations of various sorts, and sometimes we cannot seem to get through the bureaucratic layers or everyone wants to stand aside. I am thinking in particular of a case, which I will not go into details about, involving the death of a child not so long ago. I had some particular involvement trying to get some help for that family. It was the police comment at that stage that this was a case that really was a real problem because everything conspired against help being given.

Mr BARBOUR: There is undoubtedly ongoing difficulty with the management of matters that have Family Court proceedings. Indeed, we actually recently completed an investigation into DoCS' failure in a particular matter to involve itself in Family Court proceedings where it had a particular view about the conduct of the male parent in relation to matters that were before the court. We are awaiting compliance with our recommendations in relation to that particular matter, but certainly, and Mr Andrews might be able to elaborate more on this, our understanding is that the position of DoCS in these matters is that they find it very difficult to know when to intervene and when not to intervene, what is appropriate and what is not appropriate, and I think there needs to be some clarity for service providers in relation to those issues.

The Hon. DEIRDRE GRUSOVIN: I am thinking in particular of a case where in the end a parent went into court with no support mechanisms and obviously the attitude of the court was that there was a real problem in terms of the children involved, and yet that parent walked out and some very unfortunate things happened after that, but there was no understanding that there was a responsibility from the court's side as well as

DoCS and everything else to really deal professionally with that person and give them some support.

Mr BARBOUR: Certainly, in the matter that we investigated the mother did not have adequate support or representation in the proceedings and she would have been enormously assisted, and the welfare of the child would have been assisted, had DoCS been involved to some degree in the process, but they did not involve themselves at that time and that was a cause of concern for us.

The Hon. DEIRDRE GRUSOVIN: In the case I am referring to there have been people trying to get help in all sorts of areas, right through from DoCS to the CPA. It was a frustrating experience, 12 months of knowing that there was going to be a catastrophe and in the end there was and nobody seemed to be able to do anything about it to avert that problem. I just hope things might change in the future.

Can I just touch on your report regarding reporting from independent and Catholic systemic schools. You made the point in last year's report that there was still a difference in the numbers between the State school system and the independent systemics in their reporting, and you were working with the organisations to improve matters. Perhaps Anne Barwick might be able to answer.

Mr BARBOUR: Yes, I will get Anne to address that. Certainly though, in terms of CCER, the Catholic Commission for Employment Relations, because of their central co-ordinated role in relation to Catholic agencies in our jurisdiction, there have been enormous improvements in relation to the reporting in those areas and also the quality of investigations and the understanding of their obligations under the Act.

I am not sure that the same can be said for independent schools. We continue to have mixed reporting from independent schools and statistical analysis would suggest that some must be under-reporting when you compare them to other schools and the number of allegations that they report. We have targeted independent schools for a series of workshops which are designed to better educate principals of those schools about their obligations under the Act. Regrettably, we do from time to time see examples in those workshops of not only a lack of understanding about the responsibilities but an unwillingness to comply with them.

The Hon. DEIRDRE GRUSOVIN: You cannot make it mandatory?

Mr BARBOUR: Well, it is mandatory in the sense that they have to, but they try to get around the reporting because they see it as being an inappropriate burden.

The Hon. DEIRDRE GRUSOVIN: I am talking about the workshops. Do you find that you do get an attendance?

Mr BARBOUR: Absolutely, yes.

Ms BARWICK: Yes. I endorse what Bruce has been saying. We have been working with the Association of Independent Schools particularly looking at the low reporting or under-reporting with the independent schools. We have organised 16 workshops and we have insisted that principals attend those workshops, and there has

been a very good attendance. We have worked with the independent system before, but usually there has been a delegate of the Principal there who perhaps may not be disseminating the information through the schools. So we should be careful that the principals do attend.

What we have found is that, as Bruce was saying, there is certainly some resistance to the notion of notifying physical assaults, but probably what was of greater concern was just again that lack of awareness at what the reporting obligations were. We have had some response as a result of the first couple of those workshops in that we received a notification from a principal who said, "I got a lot out of that workshop. I didn't realise I had to report this matter and I will be much more diligent in the future." So we are hoping that through the workshops, through that increased awareness, we will see more notifications. But if the pattern is not changing, if some schools have not notified during this period, we will be auditing those schools, and certainly they understand that. We talk about the audit process in the workshops.

The Hon. JOHN HATZISTERGOS: Can I ask a question about local government. You indicate in your report that you have been negotiating with the Minister over the issue of councillors' conduct and perhaps doing something further in that area, legislative or otherwise. How has that progressed and how much is it a problem?

Mr BARBOUR: It has not progressed particularly far and I think it probably is still a problem.

MR ANDREWS: We continue to get complaints about various forms of councillors' conduct and the misapplication or the failure to properly investigate breaches of code of conduct matters, but we understand, in fact, that there is a current proposal to bring about some amendments to the *Local Government Act* which may make it easier to suspend individual councillors for sustained conduct that disrupts the general business of council. I think the Premier may have foreshadowed that, linked up to the recent ICAC report.

The Hon. JOHN HATZISTERGOS: That is dealing more with corruption matters?

MR ANDREWS: Yes, but I understand there are two proposals being bandied about. One is to do with the either suspension or expulsion of individual councillors for corrupt conduct, but there is another proposal which is about less serious conduct, but conduct where councillors might be suspended from individual meetings but then cause an ongoing problem over a number of meetings. We are very supportive of any movement in that area. We are not talking about a huge number of councils here, but there have certainly been cases in the past where the conduct of some individual councillors has really severely interrupted the general ongoing business of councils and brought local government into disrepute in some respects.

CHAIR: I might return to some matters about policing. The Royal Commission, as I recall, effectively argued against secondary employment of police. The Police Minister's advisory council has now recommended a trial of police secondary employment, which is occurring at the moment. The Commissioner for the PIC

expressed a few concerns to us recently. I wonder whether the Ombudsman's Office has a view on the trial that is currently being conducted as to the possible corruption risks that may arise out of that and what sort of assessment of the trial might be appropriate?

Mr BARBOUR: We were provided with some information about the proposal and we indicated that, certainly on the face of it, the sorts of safeguards that needed to be in place in terms of potential for corruption or other misconduct type issues appeared to have been flagged and were under consideration. We indicated that when the review took place we would certainly like to have an opportunity of providing input to that review. We will obviously monitor whether we receive any complaints in relation to those sorts of issues, whether there are any issues that arise as a result of having difficulty determining who is actually instructing the officers, whether there are any control issues that come up, but certainly there seemed to be attention given when the proposal was being put forward to the sorts of safeguards that might be necessary if this were to be introduced.

CHAIR: You have not got any ongoing role within the process of a trial though?

Mr BARBOUR: No.

CHAIR: Did you receive an indication that they would be happy to have your input into the assessment of a trial?

Mr BARBOUR: Yes, and that certainly seemed to be the view that was expressed in the correspondence: This is what we are proposing. Do you see any difficulties with this? It looked as though it was a fairly comprehensive checklist of things that the review would take into consideration. We also indicated that we would like to be involved and my understanding is that there was no difficulty with that.

CHAIR: Who is actually conducting the review of the trial?

Mr BARBOUR: I think, from memory, it is a range of agencies: The ministry, the police service. Anyone else?

MR KINMOND: I think the police association had some input. I think it has been driven by the ministry, as I understand it.

CHAIR: So the review is likely to be an internal review by the ministry?

MR KINMOND: That is correct.

Mr BARBOUR: There does not appear to be any external formal review, but I think PIC is in the same position as us. I think they have been advised that they would have an opportunity to contribute information and views to that review.

CHAIR: I am wondering whether it might be better to have a formal external review rather than the process that they have put up so far.

Mr BARBOUR: Possibly.

CHAIR: Still on the topic of policing, in your answer to question on notice number 17 dealing with officers with significant complaint histories, the figures as I read them say that, of 450 officers that were assessed, 112 had a significant complaint history, so about 25 percent of those assessed had a significant complaint history. That seems a very high figure to me. Is that because I am too optimistic about what to expect or is it because there was some preselection of the 450?

MR KINMOND: Yes, there was, and so essentially, in order for it to be considered in the first place, the matters had to indicate a significant complaint pattern. As a result, of the 450, after very close perusal of those, we ended up with 112 where we believe there are issues of concern that need to be considered by the police service. I think it is important to stress: Issues of concern. It does not amount to a finding on our part that these officers are corrupt or engage in misconduct, it is simply a flag for the police service, and particularly for police managers, to have a look at these officers more closely.

CHAIR: In your answer to question on notice number 11 you indicated that you had begun to develop some detailed profiles and complaint handling issues regarding individual LACs, starting with LACs with significant issues that needed attention. What are the sorts of issues that are featuring in those commands?

MR KINMOND: We look, for example, at complaint patterns where there is a high incidence of complaints on a per capita or per officer basis, where there is a particular type of complaint of significance, so you might have a trend, for example, of complaints relating to failure to respond to domestic violence issues or a whole range of possible trends. We also keep ongoing data in relation to inadequate responses by commanders to individual complaints, so if there is a pattern emerging whereby there is an indication that there is a failure to properly investigate matters that will be another flag, so there is a range of factors that we take into account in deciding to focus on a particular patrol.

Mr BARBOUR: I think in part we are trying to become a lot more sophisticated in terms of what we are addressing and I think one of the things that we have recognised over time is that it is not enough to look for indicators across the service as a whole because there may well be very valid reasons why you get different indicators and different trends coming from a particular local area command as against another local area command. Whether you have a metropolitan-based local area command as against country-based, the types of complaints that will come in will be different; the nature of the officers and their relationship with people in the community will be different; their response times to those sorts of issues will be different, and so we are trying to target in a more effective way what might be the sort of measures that you identify and what outcomes you are wanting from those and how more appropriately to respond.

CHAIR: I guess in a similar theme, question on notice number 9 talked about increasing the number of direct investigations. How many have you directly investigated and how many have you monitored?

MR KINMOND: I think the monitored are probably going to be down a little bit this year and the monitoring is a situation where we physically attend the interview. The number of direct investigations will be up significantly, so I think last year we reported that we completed 14 direct investigations and this year I think the figure is going to come in at somewhere around 35-plus completed direct investigations. A number of the direct investigation issues have focused on the issue of timeliness, so we have had a very good look at particular regions and their performance in terms of the issue of timeliness and where we have had unanswered questions as to delays we have issued them with direct investigation notices requiring them to explain the delays with respect to particular files.

CHAIR: You received a report from the New South Wales police in response to your report on officers charged with drink driving offences?

MR KINMOND: Yes, we did.

CHAIR: What was the response?

MR KINMOND: The service's response referred to the fact that it believed that its current policies, particularly its code of conduct, covered the area reasonably adequately in terms of making clear to officers the significant risks to their career in terms of the issue of drink driving. We are continuing to track cases, particularly more serious cases of mid-range and high-range PCA matters, particularly where there are also exacerbating circumstances, to ascertain whether there is consistency from the police service in relation to its response to these sorts of issues. In addition, the police service has developed a model called a decision making framework which has a whole range of factors that a manager needs to take into account before making a management decision about a misconduct issue. The service is confident that that model will assist its managers in making consistent decisions in this area. Once again, that is something that we are closely monitoring.

CHAIR: Question on notice number 19 indicated the extent of the Ombudsman's monitoring impacting on policing. I am interested in two things: Whether there are any recurrent themes emerging from these statutory reviews of those bits of legislation and, secondly, the implications that review role has for resourcing?

Mr BARBOUR: Certainly I have been consistent in my approach to the resourcing issue and I assume that the question is directed to resourcing of my office?

CHAIR: Yes.

Mr BARBOUR: That has been that wherever a new review role has been put forward I have argued very strongly for adequate resources to be provided for the purpose of conducting the review. To date we have been in receipt of a positive response on each occasion, so we have not had any negative resource implications. Certainly this review role has allowed for an enormous strengthening in our capacity to do quality research, which is a by-product of the review role. We are now obtaining and employing very skilled people with research backgrounds to assist in this particular work, but of course that provides a flow-on effect to the remainder of the office, particularly the police team in terms of skills that are available for research. The other

aspect I think which is valuable in relation to these reviews is that what we are seeing, which is a common trend if you like, is that the key is always going to be about training, appropriate education of police officers in relation to the use of these powers and ensuring that they are consistently applied as much as possible. They are common threads throughout a number of the reviews. It is certainly something in the reports that we have already done that we have commented on and I think it will be the case with these as well.

The approach that we have adopted in relation to the review roles is relatively consistent. We generally have fairly widespread community liaison and consultation, liaison with key stakeholders; we generally prepare a discussion paper which is disseminated fairly widely; we will normally conduct interviews with people who are affected or who are particular players in the issue; we look closely at any complaints that come in in relation to these particular matters; we conduct focus groups with affected people and particular agencies and we also go out and make direct observations. For example, recently two staff from the office accompanied police who were using sniffer dogs, and of course that is one of our review roles currently. So we do a lot of direct observational work and participate in the process to observe the interaction and how it is working.

CHAIR: Are you surprised that there was no increase in the level of complaints with the greater police powers?

Mr BARBOUR: I would not say I was surprised. I think your automatic reaction to issues like this is that you expect the negative. What I think is interesting is that there has been a very professional approach by the police in terms of the way that they have introduced these particular new processes and there has been a higher degree of quality training and information provided to officers and I think, because it is under review and because they are aware that there is direct scrutiny, there is a real keenness to make sure that they try to get it right from the start. On many of these issues we have been relatively impressed with the work that is being done in the implementation stages.

CHAIR: Have there been any changes made to the office's case management system in respect of detecting and monitoring of delay in individual cases?

Mr BARBOUR: Our own delays? There is currently within our case management system the capacity to receive reports on a regular basis at particular times which prompts officers if certain activities have not been done within appropriate timeframes. We are moving to produce, as I said in the opening, a completely new document management system which will also contribute to those sort of issues. In terms of our existing processes, do you want to talk a little bit about that?

MR ANDREWS: Our existing case management system logs procedures and actions that make up the procedures that we allocate to complaints. So when a complaint comes in we make an assessment of how we are going to handle that matter and we have a range of tools to use. The matter could go to a full formal investigation, it could go to a preliminary inquiry, it may be sent for conciliation or we may assess the matter as lacking merit or being trivial and decline it at the outset. Each of those procedures is made up of a number of standard actions: You write a letter to the public

authority; when you receive the response, you contact the complainant and so forth. We have developed actions for all those standard procedures and we have predicted a reasonable turnaround time that we expect those actions to take. All those things are flagged in our case management system and when those actions are completed at the due date, a report is produced which flags those actions and the report is used by our supervisors to check up on when they carry out a monthly file review of the people they are supervising.

The particular case management system that we have has a new version that is available that we are testing at the moment. We hope to put that into production in July. It has some additional features that will allow further tracking of delays. For instance, while we can produce reports about delayed matters at the moment, the new version will allow e-mails to be sent to supervisors once a due date is missed by a certain amount of time, and that is all manageable in terms of how often we want to do that sort of thing. I expect in the next six months we will get that new system running, do a proper evaluation about how beneficial that extra facility will be, and if it is, we will put it to work.

(The hearing continued in camera)

(The witnesses withdrew)

(The Committee adjourned at 12.10 p.m.)

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Appendix 1: Minutes

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

MINUTES

Meeting held 2.00pm, Thursday 16 May 2002
Jubilee Room, Parliament House

MEMBERS PRESENT

Legislative Assembly	Legislative Council
Mr Lynch MP	Hon P Breen MLC
Mrs Grusovin MP	Hon R Colless MLC
Mr Kerr MP	Hon J Hatzistergos MLC

Apologies: Mr Smith MP

Also in attendance: Ms H Minnican, Ms P Sheaves, Mr S Frappell, Ms H Parker and Ms J McVeigh.

DELIBERATIVE SESSION

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Members were also advised that draft Questions on Notice for the General Meeting with the NSW Ombudsman would be sent to them on Friday 17 May 2002 for comments by the following Monday.

The deliberative session concluded at 5.20pm.

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Chairman Clerk

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

MINUTES

Meeting held 10.00am, Wednesday 12 June 2002
National Party Room, Parliament House

MEMBERS PRESENT

Legislative Assembly	Legislative Council
Mr Lynch MP	Hon R Colless MLC
Mrs Grusovin MP	Hon J Hatzistergos MLC
Mr Kerr MP	

Apologies: Hon P Breen MLC, Mr Smith MP

Also in attendance: Ms H Minnican, Ms P Sheaves, Mr S Frappell, Ms H Parker and Ms J McVeigh.

TENTH GENERAL MEETING WITH THE NSW OMBUDSMAN

The Chairman opened the public hearing at 10.00am.

Mr Bruce Alexander Barbour, New South Wales Ombudsman, Mr Christopher Charles Wheeler, Deputy Ombudsman, and Mr Gregory Robert Andrews, Assistant Ombudsman, General Team, affirmed and acknowledged receipt of summons. Mr Stephen John Kinmond, Assistant Ombudsman, Police Team, and Ms Anne Patricia Barwick, Assistant Ombudsman, Children and Young People, took the oath and acknowledged receipt of summons. The Ombudsman made an opening statement. The Ombudsman's answers to questions on notice were tabled as part of the sworn evidence. The Chairman questioned the Ombudsman and his executive officers, followed by other Members of the Committee.

The meeting went in camera at 11.50am. The Ombudsman tabled a document in camera. Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew. The closed session of the hearing concluded at 12.10pm.

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Chairman Clerk

Appendix 2: Response by the NSW Ombudsman to Matters Taken on Notice at the Tenth General Meeting

Our Investigation Report issued on 24 January 2001 about the University of Sydney:

1. Consultation with the University (and others) prior to the issue of the final report.

As appropriate, various potential conclusions, especially those related to special consideration and complaint handling were initially canvassed with relevant witnesses during the formal hearings of the investigation.

Next, the parties (the University, the two individuals subject of investigation and the two complainants) and four other witnesses (including the University Solicitor, Assistant Solicitor and Manager, Industrial Relations) were sent extracts relevant to them from the investigation's Preliminary Conclusions and Summary of Evidence ("the preliminary report"). This was for the purpose of seeking, in the interest of procedural fairness, submissions from those addressed.

Submissions were received from all but one of the above. The Vice Chancellor provided two submissions, one on behalf of the University and the other in his personal capacity as a witness.

A discussion was also held with a University Executive Officer and the University's Director of Equal Employment Opportunity concerning the University's submission and possible investigation recommendations and their implementation.

2. The nature of comments and criticisms of the Preliminary Report by the University

The University both in the discussion referred to above and in its written submission was broadly accepting of the conclusions and recommendations proposed for the final report. The submission concentrated very largely on outlining measures already taken since the incidents investigated, or proposed, that were consistent with our proposed conclusions and recommendations. The submission also noted that it deliberately refrained from disputing individual statements and interpretations of evidence as this would be unproductive and it later noted that the University had nothing to hide and much to gain from the proposed report.

The University's most serious concern was that we might recommend a change in the relevant student's honours result. While we had indicated in forwarding our preliminary report to the University that the honours result was still at issue, we had not proposed to recommend a change to the honours result. This was because we were mindful of the very substantial practical difficulties such a course would involve and because we are always anxious to avoid proposing recommendations that might cause greater problems than they cure. In the final report we made no recommendation about the honours result.

3. The estimate of the University's expenditure on this case as reaching "a seven figure sum":

This estimate was based on:

(a) confidential information from Dr Morris about the costs of his three Supreme Court actions against the University – for instance we assumed the University's costs would have been at least as great given that it was also meeting the costs of others including former students joined as defendant parties with the University in these actions;

(b) our knowledge of the honours student's Anti-Discrimination Board case against the University (and others) and the consequent Supreme Court case; and

(c) our awareness of the extensive internal legal, administrative, investigative, consultancy and other costs to the University gained from our questioning of the parties and the perusal of the many thousands of documents that came into our possession during the course of our investigation of this case.

4. The University's response to our Investigation Report's recommendations

We accepted that the University's response to our recommendations set out in a letter of 8 June 2001 to the Minister for Education and Training (copied to us) was, generally speaking, satisfactory.