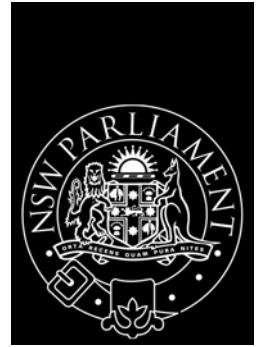


PARLIAMENT OF NEW SOUTH WALES



# Committee on the Office of the Ombudsman and the Police Integrity Commission

Report on the Sixteenth General Meeting  
with the NSW Ombudsman

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Together with Questions on Notice,  
Transcript of Proceedings and Minutes

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission**

Report on the Sixteenth General Meeting with the NSW Ombudsman / Committee on the Office of the Ombudsman and the Police Integrity Commission, Parliament NSW. [Sydney, NSW] : The Committee, 2010. 50 p.; 30cm

Chair: The Hon Kerry Hickey MP

April 2010

ISBN: 978-1-921686-07-8

1. Ombudsman—New South Wales.
2. Corruption investigation—New South Wales.
  - I. Title
  - II. Hickey, Kerry.
  - III. NSW Ombudsman.
  - IV. Series: New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission. Report ; no. 10/54

352.88 (DDC)

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## Membership and staff

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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 are set out in s.31B(1) 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

Functions of the Committee

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:

- 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.
- 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.
- 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.
- A referral or notification under this section is to be in writing.
- In this section, a reference to the Minister is;
  - in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
  - 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
  - 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*.

The Committee also oversees the Information Commissioner. The Committee's functions are set out in section 44 of the Information Commissioner Act. Under section 5 of that Act the Committee has the power to veto the appointment of the Commissioner.

## Chair's foreword

The General Meetings with the Ombudsman and his executive staff provide the Committee with the opportunity to overview the work undertaken by the Office during the previous reporting year and become aware of particular issues which the Ombudsman considers should be brought to the Committee's attention.

A number of matters raised by the Ombudsman in previous general meetings continue to be issues of concern. Foremost is the issue of budgetary constraints resulting from the imposition of an efficiency dividend and the obligation to meet pay rises. The Ombudsman has taken a number of measures to increase his Office's efficiency and effectiveness. The Committee believes that he should receive adequate funding to continue his work, which provides value across the public sector.

Two other issues have not been resolved since the last general meeting and remain of concern to the Committee: one is the Ombudsman's access to correctional centre official visitors; the other is a provision in the Ombudsman Act which allows agencies to claim legal professional privilege. These and other matters are discussed in the following report.

I would like to thank the Members of the Committee for their participation in the General Meeting and their contribution to the reporting process.



The Hon Kerry Hickey MP  
Committee Chair

## List of recommendations

RECOMMENDATION 1: That the Premier amend ss 21 and 21A of the *Ombudsman Act 1974* to ensure that public authorities can no longer claim legal professional privilege in regard to the requirements of these sections. ....5



## Chapter One - Commentary

- 1.1 On Monday 30 November 2009, the Committee conducted the Sixteenth General Meeting with the New South Wales Ombudsman and his executive officers.
- 1.2 As part of the preparation for the General Meeting, the Committee sent the Ombudsman a series of questions on notice about matters raised in the Annual Report for 2008-2009. The answers to these questions on notice can be found at Chapter Two of this report.
- 1.3 Evidence was taken at the public hearing in relation to the 2008-2009 Annual Report as well as current issues relevant to the Ombudsman's jurisdiction. The commentary that follows focuses on a number of issues, including budgetary constraints, legal professional privilege and Corrective Services official visitors.

### Budgetary constraints

- 1.4 In his annual report and in answers to questions on notice and evidence given to the Committee at the General Meeting, the Ombudsman expressed his concern about budgetary constraints placed on his office by the impact of a yearly 1% efficiency dividend and the need to make up over a third of the cost of three years of annual pay rises which were negotiated by the government. Almost 80% of the office's budget goes towards staffing costs.<sup>1</sup>
- 1.5 The Ombudsman has taken a number of measures to make up the shortfall and avoid reducing the number of frontline staff and to make the best use of his resources. These measures include:
  - *restructuring*. Following a major review, the office now consists of three branches, each headed by a Deputy Ombudsman, and a corporate branch answering to the Ombudsman. Two Assistant Ombudsman positions, as well as two legal officer positions, have been deleted, with resultant savings of approximately \$600,000, the equivalent of the salaries of eight investigation officers<sup>2</sup>.
  - *a strategic planning review* which resulted in a program looking at change in five key areas: realigning the office's work; engaging better with stakeholders and partners; building leadership capacity; leading the change; and improving business support.
- 1.6 The Ombudsman considers that on-going budgetary constraints are impacting on his office's work. While acknowledging that these financial pressures are being felt by agencies right across the public sector, the Ombudsman told the Committee he considers the blanket application of efficiency dividends in order to reduce government expenditure is:

...a short-sighted policy, as it fails to have regard to the positive contribution organisations such as ours can and do make to improving government efficiency. We work with agencies to improve their systems, in turn helping them to become more efficient and more effective. In this way, a relatively small amount of funding can make a very real difference. The arbitrary application and enforcement of efficiency dividends with no consideration of the differing ability of larger and smaller agencies to meet the

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<sup>1</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 2.

<sup>2</sup> Ombudsman's answer to question on notice No. 3, see Chapter Two.

Commentary

requirement and their respective functions and level of efficiency is counterproductive and poor administrative practice.<sup>3</sup>

1.7 He referred the Committee again<sup>4</sup> to a recommendation, contained in a report of the Joint Committee of Public Accounts and Audit<sup>5</sup>, that certain smaller agencies be exempted from the efficiency dividend. The report argued that, because smaller agencies are often established with clearly defined functions, it is more difficult for them to reprioritise or discard activities. In addition, smaller agencies might find it difficult to absorb the cost of any new functions they are given.

1.8 The Committee on the Office of the Ombudsman and the Police Integrity Commission considers that, in the case of the Ombudsman's office, any short term gain achieved by government from the efficiency dividend may be at the cost of the long-term benefit the State can derive from the office's work. Restricting the Ombudsman's effectiveness because of financial constraints may result in costly inefficiencies which the Ombudsman is uniquely placed to detect, costly not only in terms of public monies wasted but in human terms for those receiving public services. The Ombudsman told the Committee:

We can achieve significant and wide-ranging outcomes by identifying possible systemic failings and gaps in service provision and conducting targeted investigations. Such investigations often focus on multiple government and occasionally non-government agencies providing services to some of the most vulnerable members of our community. We often see policies and procedures that are well intended, but when we speak with those providing and receiving services, they are either not effective or are not being implemented correctly. Given the considerable resources provided to implement such policies, it is important to ensure they are delivering what they are supposed to.<sup>6</sup>

1.9 The Ombudsman pointed out in his answers to questions on notice that the investigations conducted by his office:

...often require a great deal of time and resources, as we need to speak with frontline staff and members of the community providing and accessing services across the State.<sup>7</sup>

1.10 The four key purposes of the Ombudsman's office are to:

- help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery
- deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems
- be a leading watchdog agency
- be an effective organisation.<sup>8</sup>

1.11 In effecting the first of these objectives in the past reporting year, amongst other things, the Ombudsman has completed two significant investigations: an audit of the Department of Ageing, Disability and Home Care's implementation of its *Aboriginal*

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<sup>3</sup> *ibid*, p. 3.

<sup>4</sup> Previously raised by the Ombudsman in the Fifteenth General Meeting, 21 May 2009, see transcript, p 2.

<sup>5</sup> Joint Committee of Public Accounts and Audit, Parliament of the Commonwealth of Australia, *Report 413: The efficiency dividend and small agencies: Size does matter*, December 2008

<sup>6</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 2.

<sup>7</sup> Answer to Question on Notice No 1, see Chapter Two of this report.

<sup>8</sup> NSW Ombudsman, *Annual Report 2008-2009*, p 1.

*Policy Framework and Aboriginal Consultation Strategy*<sup>9</sup>; and an investigation into the implementation of the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal community and public housing<sup>10</sup>. Both investigations identified systemic issues which need to be addressed. In the course of the General Meeting the Ombudsman commented that:

Something that I have noted in a lot of our work in relation to these broader systemic and strategic-type projects is that the agencies work cooperatively with us because they see considerable value in what we are trying to do.<sup>11</sup>

- 1.12 In relation to the second objective, in August this year the Ombudsman signalled to all members of the NSW Parliament<sup>12</sup> that the office's reduced resources would mean cutbacks to its complaint handling and resolution work, a traditional component of the Ombudsman's functions. It is the Committee's view that this may mean that significant matters may be overlooked if complaints are referred back to an agency for review. Because of his independence, the depth and breadth of his and his officers' complaint handling experience, and the extent of his jurisdiction, the Ombudsman's investigation of complaints can be more rigorous and he can examine all aspects of an agency's conduct. For example, in the past reporting year the office's investigations of complaints about three agencies broadened to include matters such as the adequacy of record-keeping, the appropriateness of claims of legal professional privilege, the use of external consultants, lack of transparency of administrative practices and lack of adequate regulation and procedures around the handling of asbestos exposure.<sup>13</sup> These complex matters, however, require more resources and take longer to finalise.
- 1.13 The Ombudsman may also have to curtail the assistance his office provides to agencies to improve their complaint-handling systems. The Committee considers that this will detract from the professionalism of public sector agencies. Robust complaint handling procedures can lead to the improvement of service provision and reduce the amount of time staff need to spend dealing with dissatisfied clients.
- 1.14 In fulfilling its role as a leading watchdog agency (the third objective), the office has participated in and reported on a national Ombudsman project producing and trialling an unreasonable complainant manual; provided advice to the Office of Police Integrity (Victoria) on auditing police work with Aboriginal communities; worked with the Pacific Ombudsman Alliance helping smaller Pacific nations to establish independent oversight systems; and hosted a Child Protection in the Workplace symposium. As well, the Ombudsman contributed to the Special Commission of Inquiry into Child Protection Services and, subsequent to the Inquiry's conclusion, will now audit the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.
- 1.15 In relation to the fourth objective, it is the Committee's opinion that the Ombudsman has conclusively demonstrated the efficiency and effectiveness of his office. The Committee will write to the Premier and the Treasurer requesting that consideration be given to exempting smaller agencies from the application of the efficiency

<sup>9</sup> Ombudsman officers visited 78 regional and metropolitan locations across NSW and met with more than 410 people.

<sup>10</sup> This project involved consultations with over 460 people.

<sup>11</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 12.

<sup>12</sup> NSW Ombudsman, correspondence to members of the NSW Parliament, 19 August 2009

<sup>13</sup> NSW Ombudsman, *Annual Report 2008-2009*, pp 87, 97 and 99.

dividend. We will draw their attention to the efficiencies the Ombudsman's work produces for other agencies and the limited scope he has to curtail activities because of the exigencies of legal requirements for the office to perform a range of functions.

## Legal professional privilege

- 1.16 The Committee was disappointed to hear the Ombudsman again raise the issue of legal professional privilege. Under section 21 of the NSW Ombudsman Act, a claim of legal professional privilege can prevent the Ombudsman from gaining access to documents held by a public sector agency. This matter was drawn to the Committee's attention at the Fourteenth General Meeting. The Ombudsman considered that such a claim had 'considerable potential to frustrate [his office's] thorough and proper investigation or inquiry into relevant matters'<sup>14</sup>. The Committee wrote to the Premier and the Attorney General in October 2008 pointing out that for Ombudsman in other states, territories and the Commonwealth, and the Western Australian Parliamentary Commissioner, public sector agencies cannot refuse access to documents on the basis of a claim of legal professional privilege. In NSW, the Police Integrity Commission and the Independent Commission Against Corruption are not prevented from accessing any class of document<sup>15</sup>. The Committee was concerned that some agencies use the provision in an attempt to prevent more detailed examination of particular matters and therefore asked that consideration be given to amending the Ombudsman Act to remove the legal professional privilege exemption.
- 1.17 Over a year later, following further correspondence from the Committee, the Attorney General wrote referring the Committee to the Department of Premier and Cabinet (DPC) which, he understood, now had the proposed amendment under consideration<sup>16</sup>. At the Sixteenth General Meeting, the Ombudsman told the Committee he had written to the Premier and DPC numerous times over the past two years requesting an amendment. It is unclear to both the Committee and the Ombudsman why the amendment has been delayed. The Ombudsman commented:
- I was provided with a draft bill for comment a year ago. I suggested a number of changes, some of which were made on the draft. The proposed amendment was not ideal, but it was an improvement, although far narrower than similar legislation in other States<sup>17</sup>.
- 1.18 Apparently the draft bill containing this amendment will now not go ahead so the matter remains unresolved. The Ombudsman pointed out that all that is required is the deletion of eight words in two sections of the legislation. The Ombudsman has indicated that he is considering making a brief special report to Parliament about the matter<sup>18</sup>.
- 1.19 The Committee believes the Ombudsman should be able to carry out his investigations without hindrance and at this stage can see no reason why the Ombudsman in NSW should be out of step with the Ombudsman in other jurisdictions. It therefore recommends that the Premier amend ss 21 and 21A of the

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<sup>14</sup> Fourteenth General Meeting with the NSW Ombudsman, 18 March 2008, transcript, p 4.

<sup>15</sup> See s 24 of the *Independent Commission Against Corruption Act 1988* and s 27 of the *Police Integrity Commission Act 1996*

<sup>16</sup> Correspondence from the Attorney General to the Committee dated 18 November 2009.

<sup>17</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 4.

<sup>18</sup> Under s 31 of the Ombudsman Act the Ombudsman may make a special report to Parliament.

*Ombudsman Act 1974* to ensure that public authorities can no longer claim legal professional privilege in regard to the requirements of these sections.

**RECOMMENDATION 1:** That the Premier amend ss 21 and 21A of the *Ombudsman Act 1974* to ensure that public authorities can no longer claim legal professional privilege in regard to the requirements of these sections.

## Responsibilities in relation to the Child Death Review Team

- 1.20 Following recommendations made in the report of the Special Commission of Inquiry into Child Protection Services in NSW, the Commission on Children and Young People (CCYP) Act was amended to make the Ombudsman the convenor of the Child Death Review Team (CDRT), a role previously performed by the Commissioner for Children and Young People at the CCYP.
- 1.21 In his opening address to the Committee the Ombudsman raised a number of issues relating to his office's support and coordination of the work of the Child Death Review Team<sup>19</sup>:
- *budget.* The Ombudsman considers that the current budget of \$220,000 is not sufficient to allow the CDRT to achieve its intended outcomes. He reported that this is also the view of Team members and the former CCYP Commissioner, Ms Gaye Phillips, and that the significant research capacity and other support previously provided by the CCYP had not been factored in.
  - *Minister's approval.* Under s 45N(1)(d) of the CCYP Act, the Minister for Youth's approval must be sought before the Child Death Review Team conducts research. The Ombudsman considers that this requirement compromises his independence of government.
  - *legislation.* The Ombudsman considers that the Child Death Review Team function should be moved from the CCYP Act and placed in the Community Services (Complaints, Reviews and Monitoring) Act, which already deals with his office's other reviewable death work. Amending the Acts in this way would obviate his office being oversights by two parliamentary committees, as currently there is a requirement under s 28(4) of the CCYP Act for the Committee on Children and Young People to monitor and review the exercise by the Child Death Review Team of its functions.
- 1.22 Mr Barbour wrote to the Director General of the Department of Premier and Cabinet in November and December 2009 to resolve the matters but informed the Committee on 27 January 2010 that he had yet to receive a response.

## Children and young persons: information exchange provisions

- 1.23 Legislative changes following the Wood inquiry into child protection services promote greater exchange of information between agencies where that information relates to the safety, welfare or wellbeing of a child or young person (Chapter 16A, *Children and Young Persons (Care and Protection) Act 1998* [Care Act]). In answer to a question on notice and in discussion during the General Meeting, the Ombudsman

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<sup>19</sup>Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 5.

informed the Committee of his concern that s 29(1)(f) of the Care Act, which protects the identity of a person making a risk of harm report, will prevent such reports being accessed as they have the potential to identify the reporter.

- 1.24 For example, he considered that the quality of information which Child Wellbeing Units<sup>20</sup> can acquire may be compromised because the Units 'will not have access to Community Services' child protection database (KiDS), predominantly due to the requirements of s 29<sup>21</sup>. Mr Barbour reported that Mr Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, had put forward a number of suggestions to resolve the problem; however these strategies would not be applicable to non-government agencies.
- 1.25 The Ombudsman said that his office would 'monitor how the legislative provisions for information exchange and coordination are supported operationally.'<sup>22</sup> The Committee supports the efforts of the Ombudsman to resolve this apparent legislative inconsistency and will write to the Minister for Community Services suggesting that the legislation be amended to clarify the situation.

### **Corrective Services official visitors**

- 1.26 Another unresolved issue originally drawn to the Committee's attention at the Fifteenth General Meeting is the Ombudsman's inability to directly contact official visitors to correctional centres. Official visitors make unannounced visits to correctional centres to monitor conditions and practices. They are independent of Corrective Services NSW (CSNSW); however, CSNSW administers and coordinates their work.
- 1.27 In answers to questions on notice for the Fifteenth General Meeting, the Ombudsman informed the Committee that whereas previously CSNSW had simply provided the Ombudsman's Office with the contact details for all official visitors, it was now the policy that Corrective Services General Managers were to facilitate the Ombudsman's contact with official visitors on an individual basis, because of 'privacy concerns'.
- 1.28 The Committee wrote to the Minister for Corrective Services drawing his attention to the Ombudsman's evidence that this policy impacted on his work in that he is no longer in a position to raise grievances with the official visitors that may be best dealt with by them, nor is he able to speak to them before Ombudsman officers' visits to prisons, which makes it difficult for the officers to gain an understanding of current issues in particular correctional centres or ascertain which inmates may benefit from an interview. The Committee considered that using the general managers as a conduit for contact with the official visitors compromised the independence of both the Ombudsman and the visitors and placed an administrative burden on correctional centres.
- 1.29 The Minister did not agree. He was concerned that 'ad hoc contact outside of their correctional centre visits would be an inappropriate imposition on [the visitors'] private time'<sup>23</sup>. He expected 'the time they spend at correctional centres to be used to make

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<sup>20</sup> The Government is establishing Child Wellbeing Units to help agencies identify at risk children and respond to the needs of children at the local level.

<sup>21</sup> Answer to Question on Notice No. 7, see Chapter Two of this report.

<sup>22</sup> *ibid.*

<sup>23</sup> The Hon John Roberts MLC, Minister for Corrective Services, correspondence to the Committee on the Office of the Ombudsman and the Police Integrity Commission, 4 December 2009.

their own examination of the centre and to conduct their own interviews with inmates and staff so that they are in a position to appraise me of any issues of concern’.

1.30 The Committee considers that a more collegiate approach would benefit both inmates and correctional centres. Frank and open exchange of information can be the catalyst for fresh perspectives on and solutions to problems. As well, the current arrangement can give rise to administrative inefficiency whereby the same complaints are dealt with by both official visitors and Ombudsman officers.

1.31 During the General Meeting, in response to a question from a Committee member, Mr Barbour told the Committee:

...over the past few years there have been troubling signs in relation to the level of openness and transparency around the operations of Corrective Services.<sup>24</sup>

He acknowledged that it was a challenging environment but was concerned about the effects of on-going overcrowding combined with tensions within the Corrective Services workforce arising from current restructuring.

1.32 The Committee is concerned about the lack of direct contact between the Ombudsman and the official visitors, and will be actively monitoring this situation.

## Taser use

1.33 The use of Tasers by the NSW Police Force was a question on notice for the Ombudsman for the Fifteenth General Meeting. Committee members followed up this issue with the Ombudsman at the Sixteenth General Meeting. The Ombudsman reported that he was satisfied that the police understood the concerns that his office had raised in its report on taser use<sup>25</sup>. He viewed the requirement for police regions to review each taser deployment as ‘a positive step in monitoring and safeguarding their use into the future’<sup>26</sup>, but warned that, with the rollout of tasers to general duties police, the review process may prove onerous over time and consequently the checks might be wound back.

1.34 He said that some of the fourteen complaints his office had received about taser use had been from police officers complaining of other officers ‘playing around’ and pointing the weapons at them and that this might indicate an underestimation of their lethal potentiality, which suggested there may well be a risk of the tasers being misused in the field.

1.35 Mr Andrews, Deputy Ombudsman (Police & Compliance Branch), told the Committee that he had raised with senior police press reports of police obscuring the weapon’s video camera when handling the taser with a two-handed grip and had been assured

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<sup>24</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 13.

<sup>25</sup> NSW Ombudsman, *The use of Taser weapons by New South Wales Police Force: A special report to Parliament under section 31 of the Ombudsman Act 1974*, November 2008

<sup>26</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Sixteenth General Meeting with the NSW Ombudsman, 30 November 2009, transcript, p 10.

Commentary

that this had happened in only 4-5% of cases. In these cases, feedback was provided to the officers and they would lose their accreditation if they could not overcome the problem.



## Chapter Two - Answers to questions on notice

### General

- 1. On page 2 of your annual report there is an assessment of the impact of budgetary restraints. Can you provide the Committee with some examples in support of the statement that “the complexity and extent of our workload continues to increase”?**

For a number of years, our office has looked to change the way in which we do our work. We have focussed on large scale investigations, looking at service delivery issues that have arisen through our complaint work. These provide us with an opportunity to assess the adequacy of policies, procedures and systems that impact on large sections of the community and often involve a number of different government agencies and service providers. These investigations often require a great deal of time and resources, as we need to speak with frontline staff and members of the community providing and accessing services across the State.

In 2008-09, we finalised a review of the implementation of the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing*. As noted in the annual report, this project involved consultations with over 460 people with experience working with existing or potential social housing tenants with mental health problems.

We also completed a review of the Department of Ageing Disability and Home Care's (DADHC) *Aboriginal Policy Framework and Aboriginal Consultation Strategy*. We visited 78 regional and metropolitan locations across the state and met with more than 410 people, including DADHC staff, local partners and service providers, consumers, carers and community groups in each of DADHC's six regions.

Our office continues to work with agencies to improve their complaint handling systems. This has meant many agencies are able to deal with many of the less serious complaints that are made without any involvement by my office. This also means the matters that are coming to us are often the more complex and difficult matters. In dealing with these, we often have to make use of our coercive powers, requiring agencies to produce information and occasionally conducting hearings using our Royal Commission powers. These hearings are necessary when there is no other effective method of collecting the information we need, but they can mean matters take longer to finalise.

- 2. Do you consider that the inclusion of energy management targets would enhance the environmental performance reporting in your annual report (AR p16 and pp 166-167)?**

As mentioned in our annual report, the office is currently reviewing our environmental policies following the recent release of the Government Sustainability Policy. It should be noted however that performance indicators for the government sustainability policy are still to be finalised.

Our revised policies will take into consideration the indicators set for whole of government, as well as indicators set by the owners of our building who are committed to reducing the building's environmental footprint.

Our annual report discusses our environmental achievements against certain targets including:

Answers to questions on notice

- exceeding the government's fleet performance score of 12/20 – we obtained a rating of 13.33/20
- achieving the government target of a 20% reduction in greenhouse house emissions based on our 2004-05 performance – reducing our electricity consumption in 2008-09 as a result of various energy savings initiatives
- purchasing the government target of 6% green power
- having a 3.5 rating under the National Australian Built Environment Rating System (NABERS) and working towards a 4.5 rating by 2011
- increasing our use of recycled material.

It should be noted that that we only use printers who have a certified environmental management plan (ISO 14001) and where possible we use Forest Stewardship Council certified stock.

**3. *Your Annual Report notes that your Office has had a significant restructure and that two Assistant Ombudsman positions have been deleted from your Office. What is the current status of the restructure and when do you anticipate it will be complete? What efficiencies do you expect the restructure will deliver?***

The new formal office structure took effect on 1 October 2009. The office is now made up of four separate branches, which in turn are divided into several divisions. These are the:

- Public Administration and Strategic Projects Branch (PASPB)
  - Public Administration Division
  - Strategic Projects Division
- Human Services Branch (HSB)
  - Community Services Division
  - Employment Related Child Protection Division
- Police and Compliance Branch (PCB)
  - Police Division
  - Secure Monitoring Unit
  - Business Improvement Unit
- Corporate Branch

In addition to deleting two Assistant Ombudsman positions, an Assistant Ombudsman position has been re-graded as a Deputy Ombudsman. The three Deputy Ombudsman will now head up the PASPB, HSB and PCB.

While the structure of the office has changed, the implementation of all changes necessary to restructure the work of the office will take some time.

As the Ombudsman stated before the Committee at its last general meeting, due to ongoing financial pressures caused by unfunded pay increases and the imposition of efficiency dividends, the office needs to reduce positions as future funding will not be able to support the current staff establishment.

The decision to delete two Assistant Ombudsman positions, as well as two legal officer positions, was made to counteract some of the financial pressure placed on the office, while maintaining as many front line investigation positions as possible. These deletions provide a saving of approximately \$600,000. This is the equivalent of eight investigation officers.

Even these deletions will not meet the pressures placed on the office's budget. Our Savings Implementation Plan, signed off by both the Department of Premier and Cabinet and Treasury, states that by the third year of the current salary award we will need to find savings of \$845,000 per year to meet the cost of unfunded pay increases alone.

In addition to the unfunded pay increases, we must absorb the 1% cut to our budget known as the 'efficiency dividend'.

It will be necessary to continue to review our staffing arrangements in order to meet the costs of unfunded pay increases and efficiency dividends. These reductions in staff will impact greatly on the amount of work the office is able to complete.

## Community engagement

### **4. You report a 25% increase in issues raised by official community visitors on the figure for the 2007-08 reporting year (AR p29). Can you identify any particular factors to which this substantial increase might be attributed?**

There are three factors which have contributed to an increase in issues identified by Visitors:

- Recruitment - in 2006/07 the Office undertook a review of the recruitment and induction processes for new Visitors. This has led to substantial improvements in the numbers of suitable candidates being selected, inducted and supported in their work. The retention rate of new Visitors has been substantially improved with limited loss of Visitors in the first 12 months. Improved retention has led to the capacity for increased allocation of services, and subsequently, more visits and more issues being identified.
- Training – We have introduced an improved training program for Visitors. Visitors receive scheme specific training, including information and advice on identifying and reporting issues. Secondly, Visitor training has shifted from being focused on individuals to group training. This has promoted better exchange of information and sharing of ideas between Visitors, including around the identification, reporting and resolution of issues.
- Reporting – The capacity for Visitor support by Ombudsman staff has been increased over the past few years. This has led to more consistent reporting of issues by Visitors to services and by the Office to Visitors.

## Working with Aboriginal people

### **5. Justice Wood recommended that you audit the implementation of the interagency plan to tackle child sexual assault in aboriginal communities (AR p38). What do you estimate to be the legislative changes which would need to be enacted in order to provide your office with the authority to perform the auditing role?**

The Independent Commission Against Corruption and Ombudsman Amendment Legislation Bill 2009 went before the Legislative Council on Thursday 12 November 2009.

The Bill amends the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to provide our office with the functions of reviewing the interagency plan, identifying areas where further action is required and making recommendations to improve the efficiency and effectiveness of the plan's implementation. The Bill requires our office to prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012, which the Minister must provide to the Presiding Officer of each house within a month.

Answers to questions on notice

The Bill states that heads of agencies involved in the implementation of the plan must provide our office with full and unrestricted access to records relevant to our audit role.

These legislative changes are sufficient to allow us to perform our audit role. A copy of the relevant sections of the Bill is attached at Annexure A

**6. Has DADHC responded to your recommendation that it establish an accountability network to monitor regional implementation of the Aboriginal Policy Framework and Aboriginal Consultation Strategy objectives (AR p41)?**

On 30 August 2009 we met with Ageing, Disability and Home Care's Aboriginal Service Development and Delivery Directorate to discuss the findings of our review of the implementation of the *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*, including our recommendation that an overarching accountability framework be established. We will shortly be meeting with the department's deputy Directors-General to provide a further opportunity for discussion. Additionally, at the invitation of the Director, we attended the Directorate's recent planning day to discuss the information contained in our report about accountability mechanisms.

## **Children and young people**

**7. You note that good coordination and information exchange will be critical to successful reform of the child protection system (AR p44). How would you assess current progress toward those outcomes?**

The new information exchange provisions contained in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* came into force on 30 October 2009. Chapter 16A allows for a greater exchange of information between government agencies and non-government organisations, where information relates to the safety, welfare or wellbeing of a child or young person.

Under the government's *Keep them Safe* action plan, a range of government and non-government agencies will have operational responsibilities for protecting children. It will be critical that timely and sufficiently detailed information is shared between the Child Wellbeing Units, between the Child Wellbeing Units and Community Services, and between the proposed Family Referral Services, the Wellbeing Units and Community Services.

While the details of arrangements are being finalised, we have some concerns that these agencies may not have adequate access to information about previous child protection reports to assist them to make informed assessment, referral and support decisions.

For example, we understand that the Child Wellbeing Units will not have access to Community Services' child protection database (KiDS), predominantly due to the requirements of s.29 of the Care Act, which operates to protect the identity of those making risk of harm reports. The precise level of information Wellbeing Units will be able to readily access is unclear. In discussions with Community Services about the issue, we stated our view that s.29 should be amended to reflect the new legislative reporting system.

We will monitor how the legislative provisions for information exchange and coordination are supported operationally.

**8. You report that the review of your employment-related child protection function has identified a need for further reform (AR p50). When do you envisage tabling**

***this report in Parliament and will you be making specific recommendations in relation to the areas you have identified as requiring improvement?***

The Special Report to Parliament *Ten years of operation: a review of the Ombudsman's employment-related child protection function* is close to finalisation and it is envisaged that it will be ready for tabling soon. The report will consider the operation of the 'Working With Children Check' and the prohibition of employed in special care settings (such as teachers, residential care workers, health professionals and foster carers) forming a sexual relationship with any young person under the age of 18 years unless there are mitigating circumstances.

In order to further strengthen the system for protecting children in NSW, we are considering recommending that:

- The 'Working with Children Employer Guidelines: the Working with Children Check' be revised to include clear advice regarding the notification of grooming behaviour that has not progressed to a sexual offence or misconduct of an explicitly sexual nature.
- The Working with Children Check should include the pre-employment screening of all volunteers who are engaged to work with children.
- Consideration be given to legislative amendment to extend the definition of a 'special care relationship' to prohibit people employed in special care settings (such as teachers, residential care workers, health professionals and foster carers) forming a sexual relationship with any young person under the age of 18 years unless there are mitigating circumstances.

## **People with disabilities**

***9. The report of your review of individual planning in DADHC large residential centres was published in June 2009 (AR p62). The report recommended that DADHC develop an action plan to address those issues which had been identified as requiring attention. Has DADHC responded to that recommendation?***

This recommendation included a timeframe for response of 30 August 2009. We received the Department's response on 29 October 2009, comprising separate Action Plans for Hunter Residences, Metro Residences, and Riverside. We are currently assessing the Action Plans to determine if further information will be required. We will actively monitor the Department's implementation of the plans and other relevant work.

## **Policing**

***10. Your report notes that the NSW Police Force (NSWPF) remedied over 70% of the deficiencies which you had identified in its complaint investigations (AR pp69-70). In the case of those deficiencies which were not remedied, does the NSWPF provide you with the reason why it has not acted on your advice and if so, what reasons are generally given?***

The NSW Police Force always responds to our correspondence identifying deficiencies in complaint investigations or the action taken as a consequence of the investigation. We address these letters to the responsible Commander but they are also copied to and monitored by the Professional Standards Command.

In the majority of cases, police respond positively. If we are not satisfied with the response, the Ombudsman has a number of options available including preparing a report under

section 155 of the Police Act 1990 which goes to the Minister and Commissioner, making the complaint and the police investigation of the complaint and any related issues the subject of our own investigation under section 156 of the Police Act, and making the matter the subject of a special report to Parliament.

Generally, where the Commissioner's delegate refuses to take action to remedy deficiencies, the reasons given are reasonable and persuasive and we decide to take no further action.

The Ombudsman recognises that in a number of these cases, the NSW Police Force is not in a practical position to remedy the deficiencies that occurred during a complaint investigation.

Some investigative deficiencies simply cannot be undone after the event. For example, a failure to collect and consider relevant information at the outset, poor decisions about whether a complaint ought be made the subject of a criminal investigation or an informal resolution process, poorly conducted interviews, or a failure to consider particular investigative strategies. In some cases the Ombudsman identifies that the NSW Police Force failed to make appropriate inquiries into a complaint, however, it may no longer be possible, or there may no longer be sufficient utility in requiring the NSW Police Force to conduct these further inquiries at a later point in time. However, it is still important to point out these deficiencies as they can provide a basis for learning and improved practices. The fact that the rate of defective investigations has been decreasing over the past decade is evidence that such learning and professional improvement is taking place. We believe the standard of oversight we provide to the NSW Police Force actively supports that improved professionalism in complaint investigations.

In some other cases the Ombudsman takes the view that the investigation findings and management action taken by the NSW Police Force were not appropriate in the circumstances of the case and the available evidence. Sometimes the NSW Police Force simply take a different view. In other cases, they refuse to alter the action on the basis that it would be unfair to the subject officer and present industrial problems to overturn the decision to take a lesser form of management action where that management action has already been implemented. It is for that reason that we have a policy that gives priority to the analysis of complaint investigation reports provided under section 150 of the Police Act that foreshadow reviewable management action so that as far as possible, any disagreements between the Ombudsman and Commissioner about the appropriateness of proposed management action can be worked through before such action is taken.

***11. With regard to the use of Taser weapons by police (AR p72), your special report to Parliament of November 2008, makes a number of recommendations to the NSWPF. Has the NSWPF provided you with responses to those recommendations?***

A formal response to the recommendations in the special report to Parliament was provided by the then acting Commissioner of Police Dave Owens APM on 21 January 2009. Generally police accepted the intent of many of the recommendations made by the report, but considered they had already been addressed or were better addressed through means other than those recommended. They could not report that any action was taken as a result of the actual recommendations made in the report.

## Juvenile justice

**12. Your report identifies young people in detention as a group which is unlikely to make written complaints and in recognition of this you take complaints by telephone or in person during visits to detention centres (AR p77). Do you consider this to be client group which is reasonable aware of the services your office provides?**

The population of young people in detention is constantly changing, with young people coming in and out of custody. Many young people in detention have low literacy levels. There are also high levels of intellectual disability and mental health issues among this group.

These issues present challenges to ensuring that young people in detention are aware of the services provided by this office. We recognise these challenges, and have aimed to develop focused measures to promote our services. For example:

- Our office is a free call number on young people's phone cards.
- We have produced posters, brochures and cards targeted to young people, which have been distributed to juvenile justice centres.
- We have negotiated with centres to include information about our office in the information provided to young people when they enter the centre.
- We have developed information sheets for staff of juvenile justice centres which explains what the Ombudsman's office does, and can do for young people in detention. We also speak regularly at training days for juvenile justice centre staff.
- We work closely with the Official Visitors to juvenile justice centres.

Staff from our office visit each centre twice a year. We use visits to meet with young people who have indicated they would like to discuss issues or complaints with us. In addition, we use the visits to speak informally to young people at the centre about our role and how they can contact us if they have issues to resolve.

**13. Following your meeting with the Minister and Director General for Juvenile Justice at the Emu Plains centre, how would you assess the progress made on those issues of concern which you raised in relation to the facility?**

In early October we were advised by the Minister for Juvenile Justice about the following changes planned for Emu Plains:

- Reduction in the maximum numbers of detainees from 50 to 40, freeing up six rooms, which will become three seminar rooms for education and other purposes. DET will provide education in these seminar rooms. A number of demountables will also be made available for this purpose.
- Fencing of the whole perimeter, using the proceeds from the sale of Keelong, to create a recreation area (although it is noted that DJJ still only has a short term lease over the site).
- Installation of heating in the ablution blocks for next winter.
- Introduction of chaplaincy services and a home work program.

These changes are welcome and will go some way to addressing the most pressing problems at Emu Plains. However, detainees will still be housed in double rooms that have no toilet facilities. We trust the government will make a decision shortly about the long term

Answers to questions on notice

future of Emu Plains and, if it is to continue to accommodate young people, will make funding available to upgrade it to the standard of other centres.

We will monitor progress of these changes through our regular visits program and ongoing liaison with the department.

## Corrections

**14. Your Annual Report notes at page 80 that you have received a significant increase in the number of inmates contacting you from Bathurst Correctional Centre. Apart from Bathurst being used as a transit point, could there be other reasons for the spike in complaints?**

Apart from the inconvenience caused to inmates by being in transit, another possible reason for an increase in complaints are the standard of physical amenities at Bathurst. Some of the centre's facilities reflect the centre's age, particularly the yards where some inmates may spend a significant part of their day. Management at Bathurst has sought funding to provide adequate shelter in several yards for several years. The cell blocks are also old and the inmate showers are communal, and require ongoing maintenance by the department.

**15. At page 81, your Annual Report lists a number of reasons for the increase in complaints at Wellington and Mid North Coast correctional centres. You note that you are awaiting the Commissioner's response to these concerns. Has the Commissioner responded to these issues?**

The Commissioner did respond to these concerns. He provided an outline of actions taken and proposed to address some of the concerns we raised about issues such as purposeful activities for inmates and other types of amenities. Issues such as remand inmates being located in centres remote from their home, the courts in which they will appear, and consequently their legal advisers, remains a problem.

Our main concern regarding both centres remains the inclusion of additional bunks into cells originally designed to house lesser numbers of inmates (2 bunks in 1 person cells, and 3 bunks in 2 person cells). This issue remains the subject of complaints from inmates at these centres, and we are continuing to raise the issue with both Corrective Services NSW and the Health Department.

**16. Your Annual Report also notes at page 81 that inmates have complained about retribution after reporting misconduct. Is there anything your Office can do about this?**

It is an offence for a person to take detrimental action against someone for making a complaint. However, retribution is difficult to prove in all cases, and is particularly difficult in a correctional environment where many other factors come into play. Whenever such concerns are raised with us we will make them known immediately to the appropriate senior management in Corrective Services NSW.

When handling the matters noted in the annual report, we spoke with the relevant General Manager about the concerns and they took the opportunity to generally address their staff on the issue. If a complainant can provide us with evidence of retribution we will investigate that complaint as well. Writing about these concerns in our annual report also puts the topic in the public arena, which in turn can have an educative role for public authorities.



**17. *The use of wall mounted restraints has been an ongoing issue between your Office and Corrective Services. The Annual Report notes at page 82 that following independent legal advice sought by your Office, the Commissioner agreed that wall mounted restraints are an instrument of restraint and has agreed to review all wall mounted rings and for those locations considered necessary, to ensure they are properly authorised and their use reported. Has this occurred?***

We have not received any further official advice from the Commissioner on this issue. However, we were provided with a copy of his instruction to staff about the use of such restraints, requiring them to provide him with information to enable him to make appropriate decisions of their need and ongoing use on a centre-by-centre basis.

## Departments and authorities

**18. *Has there been an improvement in the processing of Aboriginal land claims by the Department of Lands (page 86)?***

We made inquiries with both the Department of Lands and the Department of Premier and Cabinet (DPC) about strategies being considered at a whole of government level to resolve the significant delays in dealing with Aboriginal land claims. In response to our inquiries, DPC recommended that the Department of Lands:

- seek additional funding to increase its resources for checking the freehold status of Aboriginal land claims
- engage an appropriately qualified external consultant to review its claims processing with a view to making recommendations to reduce the backlog.

DPC also told us its Legal Branch would be meeting with the Department of Lands periodically to monitor progress.

While my office will continue to monitor the issues surrounding the processing of Aboriginal lands claims through our ongoing complaint handling work and work with Aboriginal communities, the primary mechanism for monitoring progress will be by DPC's meeting with the Department of Lands. At this stage we have no additional information about progress on clearing the backlog.

**19. *Have the recommendations you made following your investigation into WorkCover's handling of an asbestos exposure incident been acted on by the Minister and WorkCover (page 87)?***

Our final report was provided to the Minister on 1 July 2009. The formal response to the recommendations in the report is due by 4 January 2010.

## Freedom of Information

**20. *Has the Department of Premier and Cabinet developed a Code of Conduct to clarify the role and relations of a Minister's staff with agency staff (page 97)?***

There were two separate recommendations made here. One was a recommendation that the Premier issue a memorandum to all agencies making clear that ministerial offices are not to be involved in the FOI determination process when it relates to applications for agency documents. The Premier issued this memorandum in August.

Answers to questions on notice

The other recommendation was to develop a stand-alone Code of Conduct for Ministers' Staff. The DPC advised us on 21 October 2009 that this recommendation is still under consideration. They did not indicate any time frame for when the Code of Conduct may be finalised.

**21. Has Newcastle University developed an FOI policy and procedure manual (page 98)?**

We are continuing to follow up with the University about this issue. As at the time of preparing these answers, it was our understanding that the University had not developed a manual.

**22. Have you received a response from Department of Premier and Cabinet about amending the annual reporting requirements to require the disclosure of senior university executives pay?**

We received a response from DPC on 21 October 2009 advising us that our recommendation in relation to publication of certain remuneration information about senior executives of universities will be finalised before the end of this year. No further details were provided by the DPC.

**Annexure A**

Independent Commission Against Corruption and Ombudsman Legislation  
Amendment Bill 2009

Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2 Schedule 2

<b>Schedule 2</b>	<b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	1 2 3
[1] <b>Part 6A</b>		4
	Insert after Part 6:	5
	<b>Part 6A Audit of Interagency Plan relating to child sexual assault in Aboriginal communities</b>	6 7
<b>43B</b>	<b>The Interagency Plan</b>	8
	In this Part:	9
	<i>the Interagency Plan</i> means the <i>New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006–2011</i> , released by the Government of New South Wales in January 2007.	10 11 12 13
<b>43C</b>	<b>Audit of implementation of Interagency Plan</b>	14
(1)	The Ombudsman has the following audit functions in relation to the Interagency Plan:	15 16
(a)	to review the implementation of the Interagency Plan by public authorities of the State that have functions under the Plan,	17 18 19
(b)	to identify any areas in which further action is required by those public authorities to implement the Interagency Plan,	20 21
(c)	to make recommendations for the more efficient and effective implementation of the Interagency Plan by those public authorities.	22 23 24
(2)	The Ombudsman must prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012 on the Ombudsman's audit of the implementation of the Interagency Plan.	25 26 27 28
(3)	The Minister for Aboriginal Affairs must, within 1 month after receiving the report, furnish a copy of the report to the Presiding Officer of each House of Parliament.	29 30 31
(4)	The Ombudsman's audit functions cease after the provision of the report to the Minister for Aboriginal Affairs.	32 33

Independent Commission Against Corruption and Ombudsman Legislation  
Amendment Bill 2009Schedule 2 Amendment of Community Services (Complaints, Reviews and Monitoring)  
Act 1993 No 2

<b>43D</b>	<b>Provision of information</b>	1
(1)	It is the duty of the head of a public authority that has functions under the Interagency Plan to provide the Ombudsman with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Ombudsman reasonably requires access for the purpose of exercising the Ombudsman's audit functions in relation to the Interagency Plan.	2 3 4 5 6 7 8 9
(2)	Access to which the Ombudsman is entitled under this section includes the right to inspect and, on request, to be provided with copies of, any record referred to in subsection (1) and to inspect any non-documentary evidence associated with any such record.	10 11 12 13
(3)	A provision of any Act or law that restricts or denies access to records (other than a provision applied by section 43F) does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.	14 15 16 17
(4)	The Ombudsman may, if the Ombudsman thinks it appropriate to do so, provide information obtained by the Ombudsman under this section to a public authority that has functions under the Interagency Plan and that has a relevant interest.	18 19 20 21
(5)	The provision of information under this section:	22
(a)	does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	23 24 25
(b)	does not give rise to any liability for defamation or other civil liability.	26 27
(6)	In this section:	28
	<i>head</i> , in relation to a public authority, has the same meaning as it has in the <i>Ombudsman Act 1974</i> .	29 30
<b>43E</b>	<b>Application of Ombudsman Act 1974</b>	31
(1)	For the purpose of the exercise of functions under this Part, sections 17–24 (except section 21B), 31AC and 36 of the <i>Ombudsman Act 1974</i> apply to or in respect of the exercise of those functions in the same way that they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.	32 33 34 35 36 37 38

Independent Commission Against Corruption and Ombudsman Legislation  
Amendment Bill 2009

Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2 Schedule 2

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(2)	Section 31AA of the <i>Ombudsman Act 1974</i> applies to a report of the Ombudsman under this Part in the same way that it applies to a report under Part 4 of that Act.	1 2 3
(3)	For the purpose of the application of section 31AA (2) of the <i>Ombudsman Act 1974</i> under this section, a report of the Ombudsman under this Part is taken to include a recommendation by the Ombudsman that the report be made public forthwith.	4 5 6 7 8
<b>[2]</b>	<b>Schedule 1 Savings and transitional provisions</b>	9
	Insert at the end of clause 1 (1):	10
	<i>Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009</i>	11 12

## Chapter Three - Transcript of proceedings

**NOTE:** The Sixteenth General Meeting with the NSW Ombudsman was held at Parliament House, Macquarie Street, Sydney, on 30 November 2009 at 2pm.

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

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

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

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

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

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

**Mr WHEELER:** I appear as the Deputy Ombudsman.

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

**Mr ANDREWS:** I appear as Deputy Ombudsman.

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

**Mr BARBOUR:** Yes.

**CHAIR:** Do you want to make an opening statement?

**Mr BARBOUR:** Yes. I appreciate the opportunity to address the Committee briefly. As it has only been five months since our last meeting, I will focus on just four issues, largely providing the Committee with updates on matters we discussed when we last met. These are: our current workload, changes to our structure, ongoing financial pressures, and several continuing issues of concern that impact negatively on our work. Our finalised figures for 2008-09, on which we reported in our annual report, show we dealt with

approximately 33,000 matters last year. As you know, how we deal with these ranges from quick informal advice through to large-scale investigations. Since 1 July 2009, we have received more than 3,000 complaints and notifications, and almost 10,000 inquiries. However, the number of matters we deal with is an incomplete indicator of the level and nature of the work that we undertake, especially in the area of complaints and notifications.

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

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

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

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

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

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

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

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

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

Not all of the issues we are facing are quite so complicated. I would like to turn now to two current problems I believe can and should be solved quickly and easily. The first is not new to the Committee, as you have also sought action from government on our behalf. At our Fourteenth Meeting in 2008, I asked for the Committee's assistance in obtaining an amendment to our Act to prevent agencies from being able to claim legal professional privilege in response to an investigation by my office. As you know, the current wording of our Act allows a public authority to refuse to provide my office with information over which it claims such privilege. I thank the Committee for their efforts in writing to both the Premier and the Attorney General seeking an amendment. I also noted your comments in the report following our last meeting that you are yet to receive a response.



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

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

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

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

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

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

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

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

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

the implementing legislation went before Parliament it was amended to honour the original recommendation.

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

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

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

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

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

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

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

very comprehensive outline of the exact number of issues and how they are being resolved and dealt with.

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

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

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

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

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

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

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

**Mr BARBOUR:** No, I do not think so.

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

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

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

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

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

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

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

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

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

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

**Mr BARBOUR:** Yes, it is clearly not in the best interest of an open investigation process and my colleagues around the country are astonished that we do not have a

provision similar to the ones they have. They all agree that it would clearly prevent our office from working effectively in some cases where the privilege is claimed.

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

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

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

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

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

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

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

**Mr BARBOUR:** The EIS?

**Mr PETER DRAPER:** Yes.

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

become an issue of funding. There has been a business case put to Treasury and I understand that is where it is at the moment.

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

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

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

At this stage, to coincide with the rollout, the Commissioner has required every region to have a taser review panel and for every taser deployment to be reviewed. We see that as being a positive step. Up until this point in time the Deputy Commissioner of Police has reviewed every taser use personally but clearly, with the additional rollout, that will not be possible. So the professional standards manager in each region will review each taser use within 72 hours and all actual firings of tasers will be subject to review by the region review panel, which will include the regional commander, the professional standards manager and a weapons professional. We see this as being a positive step in monitoring and safeguarding their use into the future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**Mr BARBOUR:** Yes. We met with members of the Office of Police Integrity, Victoria in September. They requested that we talk to them about our work relating to auditing police activities, with particular regard to those commands and activities relating to Aboriginal work and our previous auditing relating to the Aboriginal strategic direction for police. We brief them on that and we have indicated that we are happy to assist them in any future discussions to develop methodology for any work that they might want to do and to inform them how best to set up any Aboriginal unit or any dedicated investigations that they might want to undertake. We seem to be the leader in Ombudsman's offices or police oversight offices in working with police with regard to Aboriginal communities and we are now called upon—as we were in this case with the OPI—to provide some advice to it.

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

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

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

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

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

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

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

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

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

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

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

**Mr BARBOUR:** I think it is one of the areas we have listed as being potentially substandard. Clearly that sort of footage allows anybody, both within Corrections and outside organisations such as ours, to be able to assess independently what has actually

happened. It is a very desirable facility to have and to have operating well. Clearly that is not the case in all centres. So that is something we have highlighted there.

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

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

**Ms SYLVIA HALE:** Have you had any complaints or had cause to look at the failure to use CCTV equipment when prisoners have been transported between centres? It is my understanding that the regulations provide that the escort officers are supposed to have CCTV equipment working so they can monitor what is happening in the vans in the same way that they are supposed to provide water. Yet it appears to be at least in several instances that this is not happening.

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

**Ms SYLVIA HALE:** Thank you.

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

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

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

**Mr BARBOUR:** No.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr BARBOUR:** No, we are not investigating. I sought an update on that this morning because I thought the Committee might have some questions or be interested in it. What I was able to determine was that we were notified about the issue in our usual daily update and status report on what was happening in correctional centres. The information that we were updated on suggested that it was a series of fights between particular inmates. It

certainly did not appear on the face of it to be a riot, as such. The number of people involved seemed to be significantly less than what has been indicated in the media. I have asked our corrections unit manager to follow up with various people for further information.

**The Hon. LYNDA VOLTZ:** No shots were fired?

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

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

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

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

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

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

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

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

**Mr PAUL PEARCE:** That is the problem.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr BARBOUR:** They are all in the process of happening now. I have to say that I think the response of the Minister has been excellent and one that perhaps is a little out of kilter with the rest of the Government. It is troubling to me that there is such an overcrowding problem in Juvenile Justice. I think it is important to acknowledge that the Minister is endeavouring with this non-purpose-built facility—one they have had to use—to house the number of young people they have to in the best way possible. The Department and the Minister have taken on board our concerns. They have taken on the issues we raised following our visits. I see these changes as being very constructive and positive. I welcomed them when the Minister announced them.

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

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

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

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

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

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

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

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

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

**Mr BARBOUR:** The short answer to that is no.

**Mr MALCOLM KERR:** What is the longer answer?



**Mr BARBOUR:** That that is disappointing.

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

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

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

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

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

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

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

**Mr BARBOUR:** Absolutely.

**(The witnesses withdrew)**

**(The Committee adjourned at 3.15 p.m.)**

## Appendix 1 – Minutes of meetings

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 22)**

10:00 am Monday 30 November 2009  
Jubilee Room, Parliament House

#### **Members Present**

Ms Hale MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

#### **Apologies**

Mr Draper MP

#### **Also Present**

Nina Barrett, Jonathan Elliott, Hilary Parker, Pru Sheaves

The meeting commenced at 10:05am.

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The committee adjourned at 11.26pm until 2.00pm.

#### **SIXTEENTH GENERAL MEETING WITH THE NSW OMBUDSMAN**

Mr Bruce Barbour, New South Wales Ombudsman; Mr Christopher Wheeler, Deputy Ombudsman; Mr Steven Kinmond, Deputy Ombudsman; and Mr Gregory Andrews, Deputy Ombudsman, Level 24, 580 George Street, Sydney, affirmed.

The Ombudsman tabled his answers to questions on notice and made an opening statement. The Chair questioned the Ombudsman and his executive officers followed by other members of the Committee.

Evidence concluded, the witnesses withdrew. The committee adjourned at 3:15pm.