



Parliament of New South Wales

1994

REPORT
OF THE
JOINT COMMITTEE ON THE OFFICE
OF THE OMBUDSMAN ENTITLED
“SECOND GENERAL MEETING WITH
THE NEW SOUTH WALES OMBUDSMAN
COLLATION OF EVIDENCE”
DATED NOVEMBER 1994

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PARLIAMENT OF NEW SOUTH WALES

**JOINT COMMITTEE ON THE
OFFICE OF THE OMBUDSMAN**

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

COLLATION OF EVIDENCE

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COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY

Mr A. R. Fraser, MP (Chairman)
Mr A. Humpherson, MP
Mr K.J. Moss, MP
Mr M.J. Richardson, MP
Mr P.C. Scully, MP
Mr A.H. Windsor, MP

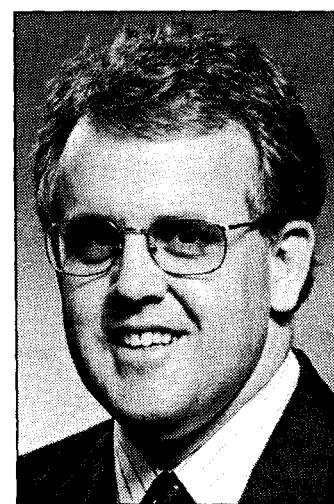
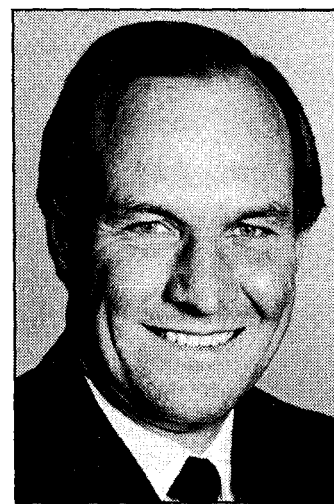
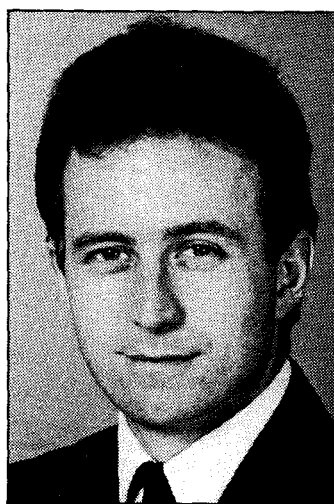
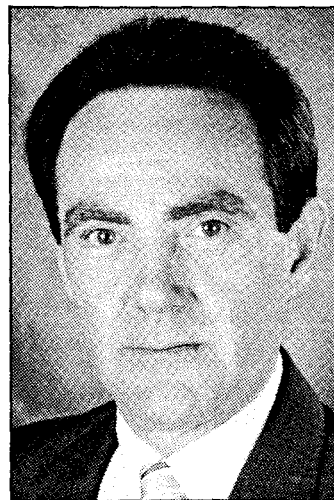
LEGISLATIVE COUNCIL

The Hon. Dr. M.A. Burgmann, MLC
The Hon. L. D. Coleman MLC
The Hon. S. B. Mutch MLC (Vice-Chairman)

SECRETARIAT

Ms H. Minnican	Project Officer
Ms V. Lovett	Assistant Committee Officer
Ms R. Miller	Clerk to the Committee

COMMITTEE PHOTOGRAPHS



Committee on the Office of the Ombudsman (Left to Right)
Andrew Fraser MP (Chairman), Andrew Humpherson MP, Kevin Moss MP, Michael Richardson MP, Carl Scully MP, Antony Windsor MP, The Hon Dr Meredith Burgmann MLC, The Hon Lloyd Coleman MLC, and The Hon Stephen Mutch MLC (Vice-Chairman).

FUNCTIONS OF THE COMMITTEE

The Committee on the Office of the Ombudsman is constituted under Part 4A of the Ombudsman Act 1974. The functions of the Committee, which are set out in section 31B (1), are 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.

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

Functions of the Committee

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 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. Section 31BA of the Ombudsman Act therefore provides:

- "(1) The Minister is to refer a proposal to appoint a person as Ombudsman or Director of Public Prosecutions to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
 - (a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act; and
 - (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the Director of Public Prosecutions Act 1986."

Under section 6A of the Ombudsman Act:

"6A(1) A person is not to be appointed as Ombudsman until:

- (a) a proposal that the person be appointed has been referred to the Joint Committee under section 31BA; and

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- (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 31BA, "appointment" includes re-appointment.

Any evidence taken by the Committee in exercising these powers must be taken in private and treated confidentially (s.31H(1)). No public disclosure is permitted about whether or not the Joint Committee or any of its members has vetoed, or intends to veto, the appointment of an applicant (s.31H(1B) and (1C)).

CHAIRMAN'S FOREWORD

The Joint Committee's second meeting in its program of regular General Meetings with the Ombudsman provided a valuable opportunity for discussions concerning a wide range of issues affecting the Office of the Ombudsman. As on previous occasions, the Ombudsman was accompanied by other statutory officers from the Office who also gave evidence to the Committee.

Once again, the Committee found this public forum for discussion of management, operational and jurisdictional issues affecting the Office, to be an extremely worthwhile exercise. Such a dialogue with the Ombudsman offers insights into the performance of his role and functions and the work of the Office for both the members of the Committee and the wider community. The General Meeting, therefore, serves an educational purpose by promoting greater understanding and awareness of the Ombudsman concept in theory and in practice.

I would like to thank the members of the Committee, the Ombudsman, the former Deputy Ombudsman and the Assistant Ombudsman (General Area) for their participation in the General Meeting and their contributions to the discussions.

I believe the second General Meeting has established the usefulness of such a program of regular public forums and the Committee intends, with the continued cooperation of the Ombudsman, to maintain such meetings as an ongoing feature of its own operations.



Andrew Fraser MP
Chairman

INTRODUCTION

The Joint Committee on the Office of the Ombudsman held its second General Meeting with the Ombudsman, Mr Landa, on 23 June, 1994. The then Deputy Ombudsman, Mr John Pinnock, and the Assistant Ombudsman, Mr Greg Andrews, also gave evidence to the Committee at the meeting.

As with the previous General Meeting "Questions on Notice" were forwarded to the Ombudsman by the Committee and the Ombudsman provided written answers which were distributed to the Committee prior to the General Meeting. The Ombudsman and his officers were asked supplementary questions without notice by members of the Committee during the meeting which was held in public.

Subjects discussed included: several of the Ombudsman's Reports to Parliament; Freedom of Information; Police Complaints; Appeal Mechanisms and the Morling Inquiry. The Committee also sought information from the Ombudsman about any changes which had occurred to the management and operations of the Office arising from the Committee's report on the Funds and Resources Inquiry conducted in 1993.

The reporting format for this General Meeting is identical with that adopted for the previous one. The Committee has provided a collation of the evidence taken on 23 June, 1994 in conjunction with the "Questions on Notice" and written answers submitted by the Ombudsman.

1. ISSUES ARISING FROM PREVIOUS INQUIRIES

1.1 FUNDS AND RESOURCES INQUIRY - Recommendation 10 of the Committee's report on its inquiry into the funds and resources available to the Ombudsman specified that the Ombudsman should regularly consult with the Committee upon management issues, including performance measures, as part of his six-monthly General Meetings with the Committee. The following questions aim at bringing the Committee up to date with changes made to the Office's operations since the publication of the Funds and Resources Inquiry Report.

1.1.1 FINANCIAL SYSTEM - ACCRUAL ACCOUNTING AND PROGRAM BUDGETING

QUESTION 1

Program Budgeting - The first recommendation of the Committee's report urged the Ombudsman to implement program budgeting which would involve the Office recording and reporting costs and revenues by activity, program and responsibility centre. Has the Office fully adopted program budgeting?

ANSWER 1

The Office has implemented program budgeting by allocating separate budgets to functional areas e.g. police investigation team, general area investigation team, administration and executive, so that it will be possible to record and report on income and expenditure separately for those areas.

QUESTIONS WITHOUT NOTICE

Mr RICHARDSON: I have an inquiry regarding question 1. This question is to Mr Pinnock: in last year's General Meeting you described your training budget as stretched to the limit. Is this still the case, particularly in relation to the abolition of the training guarantee levy? Does that have any effect on the situation?

Mr PINNOCK: I am trying to recall the likely provision in the forthcoming budget for training. I think we have been able to basically carry out all the training requirements that we wanted to do ourselves. The training guarantee levy has never been a problem for the Office of the Ombudsman in so far as compliance because of the way in which you are able to, in effect, allocate in-house training to comply with

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the 2 per cent salary-related budget, or the salary budget, in terms of the Act. It has never been a problem to us. The actual problem we encountered when I last gave evidence to the Committee was that it was more a matter of finding not only the available money but the available time to train investigators to the level that we considered necessary. I think that that has been largely overcome. I do not think that the pressures on the training budget will be significant over the coming 12 months. Just about everyone in the Office, subject to clarification from Mr Andrews, has completed an investigator's training course which was specifically designed for the Office. We have had a number of courses over the past nine or twelve months. That has lifted the general level of training considerably.

QUESTION 2

Program Performance Review - The Committee further recommended that the Office should no longer be exempt from five year program performance reviews and that these should be made available to the Committee (Rec. 19). Has the Ombudsman commenced such a review?

ANSWER 2

Program performance review will be developed by the new Deputy Ombudsman, in light of the various Inquiries, internal and external, into the Office over the past three years.

QUESTION 3

Regular External Audit - Is it intended that the Office's performance measures be included in the ordinary annual audit of the Ombudsman's Office?

ANSWER 3

Performance measures to be adopted by the Office will be included in the ordinary annual audit of the Office. In this regard, preliminary discussions have already been held with officers of the Auditor-General with a view to that Office making additional resources available for audit in the 1994/95 year.

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QUESTION 4

Formal Management Report - Formal management reporting on a monthly basis covering such topics as staffing, efficiency and effectiveness initiatives etc. also was recommended in the Committee report. The Committee believed that a formal management report based on these monthly reviews should be furnished to it on a six monthly basis. (Rec. 22) Is it possible to obtain a compilation report on the monthly reviews for discussion at the General Meeting?

ANSWER 4

A compilation report will be provided to the Committee prior to the General Meeting on 23 June as to staffing and efficiency measures. Measures of effectiveness are not conducive to monthly analysis. (see Appendix 1)

QUESTION 5

Costings (Rec. 23) - Has the Office undertaken any costings of public interest and direct investigations which could be made available to the Committee? For instance, the Committee noted that the Ombudsman's Annual Report for 1992-3 indicated that large resources were involved in investigating several complaints against public authorities (Local Government and Housing Program, Electoral Office, Brougham, Health Complaints Unit and Brougham).

ANSWER 5

The Office produced detailed costings for the investigation conducted on behalf of the Homefund Select Committee which was responsible for funding the Office's investigation. The Office is also producing detailed costings in respect of the police "Race Relations" inquiry which is currently being conducted.

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QUESTION 6

What efforts have been made to conduct random sample costings of other investigations and declines?

ANSWER 6

The complete restructuring of the investigative resources of the Office and some staff turnover associated with that restructure has meant a wholesale reallocation of complaint files and accordingly no random sample costings of either investigations or complaints declined has been carried out. It is intended that a further costing exercise will be commenced for the 1994/95 year, although a final decision has not yet been made whether that exercise will involve as large a number of files as in the previous costing exercise.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: My first question is in relation to question 6 with regard to the conduct of random or sample costings and your answer in that respect. It was not the Committee's intention that this task be an onerous one for you, but I am interested in how many files have been sampled and what time has been taken up with that.

Mr PINNOCK: We have not done any further sampling of files other than the original costing exercise that we carried out, on which we have given evidence to the Committee before. This matter was mentioned in the Peat Marwick Report. Our intention was to repeat that exercise, even though it is fairly time consuming and onerous. The original intention was to commence it in the current financial year. Basically a number of things that we wanted to do in the last six months had to take a back seat to the restructure that we put in place. The restructure turned out to be a great deal more time consuming and complicated than we anticipated, principally because, in addition to acting on the Peat Marwick recommendation and the Committee recommendation for the restructure, we also picked up on the second recommendation of Peat Marwick that we, in effect, transfer or move to permanent appointment of all staff. That was an extremely time consuming performance basically.

Everyone had to re-apply for jobs and it was going to be on the basis of permanent appointments so all the appeal provisions had to be followed. Indeed it was a great deal more cumbersome than anticipated. I would anticipate—I have to say

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"anticipate" because I will not be here after a few days time—that the costing exercise will be done in the next financial year. Whether it will be of the same size and description as the previous one will have to be considered. We looked at approximately 500 files last time. I think, apart from the actual administrative time involved in doing that and collating the figures, we will have to rethink the basis on which we actually do the timings. My own view is that there is something a bit rubbery about some of the figures that came out of it. I would like to see it tightened up.

CHAIRMAN: *Rubbery in what respect?*

Mr PINNOCK: *In respect of the times allocated by the investigation officers on the actual timing sheets. For instance, when you look at the overall figures you sense that there is something a little amiss. I cannot remember them now. I do remember that the figures quoted for declining police complaints after preliminary inquiries on a dollar-per-hour basis were very small. There was also a very big range of figures from different officers. I do not know whether that actually indicates rubberiness or just a different approach by individual officers to handling the files, but it ought to be looked at again before we embark on it. We can probably get away with a sample of 250 files. With anything lower than that you will have statistical problems, apart from the fact, as we say, there are two particular investigations that we have costed: one for the HomeFund Committee and another one which is ongoing at the moment and which is being paid for by the Police Service.*

Mr LANDA: *There is a ceiling. We are conducting a police-race relationship inquiry and I will be passing to individual Committee members early next week the discussion paper that is to be published, which is at the printers now. It is quite a considerable document and is going out for public participation and exchange of views. That inquiry was publicised as being an initiative that the Minister asked us to undertake, although it was one we were intending to do. The Minister indicated that he would fund the inquiry. It became a bit daunting when details were discussed as to what it might cost, and the ceiling was provided of \$100,000. We will probably exceed that amount if the hearings around the State take place. That is being time costed. In terms of the response that the Deputy Ombudsman has given I might add that the last exercise we did was the first exercise of costing that the Office had done. A lot was learnt from it. In any subsequent costings a fair degree of expertise that was not in existence in the first instance will be there so it will be an easier and more effective exercise.*

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CHAIRMAN: I had a question mark on the 500 files. You would feel, as Mr Pinnock stated, that 250 files as a sampling would be just as effective?

Mr LANDA: I am sure we can do it in a much more streamlined way.

1.1.2 OFFICE MANAGEMENT

QUESTION 7

Structure - It is understood that the restructure of the Office following the Management Review by KPMG Peat Marwick has been completed. What changes have been made as a result of the re-structure and what effect has this had upon the management of the Office?

ANSWER 7

The restructure of the Office's investigative and other resources was conducted broadly in accordance with the recommendations of KPMG Peat Marwick, although there were minor departures from some recommendations, relating principally to gradings of several positions. The investigative resources of the Office are now divided into a police investigation team and a general area investigation team, each the responsibility of an Assistant Ombudsman and each supervised by a Team Manager. Each team has a further supervisory structure consisting of a number of senior investigation officers, although not all SIO positions are supervisory. The restructure also created the positions of Special Projects Officer, Aboriginal Liaison Officer and Research Officer. (These positions are currently filled or to be filled on a temporary basis.) In addition, the Ombudsman decided, after consultation with all staff, to adopt a recommendation of the consultants to employ staff on a permanent basis, rather than on a temporary or contract basis, with the exception of Statutory Officers.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: On answer 7—it follows what Mr Pinnock said with regard to confirmation of people in their permanent positions—it is my understanding that Peat Marwick suggested that possibly contractual arrangements rather than permanent employee arrangements in certain areas may be better. Alternatively, the Police Minister said that he would fund certain areas. Would it be better on a contractual basis rather than a permanent employee basis? Would you find it cheaper? I believe that it was indicated to the previous Committee that the Ombudsman's Office in New Zealand found that contractual arrangements were cheaper and gave a better result.

Mr LANDA: I could not agree more. I have always subscribed to contractual arrangements being the best but the reality was that there were major problems with

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it. We were only able to give contractual arrangements that were so temporary as to be pretty daunting to the individual officers concerned. It created a fair amount of apprehension. All the time I have been in the position of Ombudsman it has been an issue that I have been aware of. It really came to a head, to the stage at which it was clear that what was desired in the Office by the members working there was permanency. At the time we were having the restructure there were other uncertainties and upheaval. I conceded to the pressure and to the request. I do not know that it was the best decision—I have to say that. I have always felt that an Ombudsman's Office is not a place of great permanency for people; it is a place where people come and contribute and move on and take their knowledge elsewhere. That has always been my view. I also believe that to be an investigator in specific areas can be very daunting over a long period. However, the industrial implications were such that I felt that, on balance, in the reorganisation the Office would benefit, perhaps not in the long term. But certainly I think it has to this time achieved more by doing it than by not.

Mr PINNOCK: *The Ombudsman's decision on this matter is in accord with the recommendation of the consultants, 7.3 in their final report, page 49. The final paragraph addresses the issue of staff contracts, morale and the attitude of staff. It says, "We recommend the Ombudsman should employ staff for a probationary period—for example, four to six months. After this time employees should either be taken on as permanent staff or terminated, based on their performance over the probationary period".*

Mr ANDREWS: *If I could add just for the information of the Committee, a number of other Ombudsman offices and other organisations have a provision that the Ombudsman may appoint his own staff on such terms as he sees fit. We are bound by the Public Sector Management Act, so we were only able to offer contracts in accordance with those provisions. So the Ombudsman, for instance, was not able to offer a temporary contract for a three-year period; he could only offer a temporary contract legally for a four-month period. That led to a lot of instability and high staff turnover and we were very concerned about the staff turnover being unproductive in the long term for the Office. That was one of the major reasons why the Office decided to offer permanent positions.*

Mr LANDA: *In other words, it was permanent as opposed to a four-month renewable contractual arrangement. After five years of dealing with that issue I felt that there was really little justification to continue such an inequitable form of employment.*

Issues Arising From Previous Inquiries

QUESTION 8

Procedures Manual - In accordance with Recommendation 7 of the Committee's report it would be appreciated if a copy of the Office's current procedures manual could be provided to the Committee for discussion during the General Meeting.

ANSWER 8

A copy of the Police Procedures Manual is attached. A draft of the General Area Manual is still being prepared. (The Ombudsman requested that the Police Procedures Manual be treated confidentially in accordance with section 31(H) of the Ombudsman Act 1974).

QUESTIONS ON NOTICE

CHAIRMAN: *On answer 8, with regard to the Police Procedures Manual, would you like the evidence to be given in camera?*

Mr LANDA: *I do not think that is necessary. If something arises that I think could be prejudicial I will point it out at the time.*

Mr RICHARDSON: *Should we read anything into the fact that you have a Police Procedures Manual prepared—I gather this is the final document and not a draft copy—and not a General Area Manual as Peat Marwick has recommended?*

Mr LANDA: *The General Area Manual is in the process of being finalised. It is not far from that. You will see from the volume entailed that it is a major project. Indeed, once it starts things can change from time to time so rapidly that before it is finished you are already revising, but that is almost complete.*

Mr ANDREWS: *It was given priority because there was a new Act so the old [Police] Manual was more out of date than the old General Manual.*

Mr RICHARDSON: *You talk about your investigation officers and assistant investigation officers working from home, permission being given for that to happen. Does that happen often, and do you regard that as an efficient way of running the Office?*

Issues Arising From Previous Inquiries

Mr LANDA: It does not happen often. It is not a regular thing but I have no problems with it if the officer is able to produce the product. I am quite happy with that.

Mr RICHARDSON: In what sort of circumstances might an officer work from home?

Mr PINNOCK: The most common one is where an officer is preparing a very detailed, lengthy, complicated report—the sort of thing that would be difficult if he is going to be constantly interrupted in the office environment. I know that perfectly: I have done it myself—until we had a younger child. If I need to be free of office constraints I will go to the library, for instance, where I can be by myself and write.

Mr RICHARDSON: Mr Landa says that it does not happen often. There must be quite a number of occasions when you produce fairly complicated documents. So perhaps it is a little more often than your previous answer suggested.

Mr LANDA: I have no way of quantifying it.

Mr PINNOCK: I am talking about 100-page type jobs. They are not that common.

Mr RICHARDSON: In your 1991 report on the effective functioning of the Office of the Ombudsman you said that the majority of overtime was not claimed for. Is this still the case?

Mr LANDA: No, it is not the case any more. Our budget is adequate to meet overtime. That was not an intended consequence even then; it is just what happened. There was not the money in the budget and people were working. It was not that they made a major issue of it either. At the time of the last Committee inquiry into funding it became pertinent to raise it because it existed and should have been shown for what it was.

QUESTION 9

Corporate Plan and Strategic Plan - Has the Corporate Plan for 1993-5 previously made available to the Committee by the Office altered and, if so, in what ways?

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ANSWER 9

The Office's Corporate Plan for 1993-5 is currently subject of a review which will be completed as a matter of priority by the new Deputy Ombudsman.

QUESTION 10

Performance Measures - Efficiency and Effectiveness - What performance measures, both qualitative and quantitative, has the Office adopted in light of KPMG's Management Review Report? (see Appendix 2 for details of the performance measures recommended by KPMG Peat Marwick).

ANSWER 10

The Ombudsman has adopted those quantitative performance measures set out at 4.6.2, 4.6.4 and 4.6.6 of the consultant's final report. Two of these performance measures were already included in the Office's Corporate Plan.

At the moment, the Office has not adopted performance measure set out at 4.6.5, due to the fact that there has been a renegotiation of the lease leading to a significant reduction in rent over the next six years. Accordingly, the performance measure is ineffective as a measure of efficiency because to meet it the Ombudsman would have to hire more staff.

The Ombudsman is considering whether to adopt the performance measure set out at 4.6.3.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: Question 10 asks about performance measures, efficiency and effectiveness. What performance measures, both qualitative and quantitative, has the Office adopted in the light of Peat Marwick's Management Review Report? The last part of your answer says that the Ombudsman is considering whether to adopt the performance measures set out in 4.6.3. Can you tell us what you are considering in that?

Mr PINNOCK: The problem we have with 4.6.3 and also—although I do not think we mentioned it—4.6.5 is that we do not know what they measure. That is

Issues Arising From Previous Inquiries

particularly the case with 4.6.5, office area per employee. Just as importantly, if you like, because it is related to the overall budget, is when you get down to the cost of office area per employee. One of the things that changes if you have got the same size office physically but in accordance with recommendations of the consultants you reduce your staff numbers is that the office area per employee goes up. The answer might be that if you reduce it significantly enough you could save on your area, try to sublet it and try to get a new tenant. That is more easily said than done. The simple problem is that a measure of performance variations which arise from time to time in your staffing will impact on office area per employee. Therefore, it will not measure a thing.

More importantly, the same relates to the cost of office area per employee. The Ombudsman succeeded—even while the Committee was considering the matter and at the same time that it made its final recommendation—in renegotiating the office lease. The renegotiation in terms of dollars per square metre is really substantial. As soon as you start looking at 4.6.3, level of non-employee and rent-related expenditure, and you have renegotiated your lease, it means nothing. Even if you could say that it was unvarying over time, from one year to another you can measure true variations. I do not know what it tells you about performance. With respect to performance, I am much more concerned with complaint outcomes. I am not saying that you throw to the wind questions such as how much your rent is costing. Over the last 12 months a lot of tenants, particularly in the CBD and on the fringe of the CBD, have been renegotiating their leases. It is happening throughout the Sydney metropolitan areas as well. That particular performance measure really does not mean a thing.

CHAIRMAN: *It is not relevant.*

Mr PINNOCK: *No, not in terms of assessing the Ombudsman's performance.*

QUESTION 11

The Committee's Report recommended that the Office arrive at benchmarks for the performance measures suggested by KPMG Peat Marwick in its Management Review Report (Rec. 11). Have benchmarks been formulated and reviewed by an external auditor (Rec. 20)?

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ANSWER 11

In its final report, KPMG Peat Marwick eschewed its earlier use of the term benchmark, preferring to talk about performance indicators because of the difficulty the consultants had in establishing an "industry" best practice. Nevertheless, there are performance targets in the Office's Corporate Plan.

These will be reviewed by the Auditor General in 1994/95.

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QUESTION 12

Was the Performance Management System developed by the Principal Investigation Officer and endorsed by the Ombudsman implemented in October 1993 as planned (Annual Report 1992-3 p.166)?

ANSWER 12

Implementation was delayed pending finalisation of restructure, redefinition of position descriptions and accompanying supervisory structures. The system is now being progressively implemented.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: In light of your answer to question 12, what is involved in the performance management system?

Mr PINNOCK: I have a copy of a memorandum issued by the Ombudsman, which I can give to you. It was issued to all staff in early April of this year. It gives a complete description of the way in which performance management will take place in relation to the assessment of officers of the Ombudsman. (see Appendix 3)

QUESTION 13

Decline Policy - Have any of the criteria or determination categories listed in the Decline Policy been changed since the Funds and Resources Inquiry?

ANSWER 13

None of the criteria or determination categories listed in the Complaints Assessment Policy have been changed since the Funding and Resources Inquiry conducted by the Committee. I note that the Committee has advised the Office of its intention to examine the Office's Complaint Assessment Policy by way of an Inquiry.

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QUESTIONS WITHOUT NOTICE

CHAIRMAN: Question 13 relates to decline policy. As you are no doubt aware, the Committee has looked at that in the past and will be looking at it in the future. I am interested as to whether you have any suggestions on that. You could bring that forward today or at a future stage in a submission.

Mr PINNOCK: The policy is unchanged, but it is subject to review. We are particularly looking at the way in which freedom of information complaints are assessed and dealt with. It may also have some spin-off, not so much on the actual assessment policy in the non-police area but on the way in which complaints are dealt with once they are assessed. It is an endeavour to bring down the turnaround time over the full spectrum of complaints, from complaints being declined at the outset through to complaints being investigated.

Mr LANDA: It is a major revision of policy and procedure in relation to FOI. I will happily provide the Committee with the directions that we will be issuing to the public sector, probably within the next two weeks. I am hoping that it will change the whole outlook on FOI with respect to turnaround times. Dealing with such applications will be streamlined and simplified. It may not work that way, but it will work better than does currently.

Dr BURGMANN: You note that we are intending to conduct an inquiry into decline policy. Do you think that is a good idea? Would it be useful to you?

Mr LANDA: It will still come back to what you can do with the resources you have got. No matter what the recommendations are, if a recommendation is made to vary one aspect of the decline policy, it will have a contrary affect on another area of the office. There is just so much you can do with the resources. We may have reached that level. That is not to say that our approach might not be as equitable as the Committee might look at. The Committee may say, "It would be more beneficial in our view to deal with this, and we would like you to have a think about it". There may be a reason to review it, but we do not see one at the moment. We cannot see any value in changing our approach.

Dr BURGMANN: If we undertook an inquiry which found that some aspect of your decline policy was not what we felt it should be, if we decided that the six months period was not correct or something like that, and said, "It will have this

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effect on your work, therefore you need two more staff", or something like that, would you see that as a problem?

Mr LANDA: No. In fact, that was the thrust of the submissions we were making in respect of the last inquiry.

Mr RICHARDSON: Are you still turning away complaints on the basis of funding rather than validity?

Mr LANDA: Funding is still an issue. Nothing has changed in the decline policy.

Mr RICHARDSON: So there are some issues which you believe are worthy of investigation but you are still having to reject them?

Mr LANDA: Yes. I believe that the evidence we gave before the last hearing was that we were rejecting cases on a financial basis that, in other circumstances, we would proceed to investigate to a preliminary or further study.

Mr ANDREWS: That is particularly true of complaints that may require site inspections in country areas or something like that. There is an obvious cost component up front. The Committee should be aware that from the performance statistics we provided you with earlier in the week there has been a decrease across the board in complaints declined at the outset. We are very pleased about that. The decrease in complaints declined at the outset was 4.6 per cent in the police area, 8.86 per cent in general departmental and statutory authority complaints, 16 per cent in local government complaints, and approximately 8 per cent in prison complaints. There has been an equivalent increase in the percentage of preliminary inquiries we have been undertaking. We put that down to some of the efficiencies that have been gained through the restructure.

Mr RICHARDSON: I have noted that since Mr Landa has been Ombudsman the number of police complaints has increased significantly. The overall number of complaints has increased, but the major increase has been in police complaints. I think the complaints have increased from slightly under 50 per cent to around 62 per cent. Are you tending to concentrate on police complaints to the exclusion of local government complaints, for example? I know that some of the complaints I refer to you are about police, but most are about local government. I do not always hear

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what the outcome of the investigations are. Is a concentration on the police detrimental to some of the other areas you are supposed to be oversighting?

Mr LANDA: The resources we use relate to the percentage of complaints that we receive in terms of police as opposed to non-police areas. The police division of the office stands on its own and receives about 62 per cent of the resources. The balance of the resources are used across the board in all the general areas. We do not divide resources between local government, prisons, health or education in a similar way. Local government, however, specifically receives a fair amount of attention from the Office. Mainly we look at major across-the-board problems. For instance, we have been spending a considerable amount of resources on an issue for some two or three years now, not just one case but a variety of cases, which is pursuing a line that the parliamentary Public Accounts Committee drew attention to some three or four years ago—the Smiles Committee report.¹ The PAC highlighted the fact that local government was abrogating its function in dealing with applications and allowing matters to proceed to litigation and allowing the Environmental Court to carry out the function it had failed to do. We have focused considerable resources in that area. I believe that we will be producing major reports. In fact, we have reports at the draft stage now, very close to finalisation, which will have a significant impact. We have spent a lot of money and invested a lot of resources in that area. The impact, coupled with the changes to the Local Government Act, will be significant.

CHAIRMAN: Mr Andrews referred earlier to cases being declined on the basis of geographics, particularly in country areas. Do you know how many country cases are declined, compared with metropolitan cases?

Mr ANDREWS: No, we are not able to do that at the moment. Our information technology is not able to differentiate on geographical postcodes, for instance. We have found out from the complainant survey we did last year that 40 per cent of our complaints come from country areas.

Mr RICHARDSON: It would be worth while doing. Both you and Peat Marwick identified country people as the people who have least access to the Ombudsman's Office.

¹ Fifty-seventh Report of the Public Accounts Committee, Report on Legal Services Provided to Local Government, May 1991.

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Mr LANDA: That was one of the major concerns. I was not proud of the fact that I called myself the urban Ombudsman for some time. I do not use that expression to the same degree any more because we are out and about in the countryside. The result of that survey was a bit of a surprise to us.

CHAIRMAN: Is a lack of resources the major problem with respect to country areas?

Mr LANDA: Yes.

CHAIRMAN: That is unfortunate.

Mr LANDA: I think we are addressing that inequity to a large extent. Our problem is not as great today as it has been in the past. We have resolved some of those issues. We are not in the same precarious financial position as we were 12 or 18 months ago.

Mr PINNOCK: I might just add something to that and perhaps remind those members of the Committee who would have been present of something we said when we gave evidence some time ago in relation to the resources inquiry. I might just pick up also on Mr Richardson's concerns about complaints concerning local government authorities. I have not seen the current statistics, but certainly at the time we gave evidence to the Committee one of the commonest areas of complaint about local government, whether in metropolitan or country areas, related to drainage. In fact, we even have a couple of officers in our place who are drainage experts. We laugh about this, of course, but these are matters that go straight to the heart of people's comfort. You cannot really assess a drainage complaint unless you see it. That means travelling to country areas. It is easy to do around the city or out in the western suburbs where you have problems with flood plains and all that sort of thing, but as soon as you start looking at a lot of the complaints about drainage that come from country areas there are considerable cost prohibitions.

CHAIRMAN: Would it be fair to say that similar complaints from country areas would be handled completely differently?

Mr PINNOCK: There is a real possibility in that area, yes. If we have only so much travel expenditure left and we have to devote it to something else or somewhere else, the potential is certainly there for people in the city rather than those

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in the country to get better service. That is not saying any more, of course, than the Ombudsman has said in the past.

CHAIRMAN: *Value judgments are based on economics—costs to the Ombudsman's Office?*

Mr PINNOCK: *Yes.*

Mr RICHARDSON: *I suppose that anonymous complaints go back to the Police Manual and to paragraph 8.10.1 which provides:*

Section 141(3) provides that the Ombudsman must not determine that an anonymous complaint should be investigated unless:

- The complaint contains sufficient evidence to enable an investigation to be carried out; and*
- The alleged conduct would:*
 - (a) if proven, provide reasonable grounds to believe a criminal offence had been committed;*
 - or*
 - (b) if a departmental charge were proved, warrant the imposition of a substantial punishment.*

The vast majority of anonymous complaints you receive are about the police. I imagine that, in any complaint about the police, one or other of those qualifications might prove to be valid. Does that mean that you are actually intending to look at anonymous police complaints a little more often than you would anonymous complaints in other areas?

Mr PINNOCK: *There is no provision equivalent to that in the Ombudsman Act. The provision in the Police Service Act replicates the old section 18(1A) of the Police Regulation (Allegations of Misconduct) Act. That was actually introduced as an amending provision. I am just trying to remember the year it was introduced. It might have been in 1983 when the police discipline package was introduced. It was a specific provision designed to encourage police officers to do in their mates. That is in the then Minister's second reading speech. It recognises the disincentive that police officers have from making complaints against their colleagues—a topic of some considerable discussion and debate right now. But it was as long ago as 1983—I think that was the year it was introduced—that it was recognised as an issue. Because they were anonymous the question was, "Will you investigate every anonymous complaint?" So this threshold provision was introduced.*

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In relation to the Ombudsman Act there is no specific provision governing anonymous complaints. The only provision under the Ombudsman Act is that a complaint must be in writing. There are certainly other provisions in the Act which talk about a complainant and the fact that the Ombudsman, for instance, has a discretion to keep the complainant apprised of the development and currency of an investigation. While there is nothing in the Ombudsman Act to actually prohibit the taking of anonymous complaints, it is something that rarely happens. I can actually now only recollect, over the ten years I have been in the Office, that we have looked at three anonymous complaints under the Ombudsman Act. In one of those we actually treated the complainant, if you like, as an informant more than a complainant. We did the investigation as an "own motion" investigation under the Ombudsman Act. I can only remember three in ten years. Mr Andrews might remember more. The figure for anonymous complaints under the Police Service Act is about sixty or seventy each year. It is still a small number.

Mr RICHARDSON: I have fifty-two in 1991-92.

Mr PINNOCK: That would be about right.

Mr RICHARDSON: Only four of which were actually substantiated. I just wonder what weight you place on anonymous complaints as opposed to those which have a complainant attached to them?

Mr LANDA: I am asked that question quite frequently by police. The reality is that, of course, we treat such anonymous complaints with great caution. The first inquiry I ever did was a substantial issue about the throttling of a person who had been arrested, who was probably conducting himself in an obnoxious way. But he was throttled in a serious way. He did not complain himself—the complaint obviously came from one of the many police officers who were present at the time who took offence. Two anonymous complaints came in and they would have been made by the same person. There were two separate complaints. We did that inquiry. We held hearings. Interestingly enough, the person who was throttled identified a policeman who was very clearly innocent—he was not the person who did the throttling. The throttling definitely took place; the medical evidence was there. No one came forward in sworn testimony—we took the testimony of every policeman and there were two shifts at the time—and told the truth. Ultimately we released that policeman from being the subject of complaint and we cautioned the person whom we suspected was the object of the complaint. But we could not get, under oath, the person who made the complaint anonymously.

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Mr RICHARDSON: Is that not a danger with anonymous complaints? It is easier for them to lie?

Mr LANDA: That is probably true. We made no finding against any individual officer, although we made a finding that the throttling took place. But we were unable to determine it, although we had strong feelings. We have to weigh very carefully anonymous complaints.

Mr RICHARDSON: Are anonymous complaints more time consuming for you to investigate or more difficult for you to investigate because you do not actually interview the complainant?

Mr LANDA: I do not think you could assess it that way. It would depend on the nature of the complaint. I do not think that, because it is anonymous, it is any more difficult than any other issue or more time consuming.

Mr RICHARDSON: Would a revision of your policy in that area free up more resources for you?

Mr LANDA: I do not think it would make a significant difference. We are very cautious when dealing with anonymous complaints.

Mr RICHARDSON: Somebody might write to you and it might become widely known throughout the police force. I know that you retype a complaint when it comes in so that the handwriting cannot be identified. The original is actually locked in your filing cabinet and is not released. It would then be retyped and you would go about your investigation. That might actually improve your success rate with the investigation. It might reduce the number of malicious or frivolous complaints being made and you would still serve the same purpose of protecting the complainant.

Mr PINNOCK: If you released the original complaint, the original paper to the police?

Mr RICHARDSON: I suppose it depends how it is worded, obviously, but if you do not release the name of the person?

Mr PINNOCK: The reason that we have a retyping of, say, a handwritten anonymous complaint is that in the past our experience has been that the main efforts of the police investigator—I say this as a general thing as there are obviously

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exceptions to it—have been not to investigate the complaint but to investigate who the complainant is, even to the extent of doing ninhydrin prints on the paper to see whether latent prints can be lifted and be matched against serving police officers, which has actually happened. In one case it did happen. In others they certainly tried to do that but were unsuccessful. There is an understanding with the Police Service—and this is to address the principal concern that police officers have against anonymous complaints—that they will be made by officers who are in competition with the officer who is the subject of complaint for promotion.

Long ago when the current Commissioner was the Assistant Commissioner of Internal Affairs I negotiated an agreement or a rule of thumb that, if the police officer the subject of an anonymous complaint was a candidate for promotion, we would be told of that by the Commissioner immediately the complaint was sent to the Commissioner. That factor itself would be a matter that we would have to look at in considering the intent of the complainant and whether it was possibly a vexatious complaint. But it is only one of the things that you can weigh. You cannot necessarily say that because a police officer is the subject of or is a candidate for promotion that that officer will be subjected to an anonymous complaint that is vexatious. Indeed, I well remember one anonymous complaint which related to an allegation of drinking by an officer who was a candidate for promotion—drinking to the extent of being intoxicated while driving a motor vehicle, repeatedly. You ignore that sort of complaint at your peril. It could easily be vexatious, but to ignore it would be extremely dangerous.

CHAIRMAN: I think the thrust of this has more to do with anonymity.

Mr PINNOCK: You have a threshold in the Act itself, which means that only serious complaints are to be investigated. If you have something that falls short of that threshold which you might think is worth looking at, you cannot. It is a statutory bar. The other thing, frankly, is this: if the investigation does not produce the goods—and I mean really produce the goods and produce hard and fast evidence—the complaint is going to be found to be not sustained. You have no issue of credibility to weigh up. You cannot weigh in the balance, as it were, the allegation per se because you have no one to talk to and you have no one to take evidence from on oath if you have to assess a credibility issue as against competing statements. So immediately you take that out. You cannot attach any weight, as such, to the complaint. The threshold question is there as to whether you make a decision to investigate that. The determination of the investigation is then made on the basis of the evidence that is or is not found in the investigation.

1.1.3 INFORMATION TECHNOLOGY SYSTEM

The Management Review Report written by KPMG Peat Marwick Management Consultants as part of the Committee's Funds and Resources Inquiry recommended that the Office should develop Information Technology strategic and tactical plans prior to further development of the Office's Information Technology System. The Committee subsequently recommended that the Office "pursue a program of integrated information technology reform on the basis of expert advice from the consultants already engaged by the Office" paying close attention to the deficiencies and inefficiencies highlighted by KPMG Peat Marwick in its report. (Recommendation 13)

QUESTION 14

The last part of this recommendation stated that the Ombudsman should report on this program to the Committee as part of proceedings during the next General Meeting. Has the Office produced the strategic and technical plans recommended in KPMG's report and, if so, what were the main objectives and recommendations contained in these plans?

ANSWER 14

The Office has completed both a strategic and tactical plan in relation to an Information Technology Strategy and these plans were submitted to the Office of Public Management for assessment in February 1994. It is understood that OPM has approved the plans and has forwarded them to Treasury for consideration for Capital Works Funding in the 1994/95 year.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: In response to your question 14 concerning the Information Technology Strategy, which you have indicated you have submitted to the Office of Public Management for assessment, have you had an answer either from the OPM or an indication from Treasury?

Mr LANDA: No.

CHAIRMAN: Could you indicate to the Committee what was requested in that submission?

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Mr LANDA: We have not heard. Our expectations were raised and we were excited at the encouragement we were given by the OPM to the submission. It found our submission, which was prepared by a consultant, flawed. It requested that we resubmit through another consultant whom it provided, paid for and funded, and the submission was redesigned and put forward to Treasury. We are still awaiting a response. We are still optimistic. It is probably appropriate to tell the Committee—and I will be addressing this in papers in the very near future, which I will be passing on to the Committee—that there has been a reasonably significant interaction between the Office of the Ombudsman and OPM which has arisen from largely within the CHIPS project.

Currently we have on secondment an officer from the Ombudsman's Office who is now with OPM and involved in mediation training and alternative dispute resolution in the public sector. I chair a committee that deals with ways and means of improving customer service in the public sector. That committee comprises representatives of OPM, Director-General of the Attorney General's Department and Director-General of the Department of Consumer Affairs. I have the distinct impression that we have reached the stage where the Office of Public Management realises that the Office of the Ombudsman is the recipient of very valuable data, and data that we believe now ought to be collated and distributed for the benefit of the public sector to resolve its own problems. I think that relationship has probably led to an approach by OPM to help us resolve our information technology problem for the benefit of the public sector generally.

QUESTION 15

What progress has been made in implementing these plans and have the problems outlined by KPMG at page 97 of the Committee's Report been overcome? For example, does the General Area database record complaint trends or demographic information?

ANSWER 15

The implementation of these plans is totally dependent on additional capital works funding. In the absence of that funding problems will remain.

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QUESTION 16

To what extent can the existing Information Technology System furnish the type of information necessary to facilitate the management reforms recommended in the Committee's Report? This would include turnaround times and other performance measures.

ANSWER 16

An effective management information system is severely restricted by the existing Information Technology Systems. Turn-around times and other performance measures are mostly produced manually at significant cost of senior managers' time and other resources.

QUESTION 17

At the last General Meeting the Ombudsman indicated in his answers to the questions on notice from the Committee that there was no capacity within the Office's Information Technology System to record data in relation to police complaints by police district. Consequently, it was not possible to examine trends on a district basis. Has this problem with statistical records on conciliation of police complaints been overcome?

ANSWER 17

Police data base records information by police station or discrete squad, but is not capable at the moment of aggregating data by police district.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: In your answer to question 17 you indicated that you are still not able to aggregate the information about police districts. It appears from your answer that you could still pinpoint problems on a station basis in relation to conciliation problems, is that right?

Mr PINNOCK: In relation to station basis, yes. More to the point, we can pinpoint quite serious problems that might emerge at a particular police station over time having regard to the nature of complaints that are made. We use that as a tool

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in perhaps carrying out an investigation of a particular complaint that we might not otherwise have done, simply because it is a current or frequent type of complaint. But the specific question that was raised was whether we can look at it in terms of police districts as some sort of subgroup of the regions. Basically, all we can do in terms of the IT system is report either on the basis of the region itself or those police stations in the region. We can certainly identify trends that emerge.

CHAIRMAN: *On that basis, if you had several stations within a region, could you still extrapolate that information?*

Mr PINNOCK: *You can. It just means you have to do it manually. You have to work out what the district actually covers and do those aggregations by hand. But we do not report on that basis in the sense of producing an internal management type report. But if the Assistant Ombudsman in charge of the police area sees something happening at a particular police station, at the press of a button he can get a report on all complaints relating to that station and then use that as a tool. It is a bit more difficult to do it in terms of region in the sense that something has to prompt you. If you are not aware of what stations are in that district, perhaps you might miss it.*

Mr RICHARDSON: *Writing software to give you that result would not be really too difficult, would it?*

Mr PINNOCK: *No, it is not. The only reason it has not been done, for instance, for police districts as such is that we have an IT plan at Treasury waiting for funding. OPM has approved the plan, we know that much. We have already made changes to the police database. Basically we do not want to spend too much more money until we know—we should know within the next month or so—whether Treasury will fund us to bring in the new technology and the new systems.*

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QUESTION 18

How has the Office's police data base been redesigned in light of the project undertaken by Tangent consultants (Annual Report p.174)?

ANSWER 18

The Tangent Group were engaged to redesign the police data base after several years of accumulated procedural change and also due to legislative changes that occurred in 1993. The legislative changes include the new investigative powers granted to the Ombudsman.

In terms of legislative change the database was redesigned to enable a complaint to be allocated to either Police Internal Affairs Unit, Patrol Commander or Ombudsman's Office depending on the seriousness of the allegations involved. Other changes due to legislation were to enable an investigation being conducted by Police to be monitored by the Ombudsman and to record where Police are attempting to conciliate a complaint.

Two reports were added to the design, one for research purposes to show a police officer's history of prior complaints and the other for management purposes as a means of investigation officer case load management.

Procedural changes and system deficiencies had accumulated since the data base was installed in 1989. A number of reports were improved by adding extra search operators and some reports were deleted from menus because they were redundant. The system software was several versions out of date and difficult to support and it was updated to the most recent version with better ad-hoc search facilities for research purposes. The main design problem was in the relationship between information on penalties imposed upon police officers with specific allegations in a complaint. New reporting needs meant that the data base had to be restructured while maintaining the investment in the existing records. A new database structure was written to enable police officers, allegations and penalties to be cross-linked more clearly than in the old structure. Searches can be still be done under each structure so that access to old information is not lost.

QUESTION 19

CRIS System - How many public sector agencies have sought demonstrations of, or advice about, the Customer Response Information System (CRIS) in use in the Office's Inquiries Section?

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ANSWER 19

The CRIS system has been demonstrated to representatives of the following public sector organisations:

Attorney General's Department
Building Services Corporation
Department of Housing
NSW Police Service
Roads and Traffic Authority
State Rail Authority

Additionally, the system has been demonstrated to representatives of the South Australian Department of Consumer Affairs, Qantas and the NRMA.

In the majority of cases, the demonstrations have been part of liaison meetings arranged by this office for the purpose of sharing information on complaint handling procedures.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: In your response to question 19 you say that the Customer Response Information System—CRIS—has been demonstrated to the Attorney General's Department, Building Services Corporation, Department of Housing, New South Wales Police Service, Roads and Traffic Authority, and State Rail Authority. Can you indicate to the Committee the reaction of those particular departments and whether any of them have adopted or decided to adopt this system?

Mr ANDREWS: My impression from each of the demonstrations is that people were generally impressed with the particular system. We are not saying that this is the best system of this type around, but we are just saying that this is the type of system that performs the service or function that we would certainly encourage other public sector agencies to adopt, that is, to actually gather information about the complaints and suggestions that are made to it, analyse those complaints and use that information in their planning process as a way of getting more in touch with their customers and refining their services so they meet the expectations of the citizens.

The particular system also enables us to input information and data into the system so that when you are taking a call about a particular complaint, you can easily access information that you may want to give to the complainant. That is a very valuable

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tool as well. We know that there are a number of other agencies interested in developing similar sorts of systems. I do not know if any agency has actually tried to implement the same sort of system; certainly a number of them have asked me for details about the firm that actually made it and how you contact them and so forth.

CHAIRMAN: *It was favourably received?*

Mr ANDREWS: *Yes.*

QUESTION 20

Is it possible to use the information gathered by the Office through the CRIS system for statistical purposes and what impact has its use had upon the management of the Inquiries Section of the Office?

ANSWER 20

The CRIS system is designed to log data on all telephone inquiries received by the Office. In relation to complaints about bodies not within the jurisdiction of the Ombudsman, complaints are recorded only in terms of the generic body against which the complaint is made eg. banks, private organisations, Ministers/MPs/Governor etc. For complaints against public authorities within the jurisdiction of the Ombudsman, the system records data on the specific public authority concerned, the nature of the complaint and the action taken. The system can produce a variety of statistical reports. It is intended to report on the breakdown of telephone inquiries in the next Annual Report.

The CRIS software not only is designed to record data about calls taken, but information can be coded into the system to enable response screens to be activated as data about the inquiries is entered. Operators can use these screens to prompt them with appropriate advice and referral information. At the moment the system is coded to record data on over 180 different types of complaints and each may be the subject of the development (and regular review) of appropriate response screens. Only a small number of response screens have been developed to date. This will be a major ongoing task.

The major impact of the system from a management perspective is that it has assisted in ensuring that advice given to callers is accurate and consistent. As the program of response

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screen development advances, we should also be able to increase the amount and quality of information provided to callers.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: The answer to question 20 probably touches on what we were talking about before but deals more with oral complaints. When someone rings up and makes a complaint over the telephone, how do you progress from there? Do you transcribe that complaint and then write to that person asking them to confirm the complaint that has been made orally, especially with ethnic groups or people who are not adept at putting their thoughts and feelings or their complaint into words? Does your Office have a follow-through system confirming the complaint?

Mr ANDREWS: If it is necessary, yes, we do it. Oral complaints fall into a number of categories. A lot of people ring up with complaints about bodies that are within our jurisdiction, but a great number ring up about bodies that are not within the Ombudsman's jurisdiction, so we act as a referral service. We say, "You really should go down the road to this other body", and we tell them how to do it, give them the address and telephone numbers, and general advice. It is also a way of giving general advice to people about techniques in actually making complaints. We certainly do not encourage people to make premature complaints to the Ombudsman. We always encourage people to take the complaints to the body with which they have their grievance, and we give them advice about how to go about doing that, and we supply the address and telephone numbers if necessary. If we think it is a matter that should be looked at by our Office, we tell the people that they are required to put a complaint in writing. We encourage them to do that, tell them how to do it and if they have trouble doing that, we can take steps to assist. That is certainly true of people who walk in off the street to our Office where our officers will get interpreters if necessary or write out complaints for people who have trouble doing that themselves.

CHAIRMAN: Is there no proactive system that you follow, either through the CRIS system or any other way, where you follow up complaints and write to the people saying, "Further to your complaint"?

Mr ANDREWS: We would only do that if they raised a very serious problem and we encouraged them to make a complaint, it did not come in, we are aware of that, and we want to follow it up. In those cases, if it was necessary to contact the

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person, we have their address to do that. Otherwise we would use our own motion power to take up the issue.

Mr PINNOCK: *In that sense the CRIS system serves two useful functions. It enables an inquiry officer to deal with a complaint in real time by using the information and prompts that the screen brings up. The other function is that it is a very important management tool in the sense that again at the press of a button we can produce a report which can identify at an early stage—even before written complaints start coming in—what might be a trend in relation to the particular type of complaint involving a given department. If necessary, we can follow that up in the sense that if written complaints start flowing in, we know that that is an area we should be targeting so that we can give it priority. They are the two real functions CRIS performs for us.*

1.2 ACCESS AND AWARENESS

QUESTION 21

Aboriginal Liaison Officer - One of the recommendations contained in the Committee's report on the Funds and Resources Inquiry was that the Ombudsman should create an Aboriginal Liaison Officer position to focus exclusively on non-investigation work and to promote the Ombudsman's Office through the Aboriginal and Torres Strait Islander community (Rec. 14). Has the Ombudsman been able to appoint such an officer?

ANSWER 21

This position has been created, but has to date been filled on a contract/project basis.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: You have advised the Committee that the position of Aboriginal Liaison Officer has been created but has not been filled. Can you give the Committee an explanation why the position has not been filled?

Mr PINNOCK: We have not found anyone who could fill it. When I say that, no one wants it in the sense of us really getting a commitment. We have been so close to filling it on a number of occasions with the latest being only last week. Suddenly at the eleventh hour, yes, a SOCOG thing, the applicant says, "No, I do not want it".

Mr LANDA: That has happened twice.

Dr BURGMANN: Where do you advertise?

Mr PINNOCK: Apart from the typical public service type of things, I think we advertise in the Koori News. We have only formally advertised it now. We have used all the contacts in the Aboriginal community that we possibly can in terms of circulating it on a networking basis.

Dr BURGMANN: You have used the Koori News?

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Mr PINNOCK: Yes.

Mr LANDA: And we are looking at sharing. We have looked at other agencies that have similar problems and sharing services. We have not had success there either. That is an avenue we are still exploring.

Mr PINNOCK: From my recollection, a position which identified Aboriginality as, if you like, an essential aspect of the position, was first created back in 1985 or 1986. Even at that time it took us something like a year all told to finally get someone into the position. When we created a slightly different position as an extension of that, in about 1989, we filled it very well. We had a person in that position who basically would fit this position perfectly. I think we made a mistake then because we actually upgraded the position. The person who was then in the position went for the job and missed it. So we lost that person. Then the investigation officer position that was ultimately created and filled, that person stayed with us for some time and then left. It was at that stage that Peats had made its recommendation about basically turning it back to a liaison officer role rather than an investigation officer role, which I think is what it should always have been. Since then, we have had no success at all in filling it. I do not think it is an issue that it is a problem because it is too lowly graded, as has been suggested in the past within our Office over the years. We have graded it at a grade 5-6 rather than a grade 7-8 as the consultant suggested. I do not think that is the issue at all. It is just that there are some reasonably good job offers going amongst members of the Aboriginal community and they are not taking up ours. There are alternatives.

Dr BURGMANN: Why did you decide to place it at grade 5-6 instead of grade 7-8?

Mr PINNOCK: I think the major reason was basically that we spoke to a number of different departments that had positions which had been similarly identified. We did not feel that adding a premium to it was actually going to give us better candidates. There has been absolutely nothing about any of the candidates who have expressed interest in it, especially the latest one, that would suggest you were going to get better candidates even at a grade 7-8. It is just that different offers have been made and we have not been able to fill the position. I doubt that we would fill it even on a grade 7-8 basis.

CHAIRMAN: Have you considered any projects on a contractual basis?

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Mr PINNOCK: That is how we approached filling it in the first place. We had a number of projects designed. We had a person, as I say, all picked out to do it, then basically they said, "No, we will go elsewhere, we have got a different offer".

CHAIRMAN: So you have not considered any projects at all?

Mr LANDA: Yes, we have. Not a project, but we have just done a significant inquiry in a country area and called in a consultant, if you wish.

CHAIRMAN: What did that inquiry relate to?

Mr LANDA: Wilcannia.

CHAIRMAN: Obviously that will come out in due course?

Mr LANDA: Yes, later rather than sooner. There are a lot of issues there that are important issues, but it is starting to come together.

Mr ANDREWS: The current situation is that we did contract with someone to assist in that investigation. We were hopeful of engaging another person. We went through a protracted negotiation phase but that finally collapsed last week. We are currently having talks with another agency about sharing staff, and this week or next week we are to advertise the position as well.

Mr RICHARDSON: Would that be viewed as a full-time position?

Mr ANDREWS: We are advertising it on all bases, hoping that it will widen the—

Mr RICHARDSON: You will not get the full-time equivalent by sharing staff.

Mr LANDA: No, but we may get people who will not work full-time and do a joint share basis. We are looking at anything, because it really is a terrible gap in an Ombudsman's Office not to fill this position.

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QUESTION 22

Country Visits - What is the extent of the Office's country visits program at present and what activities are usually undertaken on such visits?

ANSWER 22

The majority of public awareness visits are conducted in the first half of each calendar year. As far as possible, the visits are co-ordinated with visits to country correctional centres. Additionally, site inspections relating to individual complaints may be made where appropriate and audits of conciliation records held at country police stations may also be undertaken. Advertisements announcing the visits are placed in local newspapers prior to the visits and press releases are sent to all local media. Wherever possible, community centre facilities are used to hold interviews with members of the public. Citizens are able to book interviews using our toll free number prior to the visits.

Police in the ranks and middle management continue to express great hostility to public awareness visits, depicting them as "fishing expeditions" or "police bashing exercises". This issue is raised at almost every talk given by Ombudsman Office staff to police, and they seem most unreceptive to the notion of improving access for disadvantaged groups in regional areas.

Since January this year public awareness visits have been held at Newcastle (four occasions), Wollongong, Tamworth, Armidale, Coffs Harbour, Grafton, Lismore, Glen Innes and Katoomba. In the next few weeks, visits will also be made to Wagga Wagga, Bateman's Bay, Broken Hill and Dubbo.

QUESTIONS WITHOUT NOTICE

Mr MUTCH: The Committee is concerned about the negative perception of some police of country visits. Has the Ombudsman or senior management gone on any of these visits, or do they intend to go on any of the proposed visits in order to get to the bottom of some of these problems? I would also be interested in some of the press releases you have issued. Do you give a standardised talk or do you leave that to the discretion of the individual officer?

Mr LANDA: This is a perennial problem. When I first started addressing police, particularly in country areas, I soon identified the 10 or 12 standard questions,

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and one of the most vexatious issues is that police are very sensitive about the fact that when we go to a country area we advertise the fact that we are coming, obviously because we want people to know that we are not wasting time doing nothing, and clearly we have to tell them what it is we are there to do. When this objection was first raised in my very first contact with police I agreed with them. I could see why they would feel offended at the advertising of the fact that we are here to take complaints about police, the suggestion being that it was soliciting people and encouraging them to make complaints. We in fact set up a committee and had consultation to see how we could overcome the problems, and the reality is that we could never come up with a suggestion to tell people that we are there to take complaints—which includes complaints against police—without saying it. Though I confront it every time with police, to be quite frank it is a problem that police in country areas have that I can understand, but it is a sensitivity that does not really require so much attention as is given, in my view, and I cannot cure it.

Mr MUTCH: *To whom are you giving the talks? You hold interviews with members of the public. Are you targeting certain community groups and asking when you can speak to those groups?*

Mr LANDA: *When we do public awareness visits, particularly when I go, I will always arrange to get the police together and tell them about our function and more particularly allow them to tell me how they think we are performing and the things that they are concerned about. It was a very daunting task at the beginning. I used to call it going before the firing squad. It was not an easy thing to do, because there was a lot of fear and resentment there. That has changed a lot because of the very fact that I do it, and I am now doing it with Jarratt, Assistant Commissioner, Professional Responsibility. We together make these talks now because it is tied in with the conciliation process which we are trying to get up and running. So it is something I hear all the time. The only way I can really cure it in a sensible way is by actually confronting it and talking to them and explaining the problem, and usually I think it resolves the problem when I do.*

Mr MUTCH: *You say you talk to police specifically, but do you also target other groups and speak to them as well?*

Mr PINNOCK: *In terms of complainants?*

Mr MUTCH: *No, community groups.*

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Mr LANDA: Yes, local government I usually try and—

Mr MUTCH: So you gather council staff together to give them a talk?

Mr LANDA: Yes, and I frequently try to get the member of Parliament for the area, if Parliament is not sitting, to liaise as well.

Mr WINDSOR: You recently visited some country areas. Can you give the Committee an overview as to the amount of time you spend in a particular area, whether there are any trends in the complaint patterns, and how many of the complaints you receive are genuine complaints? I know that is a generalised question, but there was a lot of talk last year in the review about not being able to access country areas. When you arrive at a country area are the complaint levels high in the sense of being genuine? Are many people coming to you?

Mr ANDREWS: It varies depending on the area and whether there is a particularly contentious issue at the time. In the information we sent to you we outlined the various country centres we visited in the last few months. We have been advertising those visits ahead of time and getting people to ring our Office on our toll free number to book an appointment. We found that very useful because a lot of people, when they do that, say what their complaint is about and they make the booking through our inquiry staff and they deal with the complaint there and then. While we may see people at the actual visit, we have actually dealt with many more complaints through our normal inquiry process at the Office. I do not think we could say there is any particular trend, and the complaints we get are on the same basis as any written complaint we get. I do not think there is any great perception that they are invalid in any way.

I think perhaps we probably get more premature complaints than we would normally get in writing, and we just provide people with advice about how they should deal with those complaints. Again, if there is a controversial issue in a particular area we will get a lot of response. Our visit to Coffs Harbour recently was like that. We were inundated. Two weeks before we even got there the time we had available was booked up. We also spoke with twice as many people over the phone prior to the visit, because there were a lot of things happening, particularly with the Council at that stage.

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Mr MOSS: Do you think any of these complaints would be organised at a community group level? In other words, "The Ombudsman is coming to town, we should get together and get on to him about this particular issue"?

Mr ANDREWS: That occasionally happens, but it is certainly not a major trend.

Mr LANDA: We always liaise with the community centres that are in existence in those areas. They are a major resource in bringing people to us as well.

Mr WINDSOR: Drawing a distinction between being there and creating an awareness of the Office of the Ombudsman and being there and receiving complaints that you would not have received had you not been there—if you can follow what I am talking about—how important is simply being there as a public relations exercise and an awareness exercise?

Mr ANDREWS: I think it is very important. Obviously a lot of people have not heard about the Ombudsman in country areas. The fact that you are there prompts them to make that extra effort and make a complaint, whereas they may be intimidated to put one in writing to an office in Sydney. We need to experiment more with exactly how we approach those visits. Up to date we have tended mostly basically to set up shop in a town. I would like to see us doing more talks to community groups, but that again comes down to time and cost. We generally try to get pre-publicity, which is usually free on local media, and we invariably are interviewed on the radio and there is a newspaper article or something like that to alert people. There is always a flow-on effect after we have been to a country centre. We tend then to get complaints flowing into the Office through the normal mail system for the following couple of months.

The discussion on country visits continued later during the meeting:

CHAIRMAN: When people come to you in country areas with a complaint which would ostensibly be a verbal complaint or an oral complaint, do you assist them at the time to put the complaint into writing and give it to you then or do you ask them to seek legal advice or some other advice or assistance and then forward it to you as a written complaint? What assistance do you afford them in that regard?

Mr ANDREWS: If it is appropriate and there is time available we will give them the opportunity of making the written complaint there and then or simply saying

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you may like to go away and put your thoughts down on paper and send us a letter later.

CHAIRMAN: *Do you give them an indication at that time whether the complaint has some grounds or basis where the Ombudsman may be able to assist?*

Mr ANDREWS: *We tell them that the complaint will be assessed and outline the normal process of assessment back at the Office. You may, for instance, have someone on a country visit who is a police specialist and they will be dealing with a person who has a complaint about a council, and they will not have a great deal of specialist knowledge about that. For that reason they will say, "It sounds as though this complaint may be something we are interested in. What we need you to do is put it in writing and it will be assessed by the specialist in the Office".*

CHAIRMAN: *You also give an indication, on the other hand—*

Mr ANDREWS: *If it is clearly outside our jurisdiction or it is a trivial complaint or it is premature, they will be told that, certainly.*

Mr WINDSOR: *How long are the appointments?*

Mr ANDREWS: *I think they are usually 20 minutes.*

Mr LANDA: *They frequently go for 40 minutes or longer.*

Mr RICHARDSON: *I am concerned about the hostility that is shown by police on your country visits, which are described as police bashing exercises. The system of police secondment to the Ombudsman's Office is now dead, so there is clearly a "them and us" view, an adversarial view by the police of the Ombudsman's Office. You must view that as a matter for some concern. Whose fault do you believe that is and how can the situation be improved?*

Mr LANDA: *That is part of the police culture. I do not think it is a healthy situation. When I became the Ombudsman, the number one stress factor to police was the Ombudsman. The Ombudsman is now number 13 on the list, I am told by the psychologists.*

Mr RICHARDSON: *With the Royal Commission as number one?*

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Mr PINNOCK: *It has probably gone right up the charts now, Mr Richardson.*

Mr LANDA: *I have done an enormous amount of work around the State to confront police face to face and let them get their grievances out. In any area I have been, and I have been to Coffs Harbour on two occasions, you would be able to ask them if they participated in those visits and whether there was a discernible difference thereafter. The best way I know to manage is to go and confront it and take away some of the mystery and fear of the Ombudsman.*

Mr RICHARDSON: *More public relations, and more visits?*

Mr LANDA: *That is the most valuable thing I can do in the police area. It produces a more frank and open response. What we are doing at the moment, in conjunction with the Commissioner of Police, is covering as much of the State as possible. In our exercise on conciliation, which is the most important thing we can do where police are concerned, we are hoping to get the conciliation rate up to 40 per cent. The important issue is to convince police that they will not be punished by me or the Ombudsman's Office or by the Commissioner if they admit that they have made a mistake which did not involve malice. Again that will be a very effective way of breaking down that fear factor or resentment factor.*

Mr MOSS: *My question is about hostility shown by the police. Do you have statistics that may show that complaints lodged against the police, as a result of these country visits, are above average. Is there more hostility towards the police in the bush which gives them this hostility towards you?*

Mr LANDA: *No. It is the contrary, and I do not know what the explanation is. When we go to Newcastle we seldom get complaints there. It may be because it is a better managed semi-urban centre. Community policing may be stronger. When I go to country areas the complaints against police is nowhere near the same degree as in the city.*

Mr PINNOCK: *That is certainly the case. Complaints against police are roughly 60 to 62 per cent of the total complaints received by the Office. Those figures are not borne out by people who come to see me on country awareness visits. In my experience—and it is about nine months since I have done a public awareness visit, although I have done many over the years—it has always been the case that if 20 people come to see me only two or three at the most will have complaints about police...*

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Mr RICHARDSON: *Is there such a thing as a typical police complainant? Do you have a profile of the person who is likely to complain more than others?*

Mr LANDA: *I do not think that there could be. In a socio-economic group quite clearly the people involved with police are in the lower levels and in the Aboriginal community. In that sense there is a profile. In the inquiry in relation to police powers I used quite considerably a book by Tony Bouza which talked about the police mystique. As a former Police Chief himself, he says that police deal with the under class, and are paid by the middle class to keep the problems away. That is his explanation. Quite clearly it is an under class problem more than people who are less disadvantaged.*

Mr WINDSOR: *You are finding in the communities that you move between—say Coffs Harbour or Tamworth, compared with Wilcannia or Bourke, where you have an Aboriginal population or a lower socio-economic group—that there is a corresponding increase in hostility by police to the Ombudsman. Is that relationship there?*

Mr LANDA: *I cannot say that I see it being terribly different anywhere I go. It is fear and hostility really; it is there in a much less degree than it was years ago.*

Mr WINDSOR: *It surprises me, as a country member, to think that the police in Tamworth would be wary of the Office of the Ombudsman. I would have thought they would have had a reasonable understanding of what you are on about.*

Mr LANDA: *I think it is happening. When I go to a country area I ask could I assist. I am sure Tamworth is a case in point. The cells in Tamworth were so bad in terms of surveillance that they have a major management problem.*

Mr WINDSOR: *They are getting a new police station. I am glad you mentioned that.*

Mr LANDA: *Yes, they needed help. We certainly focussed on that point with the Minister ourselves.*

CHAIRMAN: *You were recently in Coffs Harbour. On the same basis what reaction did you have from the police in Coffs Harbour?*

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Mr LANDA: I have not been to Coffs Harbour for more than a year. When I was there we did a lot of good business. We had a large meeting with the police there. Who is the officer in charge?

CHAIRMAN: It was Inspector Mortenson.

Mr LANDA: Yes, we have a strong positive relationship. The meeting I had there was a very positive one.

CHAIRMAN: Like Mr Windsor, I think the police have a fairly good profile in country areas, especially in Coffs Harbour and especially of late. I would find it somewhat surprising if they were a little wary of your Office.

Mr LANDA: I think the police have a good profile generally in service delivery and all the surveys indicate that. One of the problems with police is their low self-esteem. They allow themselves to become too sensitive to criticisms that other professions have as a matter of course: politicians, lawyers, medical professionals. Every profession carries with it some possible attack or criticism. The police have honed a degree of sensitivity very finely. I am certainly demanding that they are given some training in self-esteem. I think it would be beneficial.

Mr RICHARDSON: I am surprised that you say that, because the public opinion poll says the perception of police is high and the perception of politicians, as everyone knows, is not so high.

Mr LANDA: And lawyers are way below that.

Mr MOSS: I am wondering what statistics say about minor complaints in these country areas. By "minor" I mean complaints that can be conciliated. Is that above average? I agree that country New South Wales is not as well serviced, but if you live in a town or have easy access to a town you are visiting, people are probably better informed about the role of the Ombudsman than the average person living in Sydney. For that reason do you get a lot of people coming along because you are there and wondering what they can complain about?

Mr LANDA: There is no way we can assess that. It is certainly a perception that police and others have.

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Mr MOSS: I am not referring to police and their fishing expeditions. I am not trying to marry the police opinion to the question.

Mr PINNOCK: In a sense you are comparing like with unlike. What we are comparing is a situation where officers of the Ombudsman go to a country centre, usually a large town or a city, and set up office for a short period of time. People who want to be able to discuss a matter personally with officers of the Ombudsman come and see them. What you would really need to do to compare is have the Ombudsman to go to a major shopping centre and set up for the day and find out how many people came to him on the same basis. There are two issues to be looked at here: one is access and awareness and the other is the way a person wants to deal with a complaint. Some people are happy to ring the 008 telephone number or a normal telephone number in the city. Some people are happy to write a complaint, others are not. Other people want to be able to deal with complaints on a personal and individualised basis. It is just the way people are. Whether there is a difference between country people and city people we do not know. What we do in the country is different from what we are doing in the city.

Mr MOSS: I define my question. I mean the complaints you act upon, not the complaints that you give advice on.

Mr PINNOCK: We do not have statistics to give you an answer. I expect the figures would be much the same. When you say "act upon", do you mean to full investigation? I suspect there is little difference. The way in which we deal with complaints—basically, the assessment policy, the decline policy—is a win and win exercise; you are filtering complaints. Some complaints in the country are classified as preliminary inquiries if they were the subject of formal written complaints. If someone from the country came to our city office that would result in a telephone call to the public authority in the country, or a letter, and be dealt with as a preliminary inquiry. In the country centre we can deal with it on the spot.

If someone comes to me with a complaint in Wagga Wagga that involves the local council, if I have time I will go to the local council and try to deal with it on the spot. In that sense it is not registered as a formal complaint but it is dealt with. Statistically I suspect that in terms of complaints that go all the way through to investigation, probably there is not too much difference; probably, but I cannot be sure.

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Dr BURGMANN: You talk about police being unreceptive to the notion of improving access for disadvantaged groups. What have you felt could be done about changing that view?

Mr PINNOCK: I think the Ombudsman is right in general terms that you have to keep plugging away at it in terms of talking to police. I sometimes see it as an issue that will be with us for a very long time, for ever and a day in a sense. No one likes being accountable. They do not like being accountable to an external body. I think the situation has improved over the last ten years. I have been in the Office for ten years. As the Ombudsman said, it is a perennial problem. Eight years ago when we went to a country area to talk about police complaints there would be tremendous hostility from police. It is still there but I do not think it is as big an issue and the Ombudsman is not as big a bogey man as he was ten years ago. The level of angst and the real hostility towards our officers on the part of members of the Police Force is not nearly as great now as it was then. I will not say that it was getting to the stage of being vicious but it was pretty close to that. It has not got that really hard edge to it now. It is more a matter of "we do not agree with you and we do not like this". But you do not feel that real hostility or even hatred—at least I do not. Perhaps it is because I am a bit more senior than I was ten years ago.

QUESTION 23

Client Survey - A full report on the implications of the AGB McNair survey results for the Office's practices and procedures was identified in the 1992-3 Annual Report as a priority task for 1993-4. Has this task been completed and, if so, what were the results of the survey?

ANSWER 23

The report produced by AGB McNair on the results of the client survey included detailed cross-tabulations of the responses and a short overview of the main findings. The Annual Report 1992-93 contained a summary of those main findings. A more detailed analysis of the results was produced internally for information of the management committee in October 1993.

Annexed is an overview of the complainant satisfaction survey containing the rationale, the findings and some initial strategy implications arising from the data. (Appendix 4) A

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number of these suggested strategies have been further developed and actioned, while others are being used as the basis of ongoing staff training to inculcate a client focus and improve quality of service.

QUESTIONS WITHOUT NOTICE

Mr LANDA: In the survey we had taken, the section about finding out about the Ombudsman, 27 per cent of respondents sourced the media, another 27 per cent sourced friends or relatives, 15 per cent legal advisers, 12 per cent our pamphlets, 11 per cent general knowledge, and I hate to say it but right down the bottom there is 6 per cent politicians. So we fail obviously in one of the most important groups. If members of this Parliament are so unaware—you are all the time dealing with constituents. It is something that we are having a meeting about specially to figure out how to target. The Committee could give us whatever assistance or guidance they can on that, because we have talked about doing news—we appreciate that time is a premium and reading material is a burden. We recognise that all our reports are hard to read and for that reason we do executive summaries, but quite clearly we really have not scratched the surface in the most important area.

CHAIRMAN: A member of Parliament could possibly resolve a complaint which would normally be directed to the Ombudsman. I recommend that people see the Ombudsman on certain issues that have not been able to be resolved in my office or through normal channels. That could indicate why the percentage is down.

Mr LANDA: It could, and indeed we are only an extension of the function and are better resourced, I might add, to be able to deal with the more difficult inquiries, but I have a feeling that it indicates a gap of communication that we have not got the message through enough. For instance, if we are going to a country area and we alert the local member or his staff it would be natural, I would have thought, that they would be telling people who have problems that this is a good time to line up, we want to address it.

QUESTION 24

Is the Ombudsman planning to conduct a second customer survey of the type carried out by AGB McNair?

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ANSWER 24

A further client survey is planned to be undertaken in the next three months. A companion expectation and satisfaction survey of public authorities is also being planned.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: There being no further questions in that area, I will move on to answer 23, client survey. It probably refers also to answer 24. You have indicated that you plan to undertake further client surveys in the next three months. A companion expectation satisfaction survey of public authorities is also being planned. Is this for satisfaction or awareness, or both?

Mr LANDA: The public sector survey is to get some input from the agencies about how they perceive our performance. The emphasis in the Office is to push back the grievance procedures to the authorities concerned and to be as much as possible a resource to them and to help them resolve their problems. To this extent they have reacted pretty positively. They have said that they want the help in most instances and have participated in all the suggestions that we have had that would assist them. So we are now asking them how our Office is able to help them to improve the system. I guess we will accept whatever criticisms come out of it and examine them for the virtue that there may be in changing our methods. That is taking priority. The timing in our answer, in terms of our survey of the customer or complainant base, is probably going to be deferred beyond the next three months as stated, but not considerably.

QUESTION 25

What other measures outlined by KPMG Peat Marwick as desirable initiatives for promoting awareness have been undertaken by the Office, for instance, contributions to ethnic newspapers and the Koori Mail? (section 6.4 KPMG Management Review Report)

ANSWER 25

The Office is planning a series of awareness programs, targeting some of the groups identified by KPMG Peat Marwick.

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The Office was recently nominated by the Ethnic Affairs Commission as a key organisation in the Government's NSW Charter of Principles for a Culturally Diverse Society. We are currently working closely with the Commission, community workers and community groups to develop a detailed education/awareness strategy for people whose first language is either Arabic, Chinese, Croatian, Greek, Italian, Serbian, Turkish or Vietnamese. Liaison with community groups will help determine the best means of reaching these groups and the type of information they require. At this stage it is thought the final strategy will involve:

- distribution of an information pamphlet in each language specified
- a speakers program for ethnic community groups in the Sydney metropolitan region
- speakers program tied in with our community awareness visits for ethnic groups in country NSW
- an education program for the ethnic media
- provision of media releases and reports to the ethnic media
- advertising in the ethnic media.

The Office is also in the preliminary stages of developing an awareness program for women. An investigation officer has already been nominated to deal with all investigations relating to domestic violence. We are currently organising to speak to community workers and coordinators of women's groups. This will allow us to determine the needs of women in relation to the work of the Office and help ensure women throughout NSW from different ethnic and sociological backgrounds are aware of our services.

A new Aboriginal Liaison Officer is about to take up duty and will work with the Public Relations Officer to develop a public awareness strategy for Aboriginal people and Torres Straight Islanders.

The Office's information brochures continue to be distributed through community centres, community justice centres, libraries, juvenile justice workers and other community based groups.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: Moving on to answer 25, access and awareness, you have advised us that you are planning a series of awareness programs. What is involved in these programs and will you be gathering statistics while doing these access and awareness programs?

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Mr ANDREWS: *The general strategy of what has been planned is set out in the answers the Ombudsman gave you. We do not have any particular plans to gather any particular statistics but if the Committee is interested in our doing that we will certainly consider it. We have been partly waiting to be advised of the Committee's findings from its previous inquiry and to inform us about what you see as the priority to help us plan our future strategy.*

CHAIRMAN: *You mention advertising in the ethnic media. Can you give us an indication of the sort of media—SBS, local newspapers in certain areas?*

Mr ANDREWS: *That has not quite been finalised. We are partly dependent on advice from various ethnic groups and organisations. There are various thoughts and advice about the effectiveness of different sorts of advertising. One of the things we were talking about only yesterday was whether a more effective way was to rent space on the end of ethnic videos, which I am told is one of the best ways to communicate with large groups rather than advertising in the press. So we are considering a number of alternatives.*

Mr LANDA: *Another initiative we are thinking of effecting is to prepare a compendium of cases in a very much summarised form for distribution to rural press, suburban press and ethnic media. Pretty well anything that we provide to them will be run and we are trying to focus on the areas of interest that will raise the profile more in the communities.*

CHAIRMAN: *You also refer to the new Aboriginal liaison officer who is about to take up duty. That is the one who has kind of dropped at the gate.*

Mr LANDA: *That has happened twice, not once.*

CHAIRMAN: *You refer to a public awareness strategy for Aboriginal people and Torres Strait Islanders. Can you do that through existing outlets rather than waiting for an Aboriginal liaison officer? In the Coffs Harbour area there are several Aboriginal groups—land councils et cetera—which would be quite happy to distribute information from the Ombudsman's Office.*

Mr ANDREWS: *We are planning to do that. We carried out an evaluation of the position of Aboriginal investigation officer last year. Part of that evaluation was a survey we did of Aboriginal groups about their knowledge of our Office, what information they needed and so forth. One of the questions asked was, "Would you be*

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prepared to distribute further information about the Ombudsman's Office?" We got quite a few positive responses from that and we will be making use of those.

Mr LANDA: Without a person from the Aboriginal community with us the response is so different from having somebody there that I think to spend the money for the effective result is probably a poor application of funds.

Mr RICHARDSON: I think we have had the statistic on the breakdown of male and female complainants. Could you refresh my memory?

Dr BURGMANN: It is 64-32.

Mr MOSS: In relation to answer 25, I am particularly interested in liaising with ethnic groups. The survey on the back of this paper indicates the great need for that. I think you are wasting your time if you are speaking to individual organisations. You are better off dealing with key bodies, particularly with the Greek and Arabic speaking organisations. There are hundreds of them. Unless you approach the key bodies, the umbrella organisations, you will not get anywhere.

Mr LANDA: We are confronting that very issue. The police race relationship inquiry is a major initiative. The publication is targeting a very wide sector. It will certainly go to the key bodies. The mailing list is prepared.

Mr MOSS: Another area worth tapping into is migrant resource centres. I think they are more important than the Ethnic Affairs Commission. Ethnics know where their local migrant resource centre is.

Mr LANDA: The effect of this inquiry will be to lift the profile of the Ombudsman's Office generally because it will achieve media coverage in all press. The very fact that it is happening is a very crucial thing for all those communities. It will do an enormous amount to redress the imbalance that has existed because of our lack of skill, knowledge, finance or whatever it is. I suspect there will be considerable change within the next six months in that area.

Dr BURGMANN: I want to go back to the issue of women. It is obviously a concern to you too that women are only half as likely to approach the Ombudsman as men are. You talk about organising to speak to community workers and women's groups. Is this being successful? Do you think you need extra resources to try to get to women or how do you think you are going?

Issues Arising From Previous Inquiries

Mr LANDA: I do not think we have addressed it properly yet.

Mr RICHARDSON: Might it not be the case that a major proportion of your complaints are about police matters and women are proportionately less involved in police matters and therefore the proportion of women making complaints might be in proportion to the number of people who would be expected to make a complaint?

Mr LANDA: It could be.

Mr ANDREWS: It could be.

Mr PINNOCK: It could be.

Dr BURGMANN: Is there a breakdown of complainants in the various areas such as general, police and prisons? Prisons might be another area which would be more male. (see Appendix 5).

Mr ANDREWS: There is. I cannot give you that information offhand but I can certainly dig it out for you.

Dr BURGMANN: It worries me that there is that big difference.

Mr LANDA: Yes, it is interesting. You would think that there should not be such a distinction or such a differentiation.

Dr BURGMANN: That is why it would be interesting to see the figures to see whether it is just to do with police and prisons being such a big part of your workload.

Mr LANDA: It could not be our Office as such. It is not daunting in that regard.

Dr BURGMANN: It is full of women.

Mr LANDA: Yes.

Mr PINNOCK: Until the recent restructuring of the Office in the previous three or four years I was responsible for what used to be called the General Area—everything except local government, police and prisons. I was not aware of the

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statistical discrepancy being talked about now in any of the time that I was running that area. It appeared to me, without even thinking about it, that statistically—if I am asked now—the split was 50-50. I may be wrong, of course. You can be impressionistic about these things. I suspect there is a distortion there in the police statistics.

**1.3 CONSULTATION RE THE FINANCIAL IMPLICATIONS OF
CHANGES TO THE OMBUDSMAN'S JURISDICTION**

QUESTION 26

The Committee recommended that the Ombudsman be appraised by The Cabinet Office and the Opposition (including the Independents) of any proposed legislation which may impact upon his jurisdiction prior to the introduction of such legislation into Parliament. Has this consultation occurred?

ANSWER 26

The Office was consulted by the Cabinet Office in relation to the Protected Disclosures Act 1994 prior to its submission to the Parliament. Unfortunately, Cabinet Office did not accept either the Ombudsman's submission or the recommendation of the Legislation Committee on the Whistleblowers Protection Bill to amend Clause 12 of Schedule 1 to the Ombudsman Act to enable the Ombudsman to investigate a complaint of "detrimental action".

There was also extensive consultation with the Police Ministry prior to the introduction of the Police Service (Complaints) Amendment Act 1994. In this instance, the Ministry accepted all of the Ombudsman's recommendations so far as the content of the Act is concerned.

2. REPORTS TO PARLIAMENT

2.1 ANNUAL REPORT

2.1.1 ALTERNATIVE DISPUTE RESOLUTION (ADR) TECHNIQUES & MEDIATION

QUESTION 27

The Annual Report for 1992-3 details that the Office has become involved in intensive training in dispute resolution techniques for public sector management and in intensive four-day courses in mediation. Do the public sector participants in these training sessions make a contribution towards the costs of conducting these sessions?

ANSWER 27

All external participants paid fees of \$895 to participate in the course. The Office contracted with LEADR to provide the primary training and derived a small amount of revenue from each course as well as some training places for our own staff. One staff member of this Office organised the courses and assisted with the actual training. The Ombudsman also gave a presentation at each course.

QUESTION 28

The Office's last Annual Report also explained that the Office has been involved in formalising a pool of mediators for use by public sector organisations in situations where external mediators are required (The Public Sector Mediation Group p.10). Have arrangements for this group been finalised and, if so, what use has been made of the Group to date?

ANSWER 28

Some 120 people have been trained in the four mediation courses organised by the Office representing over forty different public authorities. Following discussions with the former Director General of Premier's Department, it was decided to "export" the initiative of the public sector mediation pool to the Office of Public Management. The initiative is now known as the Public Sector Mediation Service. Its initial aims are to increase the public

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sector's familiarity with alternative dispute resolution generally (and mediation in particular) and then facilitate its use by agencies for resolution of disputes both internal and external.

The further development of the service is overseen by a steering committee consisting of the Ombudsman, the Director General of the Attorney General's Department Mr Laurie Glanfield, the National Secretary of the Royal Institute of Public Administration, Ms Robyn Henderson, and Mr Vishnu Prasad, Director, Office of Public Management. An officer of the Ombudsman has been seconded to the Office of Public Management to manage the service.

The resources of the staff position assigned to the CHIPS project are now being used to develop our own mediation capabilities, and in promoting the principles of effective complaint management and in assisting public authorities to further develop their own internal complaint handling systems.

QUESTIONS WITHOUT NOTICE

Mr MOSS: In relation to answer 28, I have a couple of questions. Does the Ombudsman have an input into the selection of mediators from the various public authorities? Are they chosen by their own department heads and you are told, "This is it, Joe Bloggs is the mediator from this department"? or are you told, "This particular group are the mediators", and that is it? Do you have any input yourselves?

Mr LANDA: No, we have just facilitated the course, promoted it and pushed it by various means. We have reached the stage where we have recognised that the world does not need more mediators—it probably does not need more lawyers either. We are now not focusing so much on training people to be mediators. There are a thousand mediators for every issue to be mediated. We are saying to the various bodies providing training, "You come to us"—"us" being the committee that I chair, with OPM, the Director-General of the Attorney General's Department, et cetera—"with your proposals which you think will be beneficial to the public sector. If we think it is good we will promote it and we will bring you the customers". We are specifically focusing on two areas: first, we are trying to get the CEOs in half-day or three-hour or four-hour sessions to convince them of the value of the alternative methods of dealing with disputes and, second, we are trying to get more down the line people who will be handling the problems to be much more skilled in better ways of dealing with it. We are trying to make a commercial approach so it will be as cost-effective as possible for people doing the training.

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Mr MOSS: *Do you have some sort of register where you can contact those down-the-line people? If you have something that you consider should be mediated by a department, do you send it off and say, "Here you are. You ship it off to whoever is going to do the job". Does your Office have a direct liaison with these people?*

Mr LANDA: *There is a register. The person who has been seconded from our Office to OPM holds a registry. People are funnelled into that registry and are given lists of names of people who will facilitate, mediate or do whatever is needed. A course has just been completed now. We have now topped 180 or 190 people trained in the public sector. That is an awful lot of people for the time being.*

Mr MOSS: *I feel that if mediation is to be successful the Ombudsman's Office has to have some overseeing role in it all.*

Mr LANDA: *This matter ought to be resolved.*

Mr ANDREWS: *The pool of mediators that is being co-ordinated through OPM is available to the whole public sector. They are not necessarily mediations that come about through a complaint to our Office. As knowledge of that pool grows, people approach it. We are also doing mediations with our own office, with our own staff and consultants. They are on matters subject of complaints to the Ombudsman. There are two separate initiatives.*

Mr MOSS: *So you do not send anything on to them?*

Mr ANDREWS: *At the moment, no. We tell people about their existence. If we are getting a number of complaints which are not in our jurisdiction, but may involve public sector agencies, we say, "Sorry, we cannot help you. Maybe it is a matter that can be mediated. There is this pool available. Why don't you speak to them?". On some matters that we think are premature or minor, and we are not interested in taking them up, we say, "You might like to speak to these people".*

CHAIRMAN: *In the long term, that mediation team would probably make your job a little easier.*

Mr ANDREWS: *Hopefully, yes.*

QUESTION 29

How many public sector organisations have implemented their own in-house complaint-handling system and what has been the impact of such initiatives on the workload of the Office?

ANSWER 29

It is unknown at this stage how many public authorities have implemented their own in-house complaint handling systems. As part of the CHIPS initiatives planned for this year, a survey of public authorities will be undertaken during the next three months to answer this very question.

While effective internal complaint systems hopefully will retard the growth of complaints made to the Ombudsman, especially minor matters, it is not considered that they will have a significant impact on the workload of the Office in the short and medium term. The level of complaints made to the Ombudsman is more a function of the growing sophistication of consumers about rights of appeal, expansion of public authorities (eg. increased number of police) and jurisdiction, media coverage and public awareness initiatives.

To illustrate, the office restructure undertaken late in 1993 (which involved a reduction in staff numbers) was based on recommendations arising from the Committee's Inquiry into the Adequacy of the Funds and Resources Available to the Ombudsman and the management review conducted by KPMG Peat Marwick. Those reviews were premised on workload statistics for the 1992-1993 financial year. Since that time, there has been a further substantial increase in complaints made to the Office, notably in the police area. As at the end of April 1994, the number of police complaints was projected to increase by 14%. While the numbers are far less, there has also been a substantial increase in the number of FOI complaints although complaints for other public authorities are relatively static.

2.2 SPECIAL REPORTS

2.2.1 PROPOSING AMENDMENTS TO THE FREEDOM OF INFORMATION ACT 1989

QUESTION 30

Have the amendments to sections 64, 65, 66 and 25 of the FOI Act recommended in this Special Report to Parliament been made?

ANSWER 30

No.

QUESTION 31

What has been the response to the Ombudsman's proposal for a comprehensive review of the FOI Act to be completed by 31 December, 1994 and to the recommendation for a wide-ranging review of the fees and charges policy under the Act?

ANSWER 31

There has not yet been any response from the Cabinet Office.

3. FREEDOM OF INFORMATION (GENERAL)

QUESTION 32

Has the Ombudsman had cause to use his new power to recommend the release of a document in the public interest under section 52(6)(a) of the FOI Act ?

ANSWER 32

The provision forms the basis of a recommendation in a report which is presently at draft stage.

QUESTION 33

Has the anticipated increase in complaints as a result of the repeal of section 16(2) of the Act occurred? (Annual Report p.145)

ANSWER 33

There has been an increase of approximately 80% in FOI complaints received in the current financial year. However, the increase does not appear to be related to the repeal of section 16(2) of the FOI Act. Anecdotal information available to FOI officers suggests that there is an almost total absence of awareness in the general public concerning the repeal of section 16(2).

QUESTION 34

Despite the introduction of a regulation² prescribing the information to be included in an annual report by agencies and departments under section 68 of the FOI Act, the Ombudsman has continued to express concern about the compilation of FOI statistics. In the 1992-3 Annual Report it is claimed that "there remains no provision for regular compilation and analysis of each agency's statistics", The usefulness of a recently developed FOI software package also is called into doubt in the Annual Report. Consequently, the Ombudsman recommended that "only a continuing unit with statutory power and sufficient resources can adequately collate and analyse FOI

² (Freedom of Information Act 1989 - Regulation 1993 No.46; Gazetted 22/1/93 No. 7)

statistics and maximise compliance with the new annual report regulations". The Ombudsman claimed that he would continue to experience difficulty in his external review function because of the lack of "regular analysis of the operation of the Act". What are the implications of this situation for FOI determinations made by the Ombudsman in accordance with his external review function?

ANSWER 34

The Ombudsman is not empowered to make FOI determinations. His external review function extends only so far as to the making of recommendations. As to the lack of a centralised FOI Annual Report, as for example is published annually by the Commonwealth, the Office must interpret the Act and individual department's procedures for its implementation, lacking important information about the way the range of authorities are dealing with the Act and applicants, and overall whether the objects of the Act are being met. The fact that District Court decisions are few and far between exacerbates the problem. Information from other jurisdictions on the administration and interpretation of the Act is relied upon to a greater extent than is desirable. The risk is that this Office's decisions will be increasingly isolated from any general trend within NSW of the appropriate interpretation of the Act.

Related to this is the very substantial risk that such a 'general trend' will become instead a disparate and unconnected number of strands, each taking its own direction, where there remains no unit monitoring and advising the whole state's FOI operations. This Office is not in a position to do so itself, as its sources of information relate only to complaints.

QUESTION 35

To what extent do the educational and advisory activities undertaken by the Office in the absence of a dedicated FOI Unit affect the operations of the Office?

ANSWER 35

There are no statistics on the proportion of time and effort expended on FOI educational and advisory activities. It is abundantly clear however that the Office's FOI unit spends considerable time in these activities, mostly by way of the telephone, correspondence and preparation of the Office's FOI Annual Report, but also in the preparation of speeches and in attendance at meetings of FOI practitioners.

4. POLICE COMPLAINTS

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 was assented to on 8 June 1993 and came into operation on 1 July the same year. The Committee has noted the Ombudsman's Special Reports on urgent amendments to section 121 of the Police Service Act as amended by this Act. However, it has not had the opportunity to discuss the affect of the Act's provisions on the operations of the Office. The following questions relate to the affect of the new police complaints system on the Office of the Ombudsman.

4.1 MEDIATION

QUESTION 36

To what extent has the increased focus on the conciliation of police complaints, where appropriate, enabled a more efficient use of Office resources?

ANSWER 36

Conciliation has certainly increased, with 17% of matters determined in the current financial year recorded as conciliated. Total number of conciliations is projected to increase by 47%. The new Customer Assistance Unit appears to be well managed and resourced and is dealing with matters expeditiously, which should improve use of resources in both the police service and in this office. There has been frequent telephone and personal contact between the CAU and this office which is to the benefit of both parties.

However, remaining concerns are the quality of conciliations in the regions (ie those not conducted by the CAU) where complainants allege "rubber stamping" and even coercion. As well, many of the current conciliations are being conducted on complaints about rudeness and abuse by police when issuing traffic infringements and the like, which were matters previously declined outright. In this sense, while customers are getting a better service, there is no resource saving because a conciliation is inherently more resource intensive than an outright decline.

It is also important to note that any possible gains from increase in conciliations have been swamped by this year's projected 14% rise in police complaints (from 4008 to 4691, including reviews). At this stage determinations are keeping pace with new complaints but this involves a massive staff effort and leaves little scope for additional labour intensive work such as conciliation audits.

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In an effort to redress this problem and restore a focus on conciliation, the Ombudsman has hired an additional staff member on contract to undertake a major analysis of conciliation over the next six months, with a brief to analyse existing data, undertake conciliation audits and run a pilot program of direct conciliations by Ombudsman office staff under s135(2).

QUESTIONS WITHOUT NOTICE

CHAIRMAN: We now turn to answer 36.

Dr BURGSMANN: I refer to your concern about the quality of conciliation in the regions. I also refer to answer 39 where you talk about Aboriginal and NES complainants. During our inquiry into the handling of police complaints the Aboriginal Legal Service made the point that it was not interested in mediation or conciliation because, to some extent, they wanted their day in court. They would be in a situation of conciliation where it was the copper who had done it to them anyway and they were not in a position of power to have a proper conciliation.

Mr LANDA: A power imbalance and intimidation.

Dr BURGSMANN: They were aware that this might be the case. I am interested to see that it seems to have occurred a bit.

Mr LANDA: The conciliation has a long way to go. It is not going to be an easy task to conciliate in Aboriginal areas, particularly in country areas. There is no doubt about that. With the money we have saved from the secondment, we have two ladies doing research into issues such as this. We will be focusing on it. They are skilled in designing and this is exactly the type of issue we have to design for. There is no way we can expect successful conciliations between police and Aborigines without their being some intermediary that is totally acceptable. We are aware of that.

CHAIRMAN: How many conciliation audits have you been able to undertake?

Mr LANDA: We have engaged on contract a former senior employee of the Office—a lawyer who is about to do a major report and audit.

Mr PINNOCK: It has been hit and run until now. If we can get out to country areas and fit in an audit of the local police station in terms of conciliation we

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will. The audit function has been probably a lesser priority simply because of overall resources.

Mr ANDREWS: There has been a 14 per cent increase in police complaints this financial year. People are overwhelmed with having to deal with the first stage of police investigations in assessing and monitoring those reports. It has meant that the resources we predicted could be directed to investigations and auditing functions are simply not there.

CHAIRMAN: Would that increase in complaints be in line with the high profile of the Royal Commission?

Mr LANDA: That has not hit yet. I am sure that that will be reflected.

Mr RICHARDSON: To what do you attribute it? It has not been matched in other areas, has it? So the 62 per cent of police claims will now be 67 per cent, will it?

Mr ANDREWS: Something like that. There has been an overall increase of roughly 10 per cent of complaints in general, but it is 14 per cent in the police area. Police complaints have gone up every year that we have had the police jurisdiction, since 1978. It is in line with trends. It is a result of there being more police, awareness that you can make complaints about police, that the age of police has dropped a lot, and there is a larger percentage of police on the beat with less experience than those five years ago.

QUESTION 37

Recommendation 4 of the Committee's Police Complaints Report recommended that there should be a "flexible class and kind mechanism" in relation to the type of matters to be conciliated. This was given legislative effect through section 132(1) of the Police Service Act 1990. How are matters for conciliation currently determined?

ANSWER 37

Matters for conciliation are as set out in Part B p 21-24 of the Police Procedure Manual (copy attached). The Assistant Commissioner (Professional Responsibility) has recently

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approached the Ombudsman with a view to amplifying and expanding the agreement and this is under consideration. It is likely that modifications will be made as a consequence of the research project detailed above.

4.2 AUDITING FUNCTION

QUESTION 38

The Committee also recommended in its report that the Ombudsman should be empowered to conduct random audits of conciliation records to ensure that procedures are being properly carried out and proper records maintained. To what extent have such random audits been conducted and were there any difficulties experienced by the Ombudsman in exercising this power?

ANSWER 38

Conciliation audits have been undertaken to only a limited extent as detailed above, mainly in conjunction with country visits. Four further audits are planned in the next fortnight in conjunction with scheduled public awareness visits.

As detailed above, a more intensive program of audits is planned over the next six months in conjunction with the research project, as well as ongoing monitoring of conditions in police cells which was the subject of an earlier Ombudsman report.

Difficulties have not been encountered in undertaking audits other than time and staffing constraints.

QUESTION 39

Have any procedural problems regarding the use of conciliation by police to deal with complaints been highlighted as a result of conciliation audits?

ANSWER 39

Audits themselves have not revealed procedural problems. Individual complaint files held by the Office have revealed particular problems which have been raised with the Police Service as they arise. Issues which the conciliation project is expected to address include availability of interpreters, and funding of the same, for conciliations; inducing complainants to sign

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blank conciliation statements; issues of relative power, particularly with aboriginal and NESB complainants militating against meaningful conciliation.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: Something concerned me in your answer to question 39. You indicated that inducing complainants to sign blank conciliation statements occurred. What is that about?

Mr PINNOCK: In other words, the complainant will come back to us and complain about the conciliation process. How often it happens varies. That is not an unknown thing. It is alleged to have happened on a number of occasions.

CHAIRMAN: Where?

Mr PINNOCK: The police officer who is carrying out the conciliation literally turns up with a document which says, "So and so of such and such an address wishes to advise the Ombudsman that I have today conciliated this complaint with so and so and I wish to withdraw the complaint". They are asked to sign on the dotted line. That is literally the type of complaint we have received.

CHAIRMAN: So it is not a blank conciliation form? It is a prepared statement.

Mr PINNOCK: It can either be a prepared statement or blank in the sense that you write your name in the spaces and then sign it.

Mr LANDA: I have been agitated at the delay in carrying out the audit. It is something I want prioritised. The reality is that the resources simply are not there. When the opportunity came up to employ on a contract basis the former employee, who is ideal for it, we grabbed it. It is about to happen. It is an important issue. I do not expect it to produce as much positive outcome so far as the success of conciliations is concerned; I think it will produce a fair bit of negative. We have not been able to convince the police that it is necessary to train people and to empower only those people of sufficient seniority to make a genuine process. That is happening. Before the year is out it will be well in place.

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CHAIRMAN: Would you consider that there is still a lack of understanding within the police force in those senior areas with respect to how to carry out a conciliation?

Mr LANDA: Absolutely. Management's response to all the pressure that our Office has brought to bear was that the police are instinctive, they have the skills, they are constantly mediating and conciliating, and they are simply avoiding the real issues of putting the appropriate resources into it. I am pretty sure that we have overcome that problem at the highest level. There is an acceptance that there needs to be an about-face. It will happen. They have the English consultant out who set up the Queensland model. It is happening.

4.3 CONCILIATION TRAINING

QUESTION 40

The Committee noted the information provided in the 1992-3 Annual Report on participation by the Office in internal police training courses (p.64). Does the Ombudsman's Office contribute to the education of police officers about conciliation, for example, through lectures or assistance in compiling conciliation guidelines?

ANSWER 40

Information about conciliation at this stage is presented only through lectures given by Ombudsman staff to various police groups around the state about the whole range of issues covered by the complaints system, including conciliation. The Ombudsman has made five such appearances himself over the financial year and has on each occasion addressed conciliation in some detail. Given the huge increase in complaints this year and the need to focus the energy of investigation staff on investigations, it is unlikely that the time expended on attendance at police training courses can be greatly increased. However, some preliminary discussions have been held in regard to Ombudsman participation in the conciliation courses run for prospective new CAU staff at Goulburn and this will be pursued.

QUESTION 41

Do police officers participate in mediation courses currently conducted by the Office of the Ombudsman?

ANSWER 41

Only one serving police officer, an Inspector from the Office of Professional Responsibility, has attended the mediation courses conducted by the Office. Two members of the Police Department's Human Resources Branch have also been trained.

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QUESTIONS WITHOUT NOTICE

CHAIRMAN: On a related issue, in question 41 we asked, "Do police officers participate in mediation courses currently conducted by the Office of the Ombudsman". You indicated in your response that only one serving police officer has actually attended. That is surprising to me and, I suppose, to other Committee members. Do you have any explanation?

Mr LANDA: Yes. The police like to manage their own affairs. That is the simple explanation. We have come further along the track in relation to that. The Police Association, knowing the officers' interest in increasing the rate of conciliation—doubling it at least, if not trebling it—came to the office and asked for assistance because they had seen the system being carried out in Queensland. The Queensland system is much along the lines we have been advocating, namely quite intensive training of five days. It identifies that conciliators should be not less than sergeant rank. It gets rid of the myth that all police are natural conciliators, and it is working.

The Police Association and the union are happy with it. The police management are happy with it and the oversight authorities are happy. I was engaged virtually by the association to help them get its case over with the management here to adopt such a system. It was a battle but it has finally reached the stage where they have seen the virtue of the system and are starting to put mechanisms in place to adopt it. It will be one of the most valuable exercises that have taken place in terms of the money it will save the State, the police, and the Ombudsman's office—a lot of money. The basic system is along the lines that we preach, practise and teach. If it increases from the current rate of 18 per cent conciliation to the 40 per cent achieved in Queensland, the saving will be enormous and the satisfaction rate with the police will rise correspondingly.

CHAIRMAN: You are satisfied that that is being attended to?

Mr LANDA: Yes and we have addressed the management problems. It is ongoing, we have convinced police that they are not in jeopardy by being frank when they have made a blunder.

4.4 DIRECT INVESTIGATIONS

QUESTION 42

Have any direct investigations of police complaints been conducted in accordance with the new direct investigation powers available to the Ombudsman under the Police Service Act (section 153)?

QUESTION 43

On what occasions, if any, have these powers been exercised?

ANSWER 42 & 43

Two direct investigations have been held under the new powers, for cases of major public interest involving senior police.

Each occasion so far has revealed the great disparity in resources between the Police Service, which briefs senior counsel for each hearing and threatens litigation at every step of the process, and the resources of this office, where grade 7/8 or 9/10 staff are conducting the investigation and making submissions to the Ombudsman as to the merit of submissions from counsel.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: *I refer to answer 42. Could you explain in further detail the resource difficulties experienced by the Office in undertaking direct investigations involving the senior police?*

Mr LANDA: *As the response indicates, the increase in the complaint load has put sufficient pressure on to make it more difficult. One of the cases we started fairly recently seems to have been taken over by the Royal Commission. It is still gathering material for the investigation. There have been a few minor ones, but there has been no significant change in practice.*

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Mr PINNOCK: The nuts and bolts of it is simply this: we start out a direct investigation and the whole of the investigation is conducted by our Office as opposed to where you are reinvestigating a complaint that has been looked at by the Police or you are taking over an investigation which the Police have failed to complete within the statutory time period of either 90 or 180 days. In each of those cases either the complaint has been fully investigated by the Police or partially so. A lot of the work has already been done. You can then use that, particularly if it is a lengthy investigation, to see who you want to take evidence from on oath. When we do a direct investigation we start out from scratch. The whole of the resources of the investigation process are thrown on our Office.

Mr LANDA: That is no surprise. We have always said it is a hollow power to have if it is given to us revenue neutral. We have always said that it is unlikely that it will be an effective power.

Mr PINNOCK: You are doing a direct investigation, you are going where you want to go, and you know what you are after if there is a tendency or possibility that the police will try to snow you on a really important matter.

CHAIRMAN: You have indicated on several occasions that there is a disparity between resources given to the Police Service and your resources. Senior Counsel are involved in advising Police. What do you see as the answer to that? Will you be engaging Senior Counsel?

Mr PINNOCK: I am a lawyer and I would not allow lawyers to take the process over if I had my way. The fact of the matter is that when you are starting to deal with procedural fairness aspects, the law of procedural fairness has developed a pace over the last 10 years. Starting from a position of a reasonable amount of simplicity it has now become a complicated sort of thing. In fact, there is litigation on foot at the moment which commenced principally challenging the Ombudsman's jurisdiction until a recent amendment to the Police Service Act. That having been resolved, there are still a whole host of procedural aspects which we are now waiting to see whether the plaintiff goes ahead with, not the least of which is a notice to produce, that is to say, requiring us to produce for inspection, as it were, by the plaintiff the whole of our investigation.

In other words, it is yet another attempt by the Police to get at what it is that we have and which we may not at a particular stage want to disclose. I am not criticising the Police necessarily for that. They have a right to take those proceedings, about which

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there is an issue on the merits. But the fact of the matter is that we do not have the resources to match that sort of thing on a constant basis. Not all the funding for these sorts of issues and challenges comes from, for instance, the Police Association. Indeed, recently it would appear that most of the funding for these sorts of things is coming from the Service itself. I do not know the details of it, but we cannot match that.

Mr LANDA: It is a natural progression. We had settled down under the current legislation to a stage where the challenges that had arisen were dealt with. For four or five years nothing happened. The new Act and the new powers give the impetus for police to get nervous or get anxious about the use of these powers. This is what seems to bring forth the challenges. I do not think it is unhealthy or to be unexpected. I think challenges will continue to come until we have established our methodology and the jurisdiction we have.

Mr RICHARDSON: You mentioned the Royal Commission. What impact do you think the Royal Commission might have on the number and type of cases that are brought to your attention and the cases that are currently under investigation by you?

Mr LANDA: I have already had a meeting with the Royal Commissioner. We have people who will be seconded from our Office. No doubt the Royal Commissioner will be liaising in that respect. Information and access to data are being discussed and there may need to be statutory amendments to enable that to happen. We are setting up protocols now. Undoubtedly that will increase the complaint load of the Office as the Commission gains momentum. I do not see us being otherwise affected except to say that one of the prominent inquiries that we have started and that we will be completing with some expedition may well be taken over by the Commission. We may simply leave it in abeyance ourselves.

Mr PINNOCK: Let me develop one point on that. Just on a technical aspect, which may be a matter the Committee ought to know about in its wider role, as the law stands at the moment the secrecy provisions and the immunities under the Ombudsman Act which the Ombudsman enjoys actually make him immune from suit or process issued by the Royal Commissioner and, more to the point, actually prohibit him from providing information to the Royal Commissioner. The exceptions in those provisions relate specifically only to part 3 of the Royal Commissions Act, which deals with offences under the Royal Commissions Act, for instance, failure to answer a summons. They are there so that the Ombudsman can take prosecution action for

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breach of his own summons, which is actually issued under the Royal Commissions Act.

So there will need to be an amendment in specific terms to the Ombudsman Act to enable the Ombudsman to co-operate and to supply information to the current Royal Commission, or in general terms so that at the time any royal commission comes into being we are able to do so. The issue has not arisen in the past because, for instance, when the Aboriginal Deaths in Custody Royal Commission was set up, we looked at it and came to the conclusion that the legislation, which created the letters patent being Commonwealth, overrode those provisions in the Ombudsman Act. That is not the case in relation to a royal commission established under the New South Wales Royal Commissions Act.

CHAIRMAN: *Have you raised that with the appropriate Ministers?*

Mr PINNOCK: *We raised that immediately with the Commissioner himself. It is a matter which we will have to raise with Cabinet Office. But I imagine the Royal Commissioner is already doing that. He has told us informally that there are a raft of amendments which he will be seeking in one way or another.*

Mr RICHARDSON: *To the Ombudsman Act?*

Mr LANDA: *No, overall. There are a number of issues where they will have to obtain amendments to the legislation. It is a matter that this Committee ought to be aware of certainly.*

Mr RICHARDSON: *What section specifically was that of the Ombudsman Act?*

Mr PINNOCK: *There will need to be an amendment to at least section 34 subsection (1) and possibly an amendment to section 35(2)(b). Section 34 is the disclosure provision, the secrecy provision. Section 34 is an immunity type provision which states that the Ombudsman is neither competent nor compelled to give evidence or produce any document. The exception is part 3 of the Royal Commissions Act. That will have to be either deleted or amended to read parts 2 and 3 of the Royal Commissions Act and there needs to be a similar amendment to section 34(1)(c).*

Mr HUMPHERSON: *You referred to a disparity in resources. What did you say you believed was the solution to that? Do you believe there is a solution?*

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Mr LANDA: *Resources.*

Mr HUMPHERSON: *You need additional resources to be able to match the resources available to the Police?*

Mr LANDA: *We have always maintained that power without revenue will be ineffective. We have never said otherwise.*

Mr PINNOCK: *Peat Marwick, in its report to the Committee inquiring into the adequacy of funding and resources, actually recommended that there be created in the Ombudsman's budget a protected line item for direct investigation, that is to say, that there would be money available in the Ombudsman's budget which could be used for a purpose other than direct investigation. So that if in a particular year he carried out no investigations, that money would not be touched; it would be returned to general revenue. That recommendation was not adopted by this Committee. I am not challenging the Committee on it; I am just bringing you up to date on it. I think the Committee felt that it was an undesirable fetter, if you like, to put on the Ombudsman, to have it as a protected item, because we would have to justify to Treasury its use on any occasion. But the fact of the matter is that there is no special funding for direct investigations. We have an application with Treasury—it is a long-standing one of considerable months—for enhancements as a result of the amendments introduced by the Police Service Act in relation both to monitoring of investigations and direct investigations. But we have heard nothing back from Treasury about that.*

Mr HUMPHERSON: *Is it in the public interest for the Police to be able to brief Senior Counsel on these types of matters?*

Mr PINNOCK: *They have legal rights the same as any public authority that is investigated by the Ombudsman. Public authorities avail themselves of their rights as and when they wish. Our experience is that the police probably appear with legal representatives more often than not, and certainly more often than other public authorities. It is hard to say that it is not in the public interest because they have the legal right to do so. But it becomes an issue, I guess, when they have access to independent counsel. Although we do in theory, the resources constraints mean we do not in practice all the time. Certainly we could not afford to have independent counsel briefed for every section 19-type inquiry, whether it be a reinvestigation, a taken over investigation or a direct investigation that we conduct.*

Police Complaints

Mr HUMPHERSON: Are these two specific investigations being hampered to any extent by the fact that the police are briefing senior counsel?

Mr LANDA: Yes. The delay factor, of course, blows out to a minimum of 12 months or more.

Mr HUMPHERSON: So there have been significant delays as a result?

Mr PINNOCK: Perhaps I was getting too hot under the collar, but the instructing solicitor advising counsel for the Service not only suggested how we should write our report but then annexed a copy of a draft summons taking us to the Supreme Court. If ever a matter was issued interrorem it would be that. In other words, this is what we would like you to do and, if you do not, this is what we will be doing. We will deal with that. We are strong enough to be able to deal with that sort of threat. But the point is that it is a question of the resource angle. Here is the advice of Senior Counsel. They have immediate access to Senior Counsel. I might say that, at the end of the day, we have always managed to get our costs back, but we have had to go to Treasury in relation to litigation and say, "Give us supplementation there". We have never been guaranteed of it at any stage. So if we were taken to court we have to pay on the basis that it comes out of our budget. We may get it back; we may not. But in relation to investigations as such where the Police turn up legally represented we do not have the budgetary resources to be able to brief counsel to act on the Ombudsman's behalf in those investigations. Whether we should is another matter. But even if we wanted to we do not as a matter of course.

Mr LANDA: I am ambivalent about those challenges. If I was on the other side I would think much more carefully about embarking on a challenge which, on the face of it, was an attempt to inhibit an investigation of what police management in my view ought to have wanted to have cleared up.

Mr PINNOCK: The Ombudsman has never lost any litigation that has been brought against him, or which he has brought himself, involving the Police. In fact, all the litigation has involved police matters. We have never lost.

Mr RICHARDSON: Have you made the police well aware of that?

Mr PINNOCK: We have not actually, no. But they must know where the runs are on the board.

Police Complaints

Mr LANDA: The adverse effect of that litigation being public must be very damaging to the image. Not enough thought is given to it by management. Even if the case was won I do not think it warrants exposing yourself to such damaging criticism. What do you have to hide by allowing yourself to be independently scrutinised? It is a sad indication that perhaps lawyers have triumphed over reason.

Dr BURGMANN: You said earlier that your right to primary investigation is an ineffective power if it is done on a revenue neutral basis. From what you have written in this brief answer you seem to be seeing as a problem the fact that the grade of your staff is not senior enough.

Mr ANDREWS: The answer covers two issues. One is having the resources available to direct investigations and the other refers to a trend we have noticed in recent times, that is, during section 19 hearings involving the Police. The Police are now starting to turn up with counsel or senior counsel rather than just the Police Service solicitor. That is something that has been quite noticeable over the last six months. Flowing from that police are threatening litigation much more than they used to. In fact, they have commenced litigation in one matter.

Dr BURGMANN: Returning to what we all thought was giving you real power in relation to the Police, you are basically saying that you cannot really do it because it is too expensive and you have no way of getting extra money?

Mr ANDREWS: The Committee presumably made that recommendation on the belief that some of the other components of the legislative package might balance out the resources: if there was more effort going into conciliation, there would be less first-stage police investigations; if we were auditing conciliations rather than dealing with them on an individual basis, we would free up resources. We were never convinced of that. The other thing is that there has been a 14 per cent increase in complaints overall. We are struggling to deal with that, let alone the direct investigations.

Mr LANDA: It is quite clear that the degree of resources that goes into direct investigation is so much greater than any other form of inquiry that we take that if we actually use resources there, our figures affecting other complaints will suffer.

4.5 MONITORING BY OMBUDSMAN OF A POLICE INVESTIGATION OF A COMPLAINT

QUESTION 44

Section 144 of the Police Service Act 1990 provides that the Ombudsman may monitor the progress of the investigation of a complaint by police if the Ombudsman considers that it is in the public interest to do so. To what extent has this power been exercised since the commencement of the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993?

QUESTION 45

Has the Ombudsman experienced any difficulties in exercising this power and in what circumstances has such action occurred?

ANSWER 44 & 45

Ten cases have been made subject of monitoring under section 144. Such cases have varied from matters involving only one or two witnesses to major cases involving attendance at a great number of interviews, which can be a major time investment of several weeks. Cases identified as suitable for monitoring thus far have been matters involving potentially disadvantaged complainants - such as juveniles or Aboriginal complainants - or sensitive matters where it is felt that civilian oversight may bring more probity to the process - such as whistleblowing complaints by serving police, or sexual harassment cases.

The power is proving to be an extremely effective one. It gives complainants more confidence in the process, and enables a full and frank exchange of views between police and civilian investigators.

Some initial difficulties have been experienced in that police investigators do not welcome civilian scrutiny. However, results to date have been very encouraging.

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QUESTIONS WITHOUT NOTICE

CHAIRMAN: I refer to answers 44 and 45. In regard to monitoring under section 144 you have indicated cases identified as suitable for monitoring have been matters involving potentially disadvantaged complainants such as juvenile or Aboriginal complainants. Do you feel that by identifying and pouring your resources into those areas that other areas would be missing out?

Mr PINNOCK: Something is always going to miss out. That is in the nature of a complaint-handling agency. You will never have resources to do everything you actually want to do. In fact, I do not think we have ever asked to be funded on the basis of doing everything that we could conceivably want to do; rather, to be funded on the basis of what we ought to do properly, whatever that might be. You have always got to make priority decisions as to where your resources are going to go. That must mean every time you do that, something is going to have a lower priority. We have chosen these as being the highest priority in our view. We think that is defensible, but there is always an element of subjectivity about that. It is a matter for judgment.

Some people might say, "How about looking at a different area". For instance, one area I have always been concerned about is allegations of assaults in custody. I regard that as a very serious type of allegation of police abuse of authority. It is also a particularly difficult one to get at because almost by definition you are not going to have any other witnesses to the issue. So, if you are not going to get a legitimate or good investigation on it, you may never get to the bottom of it. But it is a call that you have to make.

Mr LANDA: We identified a matter—which I do not want to name because it is going before the Royal Commission—as being a matter of public importance, and we were prepared to resource that because it needed speedy attention.

Mr PINNOCK: Two of those areas are of particular concern: whistleblowing type complaints and sexual harassment type cases. The record of the Police Force and Police Service over the past 10 years in dealing with those two areas has not been particularly good. It is improving in one area and perhaps not so much in the other. That was why we targeted those two in particular.

5. MISCELLANEOUS - QUESTIONS WITHOUT NOTICE

CHAIRMAN: *In recommendation No. 18 of the Committee's Funds and Resources Report the Committee recommends that prior to the sitting of the Parliamentary Estimates Committee the Ombudsman should present his budget for the forthcoming year to the Committee; the Committee would take evidence from the Ombudsman regarding his budgetary requirements and budget performance for the previous year and report to the Premier and Treasury Estimates Committee at the time it is convened. Do you intend to adopt that recommendation of this Committee? Put simply, will you talk to us about your budget prior to the Estimates Committees?*

Mr LANDA: *I cannot see any reason why not. I certainly would be happy to do so. I have never made any secret that my belief is that it is a very important function of this Committee and that we should appraise the Committee of all our problems and seek its assistance.*

CHAIRMAN: *That is an important opportunity for you to raise your resourcing problems with this Committee so that it can be taken forward to the Estimates Committees. It gives the Committee and yourself an opportunity to have the details put forward to those committees.*

Mr LANDA: *Mr Chairman, I tell you now that we will adopt that recommendation.*

Mr PINNOCK: *Certainly we are not often asked questions in the Estimates Committee process. It is a matter strictly where you are called upon and if you are not called upon, that is it.*

Mr ANDREWS: *It may be that the Committee might like to be apprised of that information much earlier in the year because it is a fait accompli at that stage.*

Mr PINNOCK: *That is really the point at issue. The way the budgetary process works is that we get notified of our allocation by allocation letters in the first week of July usually. The way it has always worked is that basically although that is not your funding until the appropriation is made by the Parliament, you know that as long as you spend each month one twelfth of that appropriation, you will be alright. The whole thing is set pretty much in concrete by the time it gets to the Estimates Committees.*

Miscellaneous - Questions Without Notice

CHAIRMAN: It may be a process that will have some future benefits. Returning to a question of personal interest, I was a member of the HomeFund Committee. Concern was raised during the early stages of that committee with the Ombudsman's Office instigating investigation into Treasury without the necessary legislative power or power from that Committee. Do you feel your power should be expanded to look into areas such as that?

Mr PINNOCK: The issue that was raised, at least raised directly with me, was whether or not under the guise of conducting an investigation into Treasury, I in particular, sought or obtained access to documents not relevant to the inquiry but relevant to our arguments with Treasury over funding. You will probably recall, Mr Chairman, that I categorically rejected that. The question involving the investigation of Treasury was never one of power but might have arisen as to a question of power in terms of, for instance, looking at the conduct of an officer of Treasury, Mr Allan, as a director of FANMAC. A question would arise there. I do not think it ever actually did. I only mention that as a particular example and I do not want any question to arise at all as to Mr Allan's conduct.

The real issue in a wider frame was whether we had the power to look at the conduct of FANMAC. My view was, and remains, that we did not. My view is that we should not either. We look at the conduct of public authorities. We have a very broad definition of public authorities in the Ombudsman Act. If an organisation does not meet that definition, basically the Ombudsman does not have any cause to be looking at that. What happened with HomeFund was an unusual situation, and it was cured to some extent. Purely as a personal reaction, I would not want the Ombudsman's Office to be put in a position where it was given, as it were, unfettered powers or powers to deal with non-public authorities. If the Parliament in its wisdom in a particular instance wants to call on the Ombudsman to look at something and is prepared to pass enabling legislation, that is an entirely different matter. But in terms of actual powers to look at Treasury, there was never any issue.

6. APPEAL MECHANISMS

QUESTION

The Committee occasionally receives requests from individuals who have complained to the Ombudsman for a review of the determination made in relation to their complaint. These correspondents are advised of the provisions of the Ombudsman Act which restrict the Committee from reviewing decisions by the Ombudsman to investigate, or to discontinue an investigation of a complaint (s.31B(2)). Dissatisfied complainants appear to have no avenue for review of determinations by the Ombudsman except for further appeal to the Ombudsman.

As a matter of courtesy such correspondence is forwarded to the Ombudsman for his information and in some cases for advice on any procedural matters which the Committee considers relevant.

The Committee has discussed this matter with the Ombudsman in correspondence and during the previous General Meeting and is satisfied with the current arrangements for handling such given the existing legislative framework governing the Committee's operations. It also is aware of the internal review mechanisms used by the Office to deal with complainants dissatisfied with the outcome of their complaint.

Nevertheless, it remains concerned about the issue of appeal mechanisms available to dissatisfied complainants and would welcome any comments the Ombudsman may wish to make on possible appeal structures in such cases. At a meeting on 21 April, 1994 the Committee formally resolved to discuss this issue with the Ombudsman during the General Meeting.

ANSWER

The Committee's satisfaction with the current arrangements for review of determinations, given the legislative framework, is noted. The prohibition in S.31B(2) on the Committee, which parallels provisions relating to the ICAC and the NCA, recognises both the undesirability of and the practical problems associated with the Committee acting as an appeal mechanism.

However, the absence of any appeal mechanisms in the legislation also reflects the view that external review mechanisms are inappropriate for complaint handling agencies such as an Ombudsman. Firstly, this Office deals with a huge number of complaints; secondly, emphasis is placed on informal, speedy and non-legalistic methods of dealing with

Appeal Mechanisms

complaints; thirdly, the Ombudsman's determinations do not, as a matter of law, affect legal rights. (To the extent that issues of procedural fairness arise, these are dealt with routinely as part of the Office's normal procedures).

The Ombudsman firmly believes that the existing internal right of review is both adequate and appropriate.

QUESTIONS WITHOUT NOTICE

CHAIRMAN: Do members of the Committee have any further matters?

Mr RICHARDSON: There was the matter of the appeal mechanism. The Committee has things referred to it, for example, recently from the Premier's Department that did not make a huge amount of sense. We are not permitted under the Act to evaluate these things.

Mr PINNOCK: The Premier's Department knows that too.

Mr RICHARDSON: But we are still having these matters referred to us as a matter of course. In fact, there are several of them for the Committee to look at each time round.

Mr PINNOCK: I am afraid that you are dealing with a bureaucratic response. What happens is that the complainant will write to the Premier's Department. Before this Committee was established, when that happened the Premier's Department would send those letters to us. It is just acting as a postbox. It has no interest in dealing with the matter, so it casts around to find who it will send them to. Years ago they used to send them directly to us, now they send them to you. They know that you have no powers to reconsider a determination by the Ombudsman. They send it to you anyway. I think they are being disingenuous.

Dr BURGEMANN: The question is not about reconsidering cases. Sometimes we receive letters that are complaints against the Ombudsman, but not that you came to the wrong decision. A question I keep asking is, who looks after the caretaker's daughter? Where do those sorts of cases, and we have had a number of them—

Mr PINNOCK: Unless it is an allegation of corruption, in which case it goes to ICAC, we being subject to the Commission, you are right, it does not go anywhere.

Appeal Mechanisms

Mr ANDREWS: Except to say that we have an internal procedure to deal with complaints about our own staff.

Dr BURGMANN: But is that not unacceptable? The Ombudsman was set up because we object to the police dealing with complaints against themselves et cetera. The Committee does not receive many complaints—three or four a year—but it is of concern and it seems to me that there needs to be a procedure of some type for those complaints, otherwise the perception is that something is not happening which should be happening. The Committee does not want to do it; the last thing it wants to do is look at individual cases. Have you ever thought about the type of procedure?

Mr PINNOCK: You are talking now purely about a complaint as to the conduct of an officer of the Ombudsman's Office unrelated to the determination of a complaint?

Dr BURGMANN: Yes.

Mr PINNOCK: My short answer is no. I have not ever thought about it.

Mr MOSS: We do not get letters about the conduct of the Ombudsman. We get letters complaining about not getting the right decision.

Dr BURGMANN: Sometimes they complain that the Ombudsman did not go and look at their drain.

Mr RICHARDSON: The decline policy actually is a cause of considerable dissent.

Mr LANDA: Our survey is quite revealing. We have to live with that.

Mr PINNOCK: If you are concerned that you are getting X number of complaints about either the Ombudsman's complaint assessment policy or the way in which he applies it, you are entitled to look at the policy. In fact, you have said you are going to. What you cannot do is look at the individual case. It depends on what you are interested in doing. If you are interested in addressing the individual case, you are in a cleft stick because the Act prohibits you from doing that, and rightly so in my view. However, if you are interested in the broader picture—which clearly the Committee has said on a number of occasions that it is because that is what the Committee has been looking at—you have the power to do that. (Appendix 6)

Appeal Mechanisms

Mr RICHARDSON: I do not see how we can look at the broader picture without looking at some individual cases.

Mr PINNOCK: The prohibition is not of looking at an individual case as an example, but you may not use it as a way of reconsidering the Ombudsman's determination. It seems to me, from what the provision says, that if you get the Ombudsman to give evidence and you say, "Here are 10 cases where you have applied it in this way", as a way of debating the merits or application of the policy, there is no problem with that. It is if you want to go the step further and say, "I think you ought to have come to a different conclusion in that individual case" that you are trespassing on the prohibition.

CHAIRMAN: That is a matter that the Committee will be considering.

Dr BURGMANN: We have advice from the Crown Solicitor. For example, with the E-mail case, it was not a case of whether ICAC had the right to ask us to do anything but whether we on our own had the right to do something. Apparently we had that right. I do not particularly want to be a member of a committee that is going to end up looking at whether you are behaving yourself, however, it seems to me that there needs to be a body that does that, otherwise you are above complaint.

Mr PINNOCK: The issue is where you stop, but even the Ombudsman himself cannot look at the conduct of officers in the public sector in that way if it infringes the prohibition in his own Act in clause 12 of schedule 1, namely the matter relating to the employment of a person. Even the Ombudsman cannot look at the conduct of certain public servants if it is within a certain range of behaviour. The issue is, I guess, that where there are questions of misconduct which fall short of, say, corrupt conduct or criminal conduct, it is a matter for every organisation, every public authority to take action if required against its own officers. There will always be issues about whether that is done in every case where it should be, or done as frequently as it should be, or perhaps done too frequently, I do not know.

CHAIRMAN: Possibly when issues such as that come before the Committee we could have some form of informal meeting with the Ombudsman.

Mr PINNOCK: We do not have any difficulty with that.

Appeal Mechanisms

Mr LANDA: If the Committee received a raft of complaints that created concern, there is no reason why the Committee should not request the Ombudsman to inquire into that issue and report.

Mr RICHARDSON: That is the sort of thing I had in mind.

Dr BURGMANN: You would be happy with that procedure: looking at complaints against yourself?

Mr LANDA: I think it is an appropriate way to deal with that type of issue. It worries me, too, that it is elevated to a position of non-accountability, particularly in a circumstance where conduct was being exhibited or possibly being exhibited by complaints that were enough to upset this Committee's equilibrium in how we are handling ourselves—are we managing well, are we failing. I do not have a problem with that approach.

CHAIRMAN: The number of complaints received by this Committee in any shape or form, compared to the number of complaints handled by your Office, on a percentile basis would be minuscule.

Mr LANDA: Yes, but look at the survey. It is quite clear that we are an organisation that has the potential to upset people.

CHAIRMAN: Probably more by what you do not do than by what you do.

Mr ANDREWS: There will always be people who are going to be unhappy. It is like going to court, one side always loses, so you will always have 50 per cent of people who are not happy with what happened.

Dr BURGMANN: We are quite clear about those situations if they are simple complaints about your decision; that is not a problem.

Mr LANDA: On balance I am more comfortable with that approach than without it, because it makes our process again more credible.

CHAIRMAN: Thank you for your attendance and discussion this afternoon. On behalf of the Committee I would like to place on record our thanks to Mr Pinnock for his assistance in the past. We understand he will be leaving shortly, perhaps to pursue greener pastures. We would like to wish him the very best in the future.

7. MORLING INQUIRY

QUESTION 46

Following the Hon. T Morling's independent inquiry into aspects of the Ombudsman's investigation into the Health Department's Complaints Unit, have there been any changes to staff practices in relation to the Office's internal E-mail system?

ANSWER 46

On 25 January 1994, a memorandum (copy attached - Appendix 7) was issued to all staff regarding the use of E-mail and the responsibilities of staff under the Code of Conduct. Staff have been scrupulous in the proper use of E-mail.

APPENDICES

APPENDIX 1



OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

DEL.js

Our reference:

Your reference:

21 June 1994

Mr Andrew Fraser, MP
Chairman
Joint Committee on the Office of the Ombudsman
Room 1144
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Fraser

Re: REPORT ON STAFFING AND EFFICIENCY MEASURES

As foreshadowed in my answer to question 4 in the Questions on Notice from the Joint Committee for the general meeting scheduled for 23 June 1994, I enclose reports on staffing and efficiency measures.

Efficiency Measures:

The efficiency measures referred to in the enclosed Summary of Performance are based on measures recommended in the KPMG Peat Marwick Report into the management of the Office and the current Corporate Plan. The data to be supplied to the Joint Committee on a 6 monthly basis (recommendation 22 in the Joint Committee's Report) is currently being considered as part of a significant revision of the Corporate Plan. This revision of the Corporate Plan includes the identification of a range of performance measures which will give a clearer picture of the overall performance of the Office than can be obtained from the existing performance measures.

As you are aware, the Office was restructured at the end of last year, including the creation of separate Police and General Complaint Teams within the Office. This has resulted in certain difficulties in measuring and comparing performance since the restructure with the performance measures identified by KPMG Peat Marwick before the restructure.

As you can see from the attached Summary of Performance, it appears that the Office is generally meeting the relevant performance measures identified in the KPMG Peat Marwick Report.

I note that while the number of complaints declined as a percentage of complaints finalised is slightly higher than the figure identified in that Report, there has been a significant decrease in complaints declined at the outset, with an equivalent increase in the number of complaints that were made the subject of preliminary enquiries.

In relation to the percentage of complaints declined at the outset within 14 days of receipt, the Office has not achieved the KPMG Peat Marwick performance measure of 90% within 7 days. The timeframe recommended for this performance measure is being reviewed in the light of experience throughout the NSW Public Sector.

I will address the Joint Committee further on these matters at the General Meeting on 23 June.

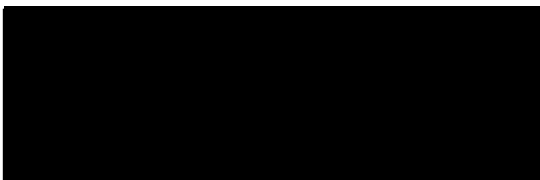
Staffing:

As can be seen from the attached Staffing Report, the staff establishment of the Office has been reduced to 69 following the restructure, with the bulk of investigative staff being assigned to the Police Complaint Team.

Of the six vacant positions, while all have been advertised it is relevant to note that:

1. The Aboriginal Liaison Officer position was offered to an applicant who has recently declined. Options are now being considered.
2. No suitable candidate was found for the Research Officer position, and as a result, the position description and the essential requirements are being reviewed. The position will be readvertised following this review.

Yours sincerely



David E Landa
NSW OMBUDSMAN

SUMMARY OF PERFORMANCE - 1/1/94 - 31/5/94

1. Average number of files finalised per Investigation Officer

	Police	General	FOI	Total
Total files finalised (includes review files)	2059	1254	39	3352
full-time permanent investigation staff grade 5/6 - 9/10	17	10.4	2	29.4
average files determined per investigation officer	121	113	19.5	114
annual equivalent	291*	271*	46.8	274

* Performance standard identified in KPMG Peat Marwick Report:

Police = 267 per annum

General = 271 per annum

2. Complaints declined as % of complaints finalised

	1992-1993			1/1/94 - 31/5/94		
	% declined outset	% declined after PE's	Total % declined	% declined outset	% declined after PE's#	Total % declined
POLICE	41.4%	23.1%	64.5%	36.8%	27.1%	65.9%
GENERAL	44.2%	20.9%	65.1%	35.34%	21.87%	57.21%
LOCAL GOVERNMENT	55.2%	35.6%	90.8%	39.11%	49.44%	88.55%
PRISONS	43.9%	44.9%	88.9%	36.32%	53.0%	89.32%
FOI	14.5%	45.0%	59.5%	23.07%	25.64%	48.71%
TOTAL	43.4%	25.0%	68.3%	34.13%	35.41%	69.94%*

* Performance standard identified in KPMG Peat Marwick Report of 68% based on 1992-93 decline percentage profile

NB discontinuations have been counted as part of decline count in police area as great majority are discontinuations at outset after advice of investigation by police.

3. Police complaints conciliated as % of complaints finalised

= 22.5% (1992 - 1993 = 16.0%)

4. Assessment of new complaints

Police - within 48 hours of receipt = 89% (based on sample of 102 files)

General - within 24 hours of receipt = 92.88% (based on sample of 646 files)

* Objective in Corporate Plan = 90%

5. Complaints declined at outset within 14 days of receipt

Police = 66.65%

General = 58.49%

* Performance standard identified in KPMG Peat Marwick Report = 90% within 7 days of receipt

STAFFING REPORT

1. Establishment pre and post restructure

- Establishment November, 1992 74
 - Establishment pre restructure - September, 1993 70
 - Establishment post restructure - September, 1993 69
- In November, 1992 the Ombudsman deleted four positions of Investigative Assistants. This decision was made due to funding constraints.

2. Establishment and staffing numbers - as at 30 June, 1994

Area	No. positions	No. vacancies	No. temporary staff
Executive & Executive Support	4	0	0
Police Complaints Team	25	2	3
General Complaints Team	19	1	1
Community Relations	9	2	3
Administration	12	1	3

3. **Vacancies**

The following positions are vacant in the Police Complaints Team:

- Assistant Investigation Officer (Police) - 2 positions - Position advertised with applications closing on 8 July, 1994.

The following position is vacant in the General Complaints Team:

- Executive Assistant to the Assistant Ombudsman - position advertised. Applications closed on 17 June, 1994 and selection process in action.

The following positions are vacant in the Community Relations Area:

- Research Officer - advertised earlier in the year - no suitable candidate found. Reviewing position description and essential requirements with a view to readvertise shortly
- Aboriginal Liaison Officer - filled by short term contracts for specific projects. Contract recently offered but declined. Position to be advertised.

The following position is vacant in the Administration Area:

- Clerical Officer (Human Resources) - Position advertised with applications closing 8 July, 1994

4. Temporary staff

The following temporary staff are employed in the Police Team:

- Investigation Officer (Police) (2 positions) - contract due to finish in October, 1994
- Investigation Officer (Police) - contract due to finish in December, 1994. Working on conciliation of complaints

The following temporary staff are employed in the General Team:

- Complaints Officer - employed on savings resulting from two permanent staff working part time. Contract due to finish in January, 1995

The following temporary staff are employed in the Community Relations Team:

- Inquiries Clerk - employed to fill a temporary vacancy that resulted from a staff member proceeding on maternity leave
- two consultants working on a part-time basis on CHIPS project. Substantive occupant of position is on a 12 month secondment to the Premiers Department

The following temporary staff are employed in the Administration Team:

- Clerical Officer (Information Systems) - replacing a staff member on leave without pay. Contract finishes in September, 1994
- Clerical Officer (Administration) - providing support during a staff members absence on leave. Contract finishes end of July, 1994
- Clerical Officer (Human Resources) - filling vacant position that is being advertised (see above)

5. Major staffing issues

The Ombudsman engaged a firm of consultants to conduct a review of the Administration Section of the Office as the major restructure of the Office in September

1993 did not include any review of the function, work practices, accountabilities etc of this Section.

The consultants have presented a draft report to the Ombudsman who is considering its contents.

APPENDIX 2

4.0 PERFORMANCE MEASUREMENT

4.1 Introduction

Performance indicators are an essential tool for the measurement of an organisation's performance.

An organisation should determine a set of performance indicators, relevant to the activities and functions which it performs, and establish measures against which future performance can be measured. Performance both in terms of efficiency and effectiveness should be measured.

Measures of efficiency are generally associated with time and financial measurement and are generally readily quantifiable.

Effectiveness measures the quality of the outcome of procedures or functions. These measures are generally associated with assessing whether a function or task needs to be performed at all and, if so, how useful are the outcomes in assisting the organisation to meet its business objectives. Effectiveness measures are often difficult to quantify.

4.2 Current Performance Measures

There are presently no formal performance measures used by the Ombudsman's Office to measure and monitor its efficiency.

Certain statistics are presented in the Ombudsman's Annual Report under the heading 'Performance Indicators'. These include numbers of inquiries and complaints received and formal reports issued. They do not provide any indication of cases handled in relation to staff numbers or operating costs and therefore provide no meaningful measurements of comparative efficiencies.

In his Corporate Plan for 1993-1995, the Ombudsman included a number of performance measures and targets. These principally related to complaint turnaround, effectiveness measures (e.g. complainant satisfaction and awareness) and internal measures (e.g. processing of accounts, staff training). None were real measures of the efficiency of his Office. Targets set for these measures were generally in relation to improvements in performance for the year ended 30 June 1993 over the 1991/92 year.

4.3 Performance Over Time

4.3.1 Introduction

A detailed analysis of the performance of the Ombudsman's Office from 1989 to 1993 is provided in Appendix 7. These calculations are based on a number of estimates and assumptions, particularly in regard to the average number of full-time investigation staff used to determine the relative workloads of each investigation staff member over time.

As a result of the complexities involved in determining accurate average numbers of effective full-time investigation staff over the period (due to staff turnover, positions

remaining unfilled at certain times during the year and the fact that not all investigation staff would have had full investigation workload responsibilities at all times), average numbers shown have been based on estimates only and are not intended to provide an accurate record of past average complaint handling numbers. However, although conclusions should not be reached from these numbers as far as relative complaint handling efficiencies are concerned, we believe that the numbers shown do provide a reasonable indication of complaint trends over the period under review.

A discussion of the key findings follows.

4.3.2 Recurrent Funding

	1988/89	1989/90	1990/91	1991/92	1992/93
Recurrent Funding	3,431	3,608	3,760	4,056	4,114
Annual Increase	n/a	5.2%	4.2%	7.8%	1.4%

The above figures are after adjustment for a number of 'one-off' and other items (refer Appendix 7 for details). Taking into account CPI fluctuations, the level of recurrent funding has remained consistent in real terms during the period.

4.3.3 Complaints Received

	1988/89	1989/90	1990/91	1991/92	1992/93
Total Complaints Received	4,499	4,791	5,915	5,915	6,443
Per Investigation Officer	145	160	191	197	222

The total number of complaints received has risen by 43% between 1989 and 1993. The increase in complaints against the NSW Police is the major contributor to this increase, accounting for 1,777 of the total increase of 1,944 complaints (more than 90%) over the period under review.

4.3.4 Complaints Finalised

	1988/89	1989/90	1990/91	1991/92	1992/93
Total Complaints Finalised	4,144	4,230	4,810	5,944	5,754
Per Investigation Officer	134	141	155	198	198

The number of complaints finalised has increased significantly over the period, increasing by 39% between 1989 and 1993. On average, each Investigation Officer dealt with almost 50% more complaints in 1992/93 than in 1988/89.

The major factor influencing the increase in the number of complaints finalised, both in total and by investigation officer, has been the increase in complaints declined during the period.

4.3.5 Investigations Performed

	1988/89	1989/90	1990/91	1991/92	1992/93
Investigations Performed	106	98	59	81	38
Per Investigation Officer	3.4	3.3	1.9	2.7	1.3

The number of formal investigations conducted by the Ombudsman's Office has decreased significantly over the period. This is a result of the continuing increase in complaints received and finalised and the consequent effect of this on the resources available to conduct investigations.

4.3.6 Complaints Declined

	1988/89	1989/90	1990/91	1991/92	1992/93
Total Declined	2,981	3,150	3,587	4,181	3,932
% of Complaints Finalised	71.9%	74.5%	74.6%	70.3%	68.3%
Per Investigation Officer	96	105	116	139	136

The increasing trend in complaints declined between 1989 and 1991 resulted from the continuing increase in the number of complaints received and the influence of the declines policy over the period. However, there has been an improvement in the situation in 1992 and 1993, with the number of complaints declined down in comparison to total numbers finalised. This has resulted from an increased effort to resolve more claims by the Ombudsman. The average cost of resolving a complaint is often not much higher than declining one. Accordingly, the increase in complaints resolved has not affected the Office's ability to finalise more complaints in total.

4.3.7 Cost Per Employee and per Complaint

	1988/89	1989/90	1990/91	1991/92	1992/93
Total Expenditure	47,100	55,500	58,600	60,200	61,500
Salary Related	31,700	39,100	42,200	46,500	46,300
Other Expenditure	15,400	16,400	16,400	13,700	15,200
Cost per Complaint	796	919	889	749	770

The relatively significant increase in average costs from 1988/89 to 1989/90 results from distortions in the average because the Freedom of Information Unit was established part way through 1988/89. The staff numbers at year end include the FOI Unit employees while only a part of the annual salaries were incurred in that year.

After excluding this factor, there have been no significant increases in average costs during the period. Increases have been principally a result of CPI and Award increases. No award increases have been received during 1992/93.

The average cost per complaint is driven by the mix of complaint outcomes which varies from year to year and direct comparison is therefore not meaningful. The general downward trend in the average cost per complaint has arisen principally as a result of the decreasing number of investigations and increasing numbers of complaints declined or resolved.

4.4 Comparison of Performance with Other Ombudsman's Offices

The performance of the NSW Ombudsman's Office was compared to the other State Ombudsmen and the Commonwealth Ombudsman.

The comparison was based on information contained in the 1991/92 annual reports for each of these organisations, and is provided in Appendix 8.

However, in our opinion, no meaningful analysis can occur because:

- The jurisdictions of the offices vary dramatically, especially in relation to police complaints.
- The term “complaint” is used differently by various offices.
- In some states complaints must be received in writing while in others they can be received orally.
- The way offices are funded varies. For example, rental costs are separately funded in some states.

4.5 Comparison with Independent Commission Against Corruption

A comparison of the cost structures of the Ombudsman’s Office and ICAC has also been performed. The Ombudsman has, in the past, made such comparisons, saying that ICAC benefited from significantly higher funding than his office, thus providing justification for additional funding for his own office.

It is not appropriate, in our opinion, for the Ombudsman to make a funding comparison with ICAC to justify an increase in funding for his own purposes because the cost structures of the two organisations are significantly different.

4.6 Proposed Efficiency Performance Measures

4.6.1 Introduction

The key efficiency performance indicators which should be used by the Office to measure performance over time and which may be used to determine funding requirements are:

- average number of complaints finalised per Investigation Officer;
- level of non-employee and rent related expenditure;
- complaints declined as a percentage of complaints finalised;
- average office area per employee; and
- complaint turnaround.

These indicators are discussed in the sections that follow and a performance measure is provided as a basis for determining funding requirements. However, it should be appreciated that a performance measure should not remain static. Rather, it should be adjusted to reflect further opportunities for performance improvement. In this way, the measure can be used to both drive increased performance and provide an indication of funding levels.

4.6.2 Average Number of Complaints Finalised per Investigation Officer

A significant indicator of the efficiency of the Ombudsman’s office is the Average Number of Complaints Processed per Investigation Officer.

The performance measures for the number of complaints to be processed by each investigation officer have been determined separately for the Police and General

complaint areas based on our complaint resource model. These were determined from the incorporation of time estimates provided by staff into the model.

These performance measures are as follows:

Police Complaints	267 per annum
General Complaints	271 per annum

These numbers represent the number of complaints of all outcomes that each senior investigation officer and investigation officer in the team should, on average, finalise in a year.

These performance measures were determined based on the 1992/93 mix of complaint outcomes for Police and General complaints (refer Section 2.5).

Previously, no separate specialised Police and General team structures existed. Accordingly, separate measures of past comparative performance are not available for Police and General area complaints separately. A comparison of the relative trend in the average number of complaints processed by each investigation officer (Police and General complaints combined) between 1988/89 and 1992/93 has been provided in Section 4.3.3.

The above performance measures represent an average target per member for each investigative team (i.e. Police and General). These measures are average targets for each team as a whole and are not necessarily targets for individual investigative officers. Investigative staff requirements have been based on the performance of different types of complaints and levels of complaints processed by each member of the teams based on their level and experience (i.e. junior investigation officers will be responsible for more routine complaints while senior investigation officers will conduct more complex cases, including investigations).

Accordingly, it was not practical to set different performance measures for each individual within the teams as it is unlikely that each member of a team's complaint workload will be similar in mix to that projected in total. The Ombudsman may, however, wish to set individual targets within the overall parameters based on seniority and experience against which an individual's performance can be assessed.

A significant change in the complaint profile from that projected for 1992/93 would result in the need for these performance measures to be revised (refer Section 6.3).

4.6.3 Level of Non-Employee and Rent Related Expenditure

We have determined the measure for the level of non-employee and rent related expenditure to be 12%, expressed as a percentage of total employee and rent related expenditure. This percentage is based on the 1992/93 ratio.

	1989	1990	1991	1992	1993	Performance Measure
Level of Non-Employee/ Rent Related Expenditure	25%	19%	18%	10%	12%	12%

Total employee and rent related expenditure includes all salary and salary related expenditure (including all provisions, whether funded or not), and rent. Non-employee and rent related expenditure includes all other working and maintenance expenditure items other than depreciation. The 1993 ratio has been determined from 1992/93 projected final expenditure.

We believe that such expenditure can be maintained at this level in the future and, accordingly, that 12% is an appropriate measure.

4.6.4 Complaints Declined as a Percentage of Complaints Finalised

We have determined the performance measure for the total level of complaints declined as a percentage of complaints finalised as 68%. This is based on the 1992/93 complaint outcome mix which has been used for the determination of the performance measures set out in 4.6.2 above.

	1989	1990	1991	1992	1993	Performance Measure
Percentage Declined	71.9%	74.5%	74.6%	70.3%	68.3%	68.0%

Details supporting these figures are provided in Appendix 7. Our recommendations throughout this report are based on the assumption that complaints continue to be processed in accordance with the 1992/93 complaint profile and the measure of 68% is based on this profile. However, should the complaint profile change significantly in the future, this performance measure would need to be reconsidered and revised.

A change in the complaint profile will change the performance measures set out in 4.6.2. The complaint resource model will determine the revised measures arising from any change in the profile.

4.6.5 Office Area per Employee

We have determined the measure for the average area of office space required per employee to be 18 square metres.

	1989	1990	1991	1992	1993	Performance Measure
Average Office Space per employee (square metres)	20.6	20.6	19.7	19.5	20.0	18.0

The Ombudsman is committed to the lease for his office in the Coopers & Lybrand Building until March 1995 and will not be in a position to move into alternative accommodation, if required, until that time. Accordingly, the actual average space per employee will be dependent on the total number of staff until then.

A detailed discussion supporting office space requirements is attached as Appendix 11. Office area per employee has been determined based on total approved establishment staff levels at each year end. The measure of 18 square metres per employee is based on the fact that, generally, office space requirements vary from about 12 square metres to 18 square metres between organisations. Based on total approved establishment staff levels at the time of our review, each staff member currently occupies, on average, 20 square metres of office space.

4.6.6 Complaint Turnaround

Based on our detailed review and documentation of complaint handling procedures, we believe the following key turnaround times are appropriate:

Output	Target Turnaround Time
Response to Initial Complainant Correspondence	7 days from receipt
Complaint Declined at Outset/Outside Jurisdiction	7 days from receipt
Initiation of Preliminary Enquiries	7 days from receipt
Completion of Parliamentary Report	28 days from completion of Investigation
Response to Section 24 Report	2 months from receipt of report

We have not included turnaround times for the completion of preliminary enquiries or investigations due to the level of variation that occurs between them reflecting the various levels of complexity.

We acknowledge that there will be instances where matters outside the Ombudsman's control mean that target turnaround times can not be achieved. Allowing for these cases, we believe that the Ombudsman's Office should aim to handle 90% of all complaints within these timeframes.

Records of complaint turnaround times should be kept on the birth certificates. One member of staff should be assigned responsibility for maintaining a formal record of actual turnaround times achieved and monitoring the office's performance against targets.

4.6.7 Monitoring of Performance

Performance against targets should be monitored on at least a quarterly basis. In addition, performance against performance measures should be reviewed annually, on an independent basis, by either the internal or external auditors of the Ombudsman's Office.

Complaint numbers in total, by complaint outcome, should also be monitored against the projected complaint profile. A significant variation in the profile will have a direct impact on the number of complaints that each team is able to process. The complaint model will determine revised targets where a significant change in complaint profile is anticipated.

4.7 **Proposed Effectiveness Performance Measures**

4.7.1 Introduction

Effectiveness measures the quality of the outcome of procedures or functions. These measures are generally associated with assessing whether a function or task needs to be performed at all and, if so, how useful are the outcomes in assisting the organisation to meet its business objectives.

Establishing effectiveness measures for the Ombudsman's Office is a difficult task. Not only is it difficult to quantify the effectiveness of the Ombudsman's work, but it is also difficult to define what effectiveness actually is. Possible definitions of effectiveness for the Ombudsman's Office could include:

- the degree of implementation of the Ombudsman's recommendations by public authorities. This reflects the fact that if none of the Ombudsman's recommendations are implemented he will be regarded as a 'toothless tiger' and will

not bring about improvements in areas of mal-administration or misconduct;

- the proportion of complaints declined at the outset or not investigated. For example, if all complaints are declined at the outset the Ombudsman's Office could not be said to be effective;
- the level of awareness of the Ombudsman across the community, and especially amongst disadvantaged and minority groups. This reflects the fact that if people do not know of the Ombudsman he can not perform his role effectively; and
- the degree of satisfaction of complainants and public authorities. If no one is satisfied with the Ombudsman, then it could be said that he is not effectively carrying out his role. Naturally, the level of satisfaction would need to be interpreted with care as many complainants and public authorities will indicate dissatisfaction where findings have not been in their favour.

Notwithstanding the difficulties associated with measuring effectiveness, we believe that some measures can be used as 'management tools' to monitor areas of effectiveness of the Ombudsman's Office. We stress, however, that no measure will be black and white, and should be interpreted with care. The numbers and reasons behind effectiveness measures should be carefully analysed over time (e.g. why have our recommendations not been implemented yet or why are public authorities less satisfied this year than last) by management and used as indicators of issues that may need to be addressed. Effectiveness measures should be reviewed at least annually.

Our recommendations for effectiveness measures are discussed below.

4.7.2 Implementation of Ombudsman's Recommendations

The extent to which the Ombudsman's recommendations are acted on provides a good indication of his effectiveness. The implementation of his recommendations, fully and partly, should be formally monitored to determine his effectiveness from this perspective.

4.7.3 Complaint Outcome Mix

The mix of complaint outcomes will provide some indication of the effectiveness of the Ombudsman's Office i.e. a decrease in the number of complaints declined with more complaints resolved or investigated would mean an increase in the effectiveness of the Office.

The Ombudsman's Office should continue to monitor the mix of complaint outcomes to provide an indication of effectiveness from this perspective.

4.7.4 Public Awareness

The level of public awareness of the Ombudsman is another measure by which effectiveness may be measured. A recent awareness survey was performed Australia-wide by the Commonwealth Ombudsman.

The Ombudsman should monitor the results of these surveys, when performed, paying particular regard to demographic patterns arising from studies to determine which areas he should concentrate future effort in conducting public awareness visits.

The level of public awareness can also be measured, to some extent, by trends in the number of complaints received from year to year from different sources. These trends should be monitored as part of the Ombudsman's normal complaint recording procedures.

4.7.5 Complainant Satisfaction

This is not readily quantifiable and can only be assessed through complainant feedback. Accordingly, formal surveys should be carried out by the Ombudsman's Office on a regular basis to monitor complainant satisfaction.

4.7.6 Public Authority Satisfaction

Again, this is not readily quantifiable and can only be assessed through feedback from the public departments and authorities within the Ombudsman's jurisdiction.

As part of our review, we conducted a formal survey of departments and authorities. A similar survey could be conducted on an annual basis.

APPENDIX 3

MEMO

Office of the Ombudsman
3rd Floor
580 George St
Sydney 2000

TO: ALL STAFF

FROM: David Landa

RE: PERFORMANCE MANAGEMENT

NUMBER: M5/4/94

Late last year Jennifer Mason and Anita Whittaker spoke to staff about the implementation of the performance management system which they had developed and which I endorsed. This system was referred to the PSA through a management/union consultation meeting at that time.

Due to the changes that occurred when I restructured the Office, the actual implementation of the system was put on hold until positions were filled and staff settled into the new structure.

Performance management folders have been forwarded to Team Managers and other Supervisors to begin the performance management process. Supervisor/Staff discussions should take place shortly and it is hoped that all performance agreements are negotiated and signed by the end of June.

This system will be continually reviewed particularly during the first year. Accordingly, any comments that you have on the system can be referred to either your Team Manager or Anita Whittaker who will keep me informed of the implementation of the system.

If you have any questions please direct them to Anita Whittaker. Anita will also be available to work through the system with you and your supervisor if this is required.



David Landa
OMBUDSMAN

OFFICE OF THE OMBUDSMAN

PERFORMANCE MANAGEMENT
SYSTEM

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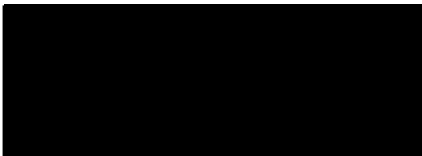
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1: STATEMENT BY THE OMBUDSMAN

Late last year, I endorsed this Performance Management System. Its aim is to assist both you and the Office improve our performance by providing a clear basis for the development of individual accountabilities, reviewing performance, determining training and skills development needs as well as promoting excellence. An effective Performance Management System is critical to ensure that the Office meets the challenges that lie ahead.

The system will be continually reviewed particularly in the first year. Accordingly, I would appreciate your comments on any aspect of the system and in particular those areas where you feel improvements/adjustments should be made. To be successful, this systems requires the support of both staff and management.

If you have any questions on the implementation of this system please refer them to Anita Whittaker.



David Landa
Ombudsman

2: PERFORMANCE MANAGEMENT

2.1 WHAT IS PERFORMANCE MANAGEMENT?

A performance management system is the process of identifying, evaluating and developing employee work performance so that the organisation's goals and objectives are achieved, while also benefiting employees through recognition, performance feedback, catering for work needs and offering career guidance. Managing performance is in fact central to effectively managing human resources and the process serves both day to day management and strategic purposes.

The Office of the Ombudsman's Performance Management System is based on agreements developed between the individual officer, their supervisors and either the Team Manager or the Executive Officer. The Team Manager and the Executive Officer will develop their agreements with their respective supervisor and the Ombudsman.

This document is comprised of general information outlining the purpose, objectives and practice of the Performance Management System, followed by practical details on how the Performance Management System is carried out. These practical sections should be used by you as a guide to the various components of the Performance Management System in which you will participate.

2.2 PURPOSE OF OMBUDSMAN'S PERFORMANCE MANAGEMENT SYSTEM

In the Office of the Ombudsman, the following purposes are identified for the Performance Management System:-

- to foster a culture that encourages excellence of performance.
- ensure staff are aware of their key tasks and how they relate to Office goals, supervisors expectations and how their performance will be measured.
- promote open and constructive communication to identify job related strengths and weaknesses in order to acknowledge accomplishments as well as improve work performance.
- to promote a results-orientated work outlook that will identify poor, satisfactory and outstanding performance and initiate appropriate action, including the allocation of rewards and sanctions.
- to identify staff development needs and implement appropriate action.
- to develop and implement a formal performance planning and review process based on clearly defined objectives.

- review job descriptions in order to ensure that they are realistic, appropriate, relevant, clearly defined and open to change.

2.3 OBJECTIVES OF PERFORMANCE MANAGEMENT

The specific objectives of performance management are:-

- to maximise the performance and contribution of officers in order to improve the Office's efficiency.
- to assist with the achievement of the Office's corporate goals
- to measure and assess individual performance fairly and objectively against job related criteria and agreed performance targets.
- to develop ways in which staff might enhance their performance and further develop skills/competencies.

The performance of each staff member is measured in terms of his/her level of achievement in relation to identified major work goals/tasks.

2.4 WHO WILL BENEFIT?

Performance Management provides a mechanism for the Office to assess its progress in carrying out its corporate objectives (as identified in the Corporate Plan). The emphasis is on the process of communication between staff and supervisors, not on information for selection or promotion purposes. Accordingly, the system will benefit everyone in the Office.

Performance Management will help **staff** by:

- providing a clear, objective and documented outline of expectations regarding their level of work performance ie giving staff a clear idea of the results they are expected to achieve.
- providing agreed standards for assessment of performance related issues.
- providing constructive feedback on progress, both positive and negative, identifying strategies to overcome any difficulties.
- encouraging staff, individually and with their supervisors, to consider their training needs and reinforcing managements responsibility for the provision of relevant work related training.
- encouraging staff to consider and plan their career options.

Performance Management will help **supervisors and managers** by:

- encouraging open communication with staff including feedback and encouragement.
- providing agreed standards by which staff will be assessed.

- assisting supervisors and managers to better direct their staff to achieve corporate objectives.
- enabling them to assist staff to improve performance, identify training requirements and develop skills for career development.
- increasing the effectiveness of the work group.

Performance Management will help the **Office of the Ombudsman** by:

- linking individual contributions with the Office's objectives.
- encouraging staff to be more results oriented.
- providing more accurate information about skills and qualities of staff.
- assisting in a positive way with the personal development of staff.
- improving the planning and evaluation process.

2.5 EEO & EAPS

Managers and supervisors should include in their Work Plans EEO and EAPS strategies which implement the Office's EEO Management Plan and Ethnic Affairs Policy Statement. This will ensure that the responsibility for the achievement of the Office's EEO Management Plan and EAPS is appropriately delegated throughout the organisation and reflects the Office's commitment to these programs.

3: PERFORMANCE MANAGEMENT AND THE MANAGEMENT PLANNING CYCLE

3.1 MANAGEMENT CYCLE

The table in Appendix A shows the links between this Performance Management System, the SES Performance Management system, corporate planning activities, the budget process and other major activities throughout the year. As can be seen, the Corporate plan sets the direction and priorities of the Office. This is reflected in the performance agreements between the SES officers and the Ombudsman and in turn impacts upon the performance agreements between staff and their supervisors.

3.2 POSITION DESCRIPTIONS AND STATEMENT OF DUTIES

As previously mentioned, one of the objectives of the Performance Management system is to review job descriptions in order to ensure that they are realistic, appropriate, relevant, clearly defined and open to change. In this regard, **Position Descriptions** have been introduced to replace traditional Statements of Duties. Position Descriptions will provide a framework around which expectations of performance can be developed and assessed. To know what is required of a staff member, it is crucial that an accurate description of the activities involved in a particular job is developed and agreed upon. Position Descriptions are similar to Statements of Duties but are more comprehensive. Position Descriptions will detail:

- purpose of the position
- responsibilities
- required competencies
 - skills
 - knowledge/experience
 - attitudes

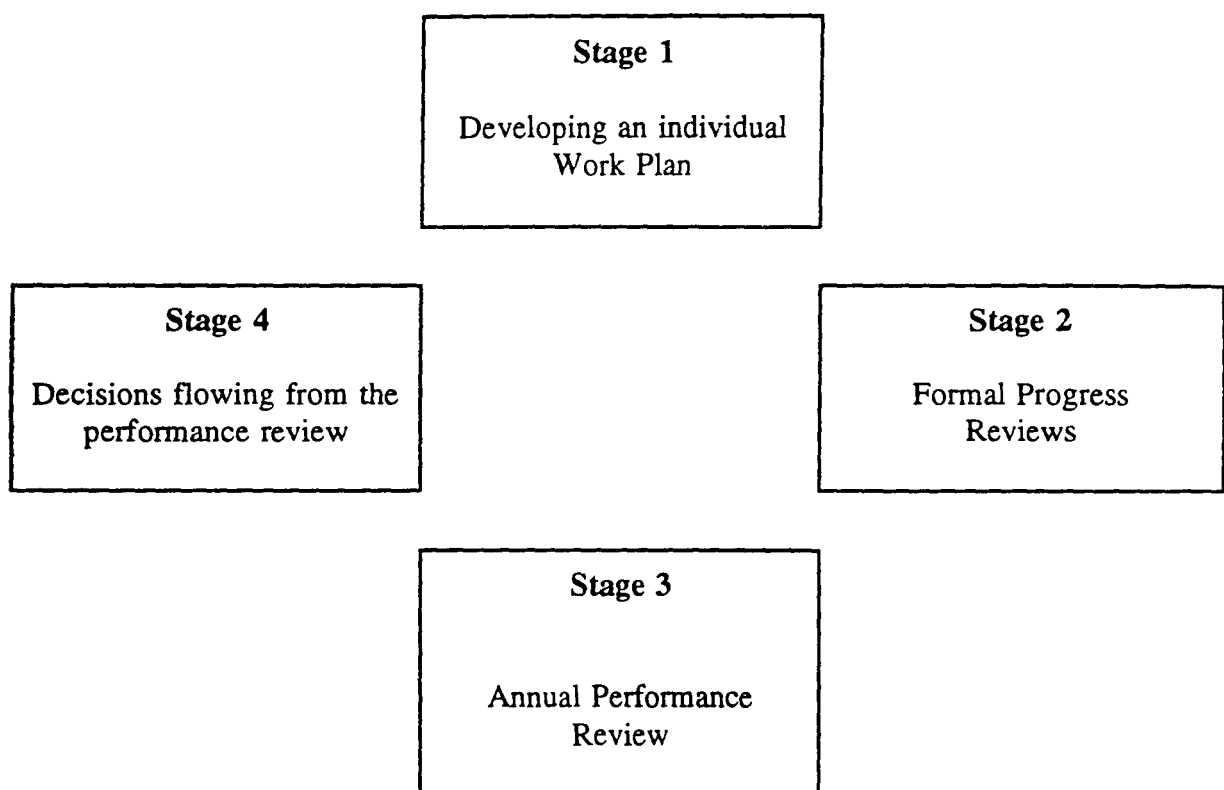
Position Descriptions will be further reviewed in connection with the job evaluation and skills audit processes currently in progress. The Corporate Plan and the EEO Management Plan contain ongoing strategies for the review of Position Descriptions.

4: IMPLEMENTATION

4.1 PERFORMANCE MANAGEMENT CYCLE

Performance Management is an ongoing process linked to the Office's Management Planning Cycle. There are four main stages in the Performance Management Cycle:

The Performance Management Cycle



The steps involved in each stage are listed in Appendix B.

4.2 DEVELOPING AN INDIVIDUAL WORK PLAN

The Corporate Plan, SES Performance Agreements and Position Descriptions form the starting point for staff and their supervisors to develop individual Work Plans. Decisions and recommendations from the previous year's performance, decisions and recommendations flowing from the performance review are also fed into the Work Plan.

You and your supervisor jointly agree on the aims and other details of your Work Plan for the next 12 months, based on the draft you have both drawn up prior to the meeting. The

plan will be reviewed by either the Team Manager (for Investigative staff) or the Executive Officer (for administrative staff) and all parties will discuss the Work Plan before it is finalised. All parties will be signatories to the final Work Plan.

The completed Work Plan will be referred to the Human Resource Manager to follow-up training requirements and to initiate the review process. A copy of the Work Plan will be retained by you and your supervisor.

4.3 COMPONENTS OF AN INDIVIDUAL WORK PLAN

The Work Plan will show:

- Major Work Goals/Tasks
- Priorities
- Performance Measurement Criteria
- Training/Development Plan

4.3.1 MAJOR WORK GOALS/TASKS

The system is designed to measure goal based criteria (what people achieve ie outputs and outcomes) and to identify developmental needs in respect of the identified competencies (ie skills, knowledge and experience) for a position.

Goal based criteria improve performance by:

- managing current performance
- clarifying performance goals for the person in the job, and
- motivating staff, especially where goals are fair and challenging

Another advantage of goal based criteria is the ability to focus on key elements of performance, rather than the whole job.

All goals should be:

- **Specific** - set out in enough detail to enable action to be taken
- **Measurable** - allowing progress to be assessed
- **Achievable** - able to be met within the timeframe or at the required level
- **Realistic** - they should be within the ability and control of the person
- **Timeframed** - set out with a specific timeframe

4.3.2 PRIORITIES

Once the Work Goals/Tasks for your position are determined, you and your supervisor will need to assign priorities to them. The principles to be used are as follows:

- **high** - essential to be achieved
- **medium** - important to be achieved
- **low** - desirable to be achieved

Assigning priorities reflects the relative importance of each Major Goal/Task within the individual Work Plan.

4.3.3 PERFORMANCE MEASUREMENT CRITERIA

The establishment of performance standards is one element of effective work planning and an essential component of performance assessment.

While there should be a level of objectivity, inevitably, assessment of the level of performance against the Performance Measurement Criteria will involve a level of judgement. To maximise objectivity, it is crucial that the supervisor and staff member discuss and agree upon the criteria that apply to each Major Goal/Task area. Position Descriptions will contain a number of useful criteria which can be used for this purpose.

Some performances are easy to measure and some are not. Work outcomes are measured in:

- time eg meeting deadlines
- money eg costs, meeting budget requirements
- physical units eg forms processed, enquires answered
- quality eg accuracy, compliance with procedures, client satisfaction

Criteria should be based on the levels that would be achieved by a competent worker.

4.3.4 TRAINING/DEVELOPMENT PLAN

Once Major Goals/Tasks have been developed, the staff member and their supervisor should consider the major skills needed to competently perform the job and achieve the goals outlined. For each skill identified, the staff member and supervisor should also discuss the staff member's strengths and weaknesses. The questions to consider are:

- what skills are required to execute the Work Plan?
- what skills does the staff member possess?
- are there deficiencies that need to be addressed?

This information forms the basis of the Training/Development Plan which proposes strategies to improve skills identified as needing further development. Activities in the plan may include internal and external training, job rotation or secondments.

In detailing skill requirements and development needs, supervisors should be mindful of the Position Description. Supervisors should also take into account the desires of the staff member to acquire certain skills over the short and long term as part of their career development aspirations.

Although it is the intention of the Ombudsman to provide the necessary training to staff, the provision of training is subject to the allocation of funds and priorities established by the Training Committee.

4.4 REVIEWING THE WORK PLAN

The purpose of the review is to provide an opportunity for feedback to staff on their progress and performance. While reviews should be carried out regularly on an informal basis by all supervisors, a Formal Progress Review gives an opportunity to make adjustments to the Work Plan and assess the Training/Development Plan. Any critical incidents outside your control that impact on your Work Plan should be noted.

If there is substantial revision of the Work Plan, the matter will be referred to the Team Manager or Executive Officer (which ever is the appropriate officer).

4.5 THE ANNUAL PERFORMANCE REVIEW

The Annual Performance Review is similar to the Formal Progress Review, except that it provides for more conclusive and formal assessments and decisions.

The Annual Performance Review meeting should consolidate the outcomes of the various formal and informal review processes that have taken place during the year. There would not normally be anything raised which has not been touched on previously (unless an exceptional event has occurred since the last informal review). The review will focus on:

- Results
- Performance
- Skill Development

4.5.1 RESULTS

This is an assessment of the extent to which the staff member has achieved each of the Work Goals/Tasks agreed upon in the individual Work Plan. Any external factors that impact on the results should be noted and commented upon.

4.5.2 PERFORMANCE

An assessment of how well or to what extent these results have been achieved. The Performance Measurement Criteria set in Stage 1 provide the standards against which performance can be assessed.

To ensure consistency, the following grading scales will be used to rate performance in each Major Goal/Task area:

LEVEL	GRADING	DEFINITION
1	OUTSTANDING	Performance standard substantially and consistently exceed requirements/ expectation.
2	CREDITABLE	Performance standard occasionally exceeded.
3	COMPETENT	Performance standard achieved - fully meets the requirements of the position.
4	MARGINAL	Performance standard not achieved - fundamental job requirements have been met, but results are not in keeping with that expected of the position.
5	UNACCEPTABLE	Performance standard substantially not achieved and basic job requirements not met.

Further details of these categories are provided in Appendix C.

4.5.3 SKILL DEVELOPMENT/TRAINING

A review of the success of training provided during the review period should be undertaken and the results noted.

4.6 DECISIONS FLOWING FROM THE PERFORMANCE REVIEW

A number of decisions or recommendations may be made as a result of the Annual Performance Review. These include:

4.6.1 REWARDS AND IMPROVEMENT STRATEGIES

Where performance **consistently and substantially exceeds** expectations, such performance should be clearly acknowledged. Recommendations may be made to Management for performance based rewards. These include developmental opportunities in other areas, periods of acting in more senior positions or being given the opportunity to attend professional conferences.

Performance that meets or occasionally exceeds agreed standards, is also to be acknowledged and the supervisor is to inform the staff member that they have fulfilled all the requirements

of the position.

Where performance is satisfactory in most Major Goals/Tasks but **falls below agreed standards** in one or a few, possible reasons for such performance need to be identified and addressed. Strategies to overcome any shortfalls should be agreed and performance reviewed regularly.

Where performance is **clearly unsatisfactory** attempts should be made to specify where difficulties arose. Areas in need of improvement should be clearly identified and a detailed strategy developed to improve performance. Regular formal and informal reviews should be undertaken and appropriate action may be recommended.

It should be noted that disciplinary action should be dealt with separately from performance management using the guidelines for disciplinary action. Disciplinary information is not to be documented on performance management forms.

4.6.2 TRAINING AND DEVELOPMENT

The specific training and development needs of staff are to be considered so that each individual may be assisted to reach his or her full potential. Training proposals may be directly related to the skills and knowledge needed to undertake the duties of the current position or they may be developmental opportunities to acquire knowledge and skills to enhance career prospects.

The primary responsibility for training and development lies with the supervisor. Training and development may involve job rotation or secondment as well as training courses. Proposals should be discussed with the Team Manager or Human Resource Manager.

4.6.3 WORK DESIGN

The Performance Review may indicate a need for a change to the actual job or to the working arrangements of the section. Such recommendations are to be made to the Management Committee through the Team Manager or the Executive Officer.

4.7 1993/94 TIMETABLE

4.7.1 STAFF SUBJECT TO INCREMENTAL REVIEW

Work Plans for staff subject to incremental review will be discussed and agreed in accordance with the timetable. However, the Formal Progress Review will occur halfway between the date of agreement to the Work Plan and the officers incremental date. The Annual Performance Review will occur at the time the increment is to be considered. The cycle will then revert to a full year.

4.7.2 STAFF CURRENTLY AT THE MAXIMUM SALARY (IE NOT SUBJECT TO INCREMENTAL REVIEW)

Work Plans for staff currently at the maximum rate of their position will be discussed and agreed in accordance with the timetable. Formal Progress Review will occur six months after the date of the Work Plan agreement. The Annual Performance Review will occur six months later.

4.8 TRAINING STAFF IN THE OPERATION OF THE SYSTEM

The Team Manager and the Human Resource Manager will be conducting briefing sessions for staff and supervisors on the implementation of the Performance Management System.

The Team Manager and the Human Resource Manager will work through the system with supervisors and staff members when they begin to develop individual Work Plans.

4.9 CONFLICT AND GRIEVANCE PROCEDURES

If a staff member does not agree with the assessment, or has not received sufficient feedback, they will in the first instance discuss the matter with their supervisor. If the issues that are of concern are not resolved, the following steps should be taken:

Step 1: The supervisor will refer the matter to the appropriate level of Management (which in most cases will be the Team Manager or the Executive Officer). The views of both the staff member and the supervisor will be assessed with the objective of arriving at a consensus decision.

Step 2: If the matter cannot be resolved the Office's Grievance Procedure will be used.

4.10 REDUCING BIAS IN PERFORMANCE REVIEWS

In observing the performance of staff, supervisors should be aware of some of the common pitfalls in making an objective assessment and guard against them.

- **personal bias** may be due to the tendency to be more impressed by those who flatter us; or who are similar in appearance and attitudes; or those on who we rely to get our work done. One way to overcome this influence is to be aware of our motives and biases and to question their effect on each appraisal.
- **recent events** may be given undue attention as these are easier to recall. Remembering significant events, both positive and negative, that occurred during the assessment period may not be easy. It may be useful to note these events as they occur.
- **halo affect** is the tendency to allow high ability in one work activity to colour the judgement of all other activities. Conversely, poor performance in one

work activity may lead to others being rated harshly. Each work activity should be judged individually and each person's area of strength and less effective performance noted.

- **leniency** may occur for a variety of reasons, for example, to reward staff for effort rather than results; to avoid confronting staff about weakness. Leniency undermines the value of the system by not providing accurate feedback to staff on their performance.
- **harshness** may occur when supervisors expect an unrealistic standard from staff. Consider whether the staff you have are generally weaker than others or whether your expectations are too high.

5: THE FORMS

The following forms will be used in the Performance Management System. Copies of the forms are found in Appendix F.

- **Performance Management Cover Sheet** - this form is to be completed and signed by both the staff member and their supervisor as soon as practicable (preferably within one week) after each stage of Performance Management.
- **Work Plan** - this form is used to record the Major Work Goals/Tasks, Priorities and Performance Criteria agreed upon between the individual staff member and their supervisor.
- **Training/Development Plan** - this form details training requirements that have been identified by the staff member and their supervisor at the time of developing the Work Plan. This form records on the job training, job rotation, higher duties or special project opportunities that could be provided. Off the job training needs should be recorded on the Training Needs Advice and referred to the Human Resource Manager.
- **Formal Progress Review** - this form records the results (to date) that the staff member has achieved. It also identifies any external factors that has affected the achievement of results.
- **Annual Performance Review** - this form records the results achieved by the staff member based on the agreed Work Goals/Tasks
- **Training Needs Advice** - (refer to Training/Development Plan) - this form is used to advise the Training Committee through the Human Resource Manager what off the job training is required. Once actioned, this form will be returned to the staff member.
- **Decisions flowing from Annual Review** - this form is completed at the time of the Annual Performance Review. Its purpose is to identify what action is to be taken as a result of the review.

6: APPENDICES

APPENDIX A: THE MANAGEMENT & OPERATIONS PLANNING CYCLE 1993/94

MONTH	CORPORATE PLANNING	BUDGET CYCLE	PERFORMANCE MANAGEMENT CYCLE
JULY	EAPS Report due, prepare Outreach visit program for next 12 months. Annual Report - prepare statistics Information Technology Strategic Plan - commence development	Year End Procedures , Prepare final accounts Audit Plan Review Auditor General's audit Internal Audit	New SES Performance Agreements drafted and signed. Annual Review for PIO, EO and SIO's. Prepare training program for next financial year
AUGUST	Agency reports on program evaluation. Commence work on EEO Annual Report. Annual Report - 1st week absolute deadline for copy. Auditor General's opinion received	Cabinet Minute for Budget session State Budget Send final accounts to Auditor General	
SEPTEMBER	Review environment scanning and corporate objectives . EEO Annual Report to ODEOPE Annual Report sent to printer	Appropriation Act and final allocation Treasurer presents State Budget .	SES Progress Review held.
OCTOBER	OH & S workplace inspection Agency commences revising Corporate Plan 1993-95 and Management & Operations Planning Cycle. Review Guarantee of Service	Internal resource allocation, staffing and programs	
NOVEMBER	Annual Report to Premier 7/11/93 Agency reports on results of program evaluation. Submit legislative Program for Budget session. PR/ Media Schedule prepared for 1994	Treasurer issues forward estimates Internal Audit visit	
DECEMBER	Ombudsman's Newsletter Agency completes updating corporate plan for budget and program enhancements. Prepare schedule of program evaluation. Review Fact Sheets	Forward Budget estimates preparation Capital forward estimates issued	Non police files cull of those still at P/E stage
JANUARY	CES/Heads of Central agencies meetings Review Outreach program	Agency responds to forward estimates, portfolio savings and propose program enhancements Prepare forward capital estimates. PR/Media budget submitted	
FEBRUARY	Ministerial meetings with Premier		SES Progress Review. Progress review for PIO, EO and SIO's.
MARCH	Commence work on Annual Report. Finalisation of Corporate Plan 1993-95		Performance Agreements for PIO, EO and SIO's drafted and signed.
APRIL	OH & S Workplace inspection Annual Report - Case/topic allocation	Internal Audit	Performance Agreements drafted and signed for IO, AIO, Inquiry staff, IA's and Administration Staff
MAY		Capital Works Committee approves overall Capital Works program	Review Training program
JUNE	Commence EAPS Annual Report Annual Report - writing, editing, formatting and checking	Treasurer issues Budget and Capital Allocations Department submits capital expenditures strategic plans	SES Annual Performance Review conducted

APPENDIX B: SUMMARY OF THE STAGES OF PERFORMANCE MANAGEMENT

STAGE 1: INDIVIDUAL WORK PLANS

- STEP 1:** The Human Resource Manager forwards Position Description, Performance Management forms and other appropriate documentation to the staff member and the supervisor. The staff member fills in relevant details on the Performance Management Cover sheet.
- STEP 2:** The Major Work Goals/Tasks to be identified jointly.
- STEP 3:** Priority (high/medium/low) of each Major Work Goal/Task to be agreed.
- STEP 4:** The supervisor and staff member to decide on the Performance Measurement Criteria to measure the competent level of achievement. This will allow a fair and accurate assessment of performance at the end of each review period.
The Position Description should be used as the basis for setting performance standards.
- STEP 5:** The supervisor and staff member to identify the type of skills required for successful completion of the individual Work Plan. An assessment is made of the staff member's level of skill in each of these areas and, if needed, a proposal agreed to, to foster skill development. Any training needs should be identified and the appropriate form referred to the Human Resource Manager for action.
- STEP 6:** If desired, the staff member can develop a detailed Action Plan, with the assistance of the supervisor, indicating how goals will be achieved.
- STEP 7:** The supervisor and staff member sign and date appropriate section of the Performance Management Cover Sheet.

STAGE 2: FORMAL PROGRESS REVIEW

- STEP 1:** The supervisor and staff member agree on an appropriate time and place for the formal review meeting. Sufficient time should be set aside for preparation and to allow for full discussions.
- STEP 2:** The purpose of the review meeting is to discuss the progress of the Major Work Goals/Tasks highlighting outcomes to date. Results are to be noted on the Performance Management Form.

- STEP 3:** The discussion about the staff members performance (to date) is to include any unforeseen or external factors which may influence the achievement of Major Goals/Tasks.
- STEP 4:** Agreement between the staff member and their supervisor is to be reached on any changes needed in the Work Plan. Changes are to be explained and noted on the Performance Management Form.
- STEP 5:** The supervisor and staff member are to provide separate estimates of the staff members Performance level for each Major Goal/Task. Significant differences are to be discussed and resolved.
- STEP 6:** Both parties are to sign and date the Performance Management Form.

STAGE 3: ANNUAL PERFORMANCE REVIEW

- STEP 1:** The supervisor and staff member agree on appropriate time and place for meeting. Sufficient time should be set aside for preparation and to allow for full discussions. Preparation could include commendatory remarks from senior staff or clients etc.
- STEP 2:** Results of Major Goals/Tasks should be agreed upon and noted on Performance Management Document. Comments on external factors affecting outcomes or performance should also be noted.
- STEP 3:** For each Major Goals/Tasks, a Performance Level should be agreed.
- STEP 4:** If agreement cannot be reached, the Conflict and Grievance Procedures should be followed.
- STEP 5:** Outcomes of Skill Development Plan should be discussed and noted.
- STEP 6:** Details are to be noted and the Performance Management Form is to be endorsed as appropriate.

STAGE 4: DECISIONS FLOWING FROM ANNUAL REVIEW

- STEP 1:** The implications of Annual Performance Review are to be considered.
- STEP 2:** If performance is above expectations, the supervisor is to discuss with management any appropriate performance rewards. If performance is below standard, the supervisor and staff member will discuss options for improvement. At this point, the supervisor should discuss the staff member's

performance with management before payment of an increment or confirmation of appointment is approved.

- STEP 3: Appropriate training and development is to be considered and the Skill Development Plan revised.
- STEP 4: Changes to job or work design is to be considered if needed.
- STEP 5: Details to be noted and Performance Management Form to be endorsed as appropriate.
- STEP 6: Relevant decisions and strategies flowing from the performance review are transferred to the following years Individual Work Plan.

APPENDIX C: GRADING LEVELS/CATEGORIES

The following grading levels will be used in the Formal Progress Review and Annual Performance Review to ensure consistency across the Office.

Outstanding

Performance has consistently and substantially exceeded the expectations and results agreed upon, and the staff member has made significant contributions towards achieving the Office's objectives, Corporate Plan etc. The staff member is to be congratulated for her or his performance, and recommendations may be made to management for performance-based rewards. Training and development should be considered to assist the staff member attain her or his long term career aspirations.

Creditable

Performance has consistently met, and on several occasions exceeded, the expected standards. The staff member is to be commended for her or his performance, and for the contributions made towards achieving the Office's objectives. Training and development are to be considered to assist the staff member reach her or his full potential.

Competent

Performance has fully met all the standards agreed upon. The staff member is to be congratulated on meeting all the requirements of the position, and for assisting in achieving the goals of the Office. Training and development should be considered to assist the staff member reach her or his full potential.

Marginal

Although the major requirements of the job have been met, some aspects require improvement. These areas are to be fully discussed, influencing factors sought and a strategy developed to overcome any difficulties. Further support and monitoring is required to assist the staff member fully achieve a competent standard. The staff member's performance is to be discussed with a senior manager who will decide whether approval of increment or confirmation of appointment should be deferred until improvement has been noted.

Unacceptable

The staff member's performance has been below expectations and has not met the basic standards and job requirements. There is clearly a need for remedial action to assist the officer meet expectations. All aspects of performance are to be fully discussed and influencing factors considered. Specific strategies to improve performance are to be developed and agreed upon, and regular formal and informal reviews to be undertaken. Supervisors should ensure such matters are discussed in detail with Management. Increments cannot be paid and appointments cannot be confirmed if performance is deemed unsatisfactory.

APPENDIX D: PERFORMANCE DISCUSSION GUIDELINES FOR SUPERVISORS

The goal of the performance discussion is to provide an objective and detailed account of each person's work performance and to discuss and agree on ways in which performance can be improved.

In conducting the discussion, the following guidelines may be of use:

- **Be prepared**
 - arrange a convenient time for the discussion to be held (at least two days before).
 - ensure that the staff member has had time to read any relevant documentation.
 - choose a private location.
 - prepare an outline of aspects to cover in the meeting (eg suggestions for improvements, questions to ask etc).

- **Establish rapport**
 - help the staff member feel at ease.
 - encourage participation.
 - listen to what the staff member has to say.

- **Give feedback**
 - if praise has been earned, make sure that it is given. Even the best performers need encouragement and appreciation.
 - emphasise strengths on which a person can build rather than weaknesses to be overcome.
 - be specific in your comments; support observations and remarks with examples wherever possible.
 - concentrate on a few major points or areas - do not overwhelm the person with feedback.
 - avoid letting discussions develop into debates.

APPENDIX E: PROCEDURES - MANAGING POOR PERFORMANCE

Set performance standards by:

- ensuring employee participation
- matching individual and organisational goals
- focusing on specific goals
- ensuring goals are achievable

Identify and respond to poor performance

Inadequate performance should be dealt with as soon as agreed goals/targets are not met or agreed tasks are not performed.

Informal feedback and counselling

On the first occasion where poor performance has been identified, the supervisor should respond with informal feedback and counselling. The following should be used as a guide.

- document by diary or short memo (this does not go on the personnel file but is retained by the supervisor)
- set a follow-up date
- clarify expectations
- seek improvement
- agree on the method and timeframe for improvement

If poor performance continues, another informal session can be held or it may be appropriate to conduct a formal counselling session.

Formal counselling

A formal counselling mechanism should be employed when:

- there is a significant and serious deviation from expected performance
- earlier discussions have failed to produce an adequate improvement in performance

Formal counselling sessions should include a written statement detailing:

- the nature of the unsatisfactory performance focusing on agreed goals, tasks, standards and skills
- discussion of the reasons why the performance is inadequate
- action to be taken to improve performance
- consequences if there is not improvement

In addition, there should be a:

- record of interview signed by and distributed to all parties
- timeframe established for review

At the conclusion of the interview, the employee should be aware of the serious nature of the problem, the action to be taken and the consequences if performance does not improve.

Remedial action

Remedial action should aim to resolve the cause of the poor performance and assist the employee to achieve the required performance standards. Remedial action can include:

- referral to professional counselling
- on the job training
- provision of developmental opportunities
- job redesign

Follow-up action

Follow-up action should occur when as agreed in the counselling session. Where performance has improved satisfactorily, this should still be discussed, documented and further action to be taken agreed to by all parties. Performance should continue to be assessed through feedback.

If employee fails to improve performance, the matter should be referred to the Ombudsman (or delegate) who may recommend the use of sanctions. Sanctions intend to bring about an improvement in the performance of an individual and as such they should relate to work performance. Sanctions may include:

- extension of probationary period
- deferral of increment
- cancellation of flexitime
- disciplinary action

APPENDIX F: QUESTIONS YOU MIGHT ASK ABOUT THE SYSTEM

Where will the forms be kept?

Forms will be retained on individual performance management files with a copy held by the staff member.

Who will have access to the information?

Information from the Performance Management System will only be available to the staff member concerned, the supervisor, and the reviewing manager.

The forms are not available to selection committees.

How long will the Work Plan be retained?

Work Plans will be retained for a period of two years after the Annual Performance Review. The two years enable referral to past Work Plans particularly where Work Goals not achieved have been brought forward.

What happens if I change jobs?

Staff members:

When a staff member changes teams or is promoted they will have a formal interview with their new supervisor within one month of arrival in the team/position.

At this interview, the staff member and the supervisor will together draft a Work Plan.

Supervisors:

When a person takes up a new supervisory position they should become familiar with each of their staff member's Work Plan.

After a month in the new position, the supervisor should review the staff member's Major Goals/Tasks to ensure that they are still appropriate and, if necessary, renegotiate any changes.

When a supervisor is leaving a position they should hold a review with each staff member before they leave.

What happens if I am seconded or act in another position?

At the end of the period of secondment, higher duties or job rotation it is important for a staff member to receive constructive feedback about their performance and achievements. It is

important that this feedback is provided as soon as the period of acting is finished. An informal review session will be held to provide that feedback.

Are short term temporary staff included?

If a person is employed for three months or more, a Work Plan will be developed for the period of employment. The same system of performance feedback and review would also apply.

What if I don't agree with the review?

It is preferable that a dispute be handled and resolved between the supervisor and the staff member. Every effort should be made towards this end. If this is not possible the following options are available.

- using the grievance procedure
- going to a more senior supervisor
- seeking assistance from the Human Resource Manager or EEO Co-ordinator
- seeking assistance from the union

Where can I get more information about the system?

Information about the system is available from the following sources.

- **Supervisors** are responsible for informing their staff about the system
- **Induction Courses** will give new staff basic material on the system
- **The Human Resource Section** can provide information and assistance

Will ongoing training be available?

Training courses will be available on an ongoing basis for supervisors. These courses will provide supervisors with the opportunity to further develop their interview, counselling and appraisal skills.

Briefing sessions for staff will also be held. The Team Manager and the Human Resource Manager will conduct information sessions with individual staff and their supervisors.

Where can I get Performance Management forms and guidelines?

The Human Resource Section has copies of the guidelines and forms.

APPENDIX G: PERFORMANCE MANAGEMENT FORMS

PERFORMANCE MANAGEMENT COVER SHEET

NAME:

POSITION:

		supervisors signature & date	staff members signature & date	approving officers signature & date
PRELIMINARY DISCUSSION	I have provided this officer with a copy of their position description and other relevant documentation eg corporate plan, guarantee of service			
WORK PLAN DEVELOPED AND AGREED TRAINING/DEVELOPMENT PLAN AGREED				
INTERIM PROGRESS REVIEW	review period from to			
ANNUAL PERFORMANCE REVIEW CONDUCTED AND OUTCOME AGREED	review period from to			
ACTION TAKEN TO IMPLEMENT OUTCOME OF ANNUAL REVIEW				

APPENDIX 4

OVERVIEW OF THE COMPLAINANT SATISFACTION SURVEY

Prepared for the Joint
Committee on the Office
of the Ombudsman May
1994

A complainant satisfaction survey was conducted by AGB McNair on behalf of the Office of the Ombudsman during March-May 1993 of a random sample of complainants who had their matters finalised during the calendar year 1992. The overview sets out the rationale for the survey, provided details on the main findings of interest and outlines some initial strategy implications arising from the data for changes to procedures. Some of these strategies have already been further developed and actioned while others are being used as a basis for ongoing staff training to inculcate a customer focus and improve quality of service.

Background rationale

Jan Carlzon (1989) in his concept of "moments of truth" demonstrated that the esteem in which an organisation is held can be the product of the smallest social interactions between clients and staff. Tom Peters (1987:100) argued that a key strategy in improving quality of service is to view every element of an organisation's operations through the customer's lens and to constantly attempt to redefine each element of the organisation in terms of the customer's perception of the intangibles.

Knowing what the client groups expectations are and the extent to which those expectations are met is an essential part of improving service. The knowledge basically serves two important purposes:

1. it helps you identify areas of improvement in the quality of service you offer
2. it highlights those areas that need corrective action when your clients expectations exceed what the organisation can afford to deliver or what particular programs are meant to provide.

You can think about the issue as an equation:

Service - expectations = degree of satisfaction or dissatisfaction

As the equation implies it is extremely important to know what our complainants expect. If their expectations are totally unrealistic they will obviously be dissatisfied with our service. The dissatisfaction may not be attributable to bad service on our part, but be simply a product of a lack of understanding about what we can and do do. In such circumstances we can improve customer satisfaction by better

communication. More realistic expectations will in turn lead to greater satisfaction. On the other hand, if expectations are reasonable but satisfaction levels are low, that information can point to areas where we can improve our service which in turn will result in greater complainant satisfaction.

These basic ideas have been used in much of the material and talks given as part of the CHIPS project by the Office of the Ombudsman over the past two years. To put those ideas into practice the complainant survey was conducted as a means of finding out what our complainants thought about their experience of dealing with the Office. The main objectives were to :

gain information on the expectations and satisfaction levels with existing procedures used by the Office of the Ombudsman in responding to written complaints

to represent in the sample, complaints against the police and other public authorities and the types of services provided (initial assessment only; preliminary enquiries; conciliations and formal investigations)

The principal aim was to use the information about expectations and satisfaction levels to point to where the Office's procedures could be modified to ensure greater customer service and satisfaction, and ultimately support for the Office.

Starting from the same position as Tom Peters mentioned above, Zeithaml, Parasuraman & Berry¹, a group of leading market researchers from the US developed the strategy by identifying the five key dimensions that people use to judge quality service across all service sectors - reliability, which refers to the ability to perform the promised service dependably and accurately; tangibles, which refers to the appearance of physical facilities, equipment, personnel and communication material; assurance, which refers to the knowledge and courtesy of employees and their ability to convey trust and confidence; responsiveness, which refers to the willingness to help customers and provide prompt service; and empathy, which refers to the caring, individualised attention the organisation provides to its customers.

Consultation with staff members on what information they felt would be useful to gather from complainants also fell into these dimensions and they were used to structure the basic questions addressed in the survey.

The survey was conducted in late March / early May 1993 with approximately 2000 questionnaires being mailed to a stratified random sample of complainants who had their complaints determined during the 1992 calendar year. The replies were received and processed by AGB McNair. There was a satisfactory response rate of 31%.

¹Zeithaml, Valerie A., Parasuraman, A., Berry, Leonard. Delivering Quality Service: Balancing Customer Perceptions and Expectations. The Free Press: New York, 1990.

WHO ARE OUR COMPLAINANTS?

Appendix 1 sets out the summary of the respondents to the survey. Of note are the following:

- * 42% were country people.
- * 14 % of complainants were from Non English speaking backgrounds (NESB) and a quarter of them needed assistance of some sort in making a complaint
- * 64% male/32% female
- * 63% are 40 plus and only 6% are under 25

The percentage of country based complainants is also much higher than was previously thought.

Strategy implications

- the Media Officer should use this demographic data as a basis for designing targeted publicity campaigns

TANGIBLES

The tangibles dimension was sampled by asking questions about how people found out about the Ombudsman, whether they were able to locate the Office and our phone number easily, and whether they found our correspondence (including phone responses, initial letters and/or pamphlets) easy to understand.

Finding out about the Ombudsman

27% of respondents sourced the media and another 27% sourced friends/relatives. 15% said legal advisors, 12% our pamphlets, 11% general knowledge and 6% politicians.

Women relied on friends/relatives to a greater extent than men (34%:22%) and also relied on our pamphlets more than men (15%:9%).

The media had the greatest impact on older complainants but was less influential as a source of information about the Ombudsman for NESBs who relied much more on pamphlets, legal advisers and politicians for referrals particularly those needing assistance. Under 25s also relied more on friends/relatives and legal advisers as a source. Legal advisers and politicians were sourced more by police complainants (37% and 13% respectively).

Strategy implications

- the media is still our best means of communicating information about the role, function and access of the Office to the public and we should continue to use it

wherever we can to promote the Office.

- media stories should be developed wherever possible to more realistically show the work we do. For example, they should illustrate outcomes, implementation of recommendations etc not just criticisms and exposes of misconduct.

- targetted stories for ethnic press should be developed

- multi-lingual pamphlets must be developed as a priority and distributed widely to ethnic organisations

- pamphlets and information packages should be sent to youth and women's centres, community legal centres and aged and pensioner agencies

Ability to locate facilities easily

70% found our Office easily and 62% said they found our telephone number easily. Responses were not affected by gender, educational qualifications, age or area.

Police conciliation complainants reported a significantly lower positive reponse than other groups (54% and 42%) although that group also reported the highest level of don't know/no response answers. This is presumably explained by a large percentage of that group not making their complaint direct to this Office.

Ease of understanding communications

89% said yes. The only factors affecting this were language and overall satisfaction levels. NESB complainants needing assistance reported a significantly higher negative response (38%:10%) as did people dissatisfied or very dissatisfied with our finding and overall outcome.

Disatisfaction with finding/outcome may cloud satisfaction with everything or else the difficulty experienced by some complainants understanding our communications may contribute significantly to their level of overall dissatisfaction. Only 4% of respondents who saw the outcome as a resolution partly or substantially in their favour or as useful information /advice provided found our communications not easy to understand whereas 18% of those who saw the outcome as resolved but not at all in their favour and 13% who saw no resolution achieved by making complaint did.

Strategy implications

- we must continue to strive to make our correspondence and other communications clear and easy to understand.

- remind staff to use plain english

RELIABILITY

Of all the dimensions people use to judge quality service , reliability is the most important and influential perception. In our survey perceptions of reliability were sampled by asking complainants about their expectations of the Ombudsman's role, whether he met their expectations in handling the complaint, whether we met any promises made regarding the complaint and whether we gave clear guidelines or indications as to what we could do, would do, couldn't do, or wouldn't do.

Expectations about the Ombudsman's role

The role of the Ombudsman was seen in the following order by respondents:

someone to investigate complaint and find the truth	76%
someone to independently assess your grievance	52%
the avenue of last resort to get justice	44%
someone to get advice or information from	28%
someone to argue your case for you	25%
someone to refer you to the right place for help	16%

Women ranked the roles as independent assessor and someone to get advice/information from and someone to referer you to the right place much higher than men did. Young people were more likely to see the Ombudsman in his role as an investigator and information/advice provider than other age groups, whereas the 55plus age group looked to him as an advocate more than other age groups.

NESBs needing assistance also significantly favoured the advocate and referral role and ranked the investigator and assessor roles lower than their English speaking counterparts.

People dissatisfied with findings/outcome had a slightly higher perception of the Ombudsman's role as an investigator.

Strategy implications

- enquiries function is therefore particularly important for the young and the elderly and the availability of this service needs to be communicated better to these groups
- we should consider a special brochure for or certainly a special distribution of available brochures to aged groups
- we must take special steps when dealing with NESB complainants and aged complainants to communicate fact that we do not function as advocates

Meeting expectation about handling of complaint

23% of respondents said yes, completely. Another 32% said yes, partially and 42

% said no.

Under 25s were far more likely to report expectations completely met compared to other age groups (50%).

The groups reporting the highest level of satisfaction about their expectations of the complaint handling being completely met were police conciliations (58%:23%) followed by general area investigations (38%:23%). The highest groups reporting expectations being partially met were non-police investigations (46%:32%) and police investigations (40%:32%).

The highest groups reporting expectations not met were police DECOs (53%:42%) and non-police DECOs (48%:42%).

Among the groups reporting expectations not met, the 55+ group, men, NESB complainants and complainants generally dissatisfied with our finding and overall outcome were more highly represented.

Strategy implications

- people complaining to the Ombudsman obviously do not expect that we may make judgements against them. They also expect either indepth investigations or quick resolutions as in police conciliations. We must therefore communicate better at initial contact what the nature and limits of our enquiries are to give people more realistic expectations about what we can do
- develop a special brochure that explains in detail what PEs mean etc that also gives a snapshot of our overall determinations so they can see how few formal investigations are able to be done
- alert people to fact that we may find that the conduct of the public authority is reasonable within overall context even though their particular grievance would not lead them to expect that

Meeting promises made regarding the complaint

Far more complainants said we didn't keep promises made to them than those saying we did. 28% said yes whereas 44% said no with a further 28% giving a not applicable/don't know response.

Groups with higher than average positive responses were non-police investigations (62%), police conciliations(53%) and police investigations (38%). Police DECOs produced the highest negative response (50%) with NESB complainants also reporting significantly high no responses (61% and 71% for those needing assistance making complaints).

Strategy implications

- the results strongly suggest that staff are unwittingly making or implying promises about the handling of complaints to complainants and must be reminded to check this
- generally we need to formulate better description of what we are doing and likely outcomes, particularly for PEs in police and non-police areas where only one in three complainants report us meeting promises made.
- we must be particularly clear when dealing with NESB complainants

Giving clear guidelines or indications about what we do

The responses from the survey indicate that we do not give sufficient guidance to complainants about what we can and will do and what we can't or won't do. 25% reported getting nothing at all whereas less than half the respondents said we gave guidance about what we could do (41%), less than one in three reported receiving guidance about what we would do (29%), 33% said they received guidance on what we couldn't do and only 19% reported being told what we wouldn't do.

Among the complainants reporting positive responses to could do information, police conciliations(53%), police(56%) and non-police investigations (69%) were higher than average as they were for would do information (53,38% and 46% respectively). The groups reporting the highest responses to information on couldn't do information were the DECO groups predictably and they and police conciliations also reported higher than average responses to getting wouldn't do information.

Strategy implications

- we must give better and clearer messages to people about what we can, will, can't and won't do with their complaints so they have more realistic expectations and less cause for feeling dissatisfied.
- better information on what we can and will do should be given to non-police PE complainants in particular given the bulk of this group and the fact that this group reported significantly fewer positive responses on these dimensions than the police PE group.

RESPONSIVENESS

Complainants perception of our responsiveness was tested through asking them questions on their expectations on whether our initial response was quick enough, of how long it would take to settle their complaint, how long it did take, whether we took longer than necessary, whether we kept them regularly informed of progress, and how they believed their complaint would be handled.

Initial responses

76% of respondents reported our initial response as quick enough and only 20% said no.

There were no age, gender, area or educational differences represented in these responses and they were consistent across complaint groups except that the police PE group reported a significantly higher negative response (35%) and significantly lower positive response (60%) compared to other complaint types. The non-police investigation group also reported a significantly higher negative response (31%) than the average.

Strategy implications

- we should check and improve our response rate for providing initial acknowledgments and information on what is going to happen to the police PE group of complainants.

- we should take steps to initiate non-police investigations earlier through better identification of matters that can proceed directly to investigation, and cutting down on matters that go through extensive PEs prior to investigation.

Expectations on time to settle and actual time taken

	Expected settlement time	Actual settlement time
	% respondents	% respondents
same or few days	1%	2%
< 2 weeks	22%	15%
<2 months	36%	32%
<3 months	18%	9%
3-6 months	13%	13%
6-14 months	2%	7%
14-24 months	1%	4%
2+ years	1%	3%
dk/ns	6%	14%

Expected settlement time was not affected by gender, area, educational level of complainant or level of satisfaction with outcome.

Almost one quarter of complainants expected settlement in less than two weeks, nearly 60% expected settlement within 2 months and three quarters of complainants expected settlement within 3 months at the outset which indicates high expectations of quick turnaround times.

Only 31% of the non-police investigation group expected settlement in less than 3 months and 56% of the police investigation group did compared to 76% of complainants on average.

Under 25s and NESB complainants were represented significantly more among complainants expecting settlement in less than 2 weeks.

Most initial assessment only and preliminary enquiry complainants had their complaints dealt with within expectations, while most the subject of formal investigations took longer than expected. 80% of complainants involved in police investigations expected settlement in less than 6 months whereas only 46% reported actual settlement in that time. Similarly 77% of the non-police investigation groups expected settlement in under 6 months but only 16% reported this happening. 62% of that group reported in fact investigations taking 14-24 months to complete whereas only 16% of the police investigations groups reported times of this length.

It would appear that the respondents to the survey are not fully representative of the total population or that their perceptions of time actually taken do not match reality. For example, 72% of non-police PEs are completed within 2 months and 81% within 3 months whereas only 50% and 63% of the respondents from the non-police PE group reported their complaints being completed within these time limits respectively. A similar result was found comparing police PEs. Only 25% of the police PE group responding to the survey said their complaints were completed within 2 months and 33% said within 3 months whereas statistics produced from averaging all police PE files determined during 1992/93 show 70 % are completed within 2 months and 79% within 3 months. The difference between the sample drawn from the 1992 calendar year and the statistics drawn from the 92/93 financial year would not account for these differences.

Strategy implications

- when advising complainants of action being taken (eg. PEs), tell them time expectations from past year (eg. "in the past year we found 81% of enquiries of this type were completed within 3 months. Hopefully it will not take longer than this to complete enquiries about your complaint and for a determination to be made.")
- introduce general strategies to keep reducing turnaround times , particularly complaints investigated -eg. give clearer and more precise directions on issues to be addressed in police investigations; develop investigation plans for non-police investigations and send more complaints direct to investigation etc.

Whether we took longer than necessary

The majority of complainants were satisfied with the time taken to deal with their complaints. 66% of respondents said we took no longer than necessary to deal with their complaints whereas 23% said we did. There was an 11% nil response. NESB complainants (30%), particularly those needing assistance in making complaints reported higher negative responses (54%).

There was a direct relationship between reporting we took no longer than necessary and satisfaction with findings and outcome. While 66% reported we took no longer than necessary 84 of the satisfied group reported this and 79% of the very satisfied group did whereas only 53% of complainants very dissatisfied with the finding/outcome did so.

The type of complaint also affected perceptions about satisfactory turnaround times. Reports of taking no longer than necessary fell in the following order:

police conciliations	82%
non-police DECos	77%
police DECO	69%
non-police PEs	60%
police investigations	51%
police PEs	46%
non-police investigation	38%

Strategy implications

- introduce strategies to speed up non-police investigations
- introduce strategies to speed up our handling of police PEs and investigations coupled with giving clearer information about our ability/inability to control time taken by police

Whether we keep people regularly informed

41% said yes, 31% we didn't and 24% reported not applicable.

NESB complainants needing assistance to complain reported we didn't keep them regularly informed much more than other NESB complainants and english speaking only complainants (58%). The under 25s gave a significantly higher positive response than other age groups (53%).

There was a positive relationship with satisfaction with finding and outcome and perceptions of being kept regularly informed. 66% of the very satisfied and 57% of the satisfied with the finding reported yes. Similarly, 68% of those who saw the outcome as resolution in their favour said yes.

In terms of complaint types, the order of groups reporting a positive response was as follows:

non-police investigation	85%
police investigations	71%
police conciliations	61%
police PE	52%
non-police PE	40%

Strategy implications

- provide progress information to general area PE and police PE complainants wherever there are unexpected delays by phone.
- assess PE reports as soon as possible after receipt and dispatch immediately if they need to be sent to complainant for comment.

Expectations about ways complaints would be handled

Only 2% of respondents expected simple telephone advice in response to their written complaint, although 21% expected simple written/letter advice. 32% expected a formal report based on further enquiries (PEs) whereas 36% expected a detailed report based on a formal investigation.

People with higher educational qualifications had the highest expectations of detailed formal reports (48%) as did NESB complainants not needing assistance with complaining (45%).

Those with expectations of simpler responses tended to have the highest overall satisfaction levels however. Whereas only 2% of complainants expected telephone advice, 10% of those reporting to be very satisfied with the finding did. Whereas only 21% expected simple letter advice, 41% of the group reporting being most satisfied with the finding did, and 34% of those perceiving the overall outcome as a resolution in their favour or useful advice and information being provided (37%) also only expected a simple letter response.

Conversely, 51% of respondents dissatisfied with the finding and 52% dissatisfied with the overall outcome expected a detailed report based on a formal investigation.

The depth and detail of investigation and reporting therefore does not necessarily increase levels of overall satisfaction. In fact the reverse could be said to be the case.

Strategy implications

- adjust unrealistic expectations by giving clearer advice about the type and scope of enquiries being undertaken, particularly when dealing with NESB complainants
- produce information sheet to be sent with action acknowledgments which details what different types of action mean, and the proportion of these types of actions in terms of overall determination statistics eg. so if a complaint is DECO, people know that 50% of all complaints are DECO.

EMPATHY

Complainants perceptions of the empathy staff had with their problems was tested by asking questions about the level of personal contact they expected, whether they found staff helpful and courteous and polite, whether they believed we understood their complaint and identified the crucial issues in it, and whether they found contact with our staff on the phone, in person and by letter helpful and pleasant or not.

Level of contact expected

61 % of complainants expected minimal personal contact with staff and 33% expected extensive contact.

There were a number of factors influencing these results. People satisfied or very satisfied with the finding and outcome were more likely to expect minimal contact whereas those very dissatisfied expected extensive contact to a greater degree than average. Those who saw the outcome resolved for them or useful information or advice provided also reported higher expectations of minimal contact (77% and 73% respectively).

General area investigations, police investigations and police PE groups all reported higher than average expectations of extensive personal contact with staff (54%, 47% and 44% respectively).

Strategy implications

- Exceeding expectations always increases levels of satisfaction. Experiment with using telephone to acknowledge receipt of complaints instead of sending letters. This will be more cost effective also
- Wherever possible, quick phonecalls in addition to letters advising people of action should be made
- Give clearer messages about what likely contact they can expect from staff during the processing of complaints
- Invite complainants to ring if they have any queries at any time and be responsive when they do

Perceptions of staff helpfulness

51% of complainants reported staff as being helpful and 22% said they weren't. 27% of respondents didn't know.

Female complainants and those under 25 tended to report staff as more helpful than other groups. NESB complainants needing assistance found us less helpful than other groups (37% said no).

One quarter of complainants in the DECO and PE groups said we were not helpful. The order of groups reporting us as being helpful was:

general area investigations	85%
police conciliations	65%
police investigations	62%
general area PEs	56%
police PEs	50%

Complainants with high satisfaction levels with findings and outcomes reported us as being helpful significantly higher than average (91% very satisfied and 79% satisfied) whereas the very dissatisfied reported higher no responses than average(41%). Perceptions of helpfulness predictably are strongly related to overall satisfaction levels.

Strategy implications

- even if we can't resolve complaints or find no prima facie evidence of wrong conduct, wherever possible we should provide other useful information or advice to increase likelihood of perceptions of helpfulness. This could be simple information about standard practices, what to do in the future in similar situations arise etc.
- provide information about alternative remedies wherever they exist even if we are processing
- encourage people to keep trying to resolve matter while we are making enquiries wherever appropriate. [eg. our experience with suggesting mediation is that authorities tend to resolve rather than consent to enter mediation]

Perceptions of staff courtesy and politeness

63% of respondents found staff to be polite and courteous and only 6% found them not to be.

In terms of both perceptions of helpfulness and politeness and courtesy, these results indicate that for between 1/4 and 1/3 of complainants we didn't make any impression at all.

Interestingly while NESB complainants needing assistance reported a higher than average negative response in terms of perceptions of staff helpfulness, they reported higher than average perception of staff politeness and courtesy (68%).

Perceptions of politeness and courtesy among complaint types fell in the following order:

general area investigations	77%
general area PEs	72%

police investigations	71%
police conciliations	65%
general area DECOs	62%
police PEs	60%
police DECOs	53%

The same positive relationship with levels of satisfaction with findings/outcome was true of perceptions of politeness and courtesy as it was with perceptions of staff helpfulness.

Strategy implications

- we fail to impress a significant number of complainants and could address this by increasing personal contact. Other recommendations about increased use of telephone should assist this.
- instruct staff to always take messages if they can't transfer enquiry calls
- instruct staff to return enquiry calls within 24 hours

Understanding complaints and identifying critical issues

55% of respondents thought we did but 41% thought we didn't.

Women thought we did to a greater extent than men (63%:51%), as did the under 25s(61% compared to 55% average) and those with the lowest education levels (64%).

Among complaint types, the order of positive responses was as follows:

general area investigations	85%
police conciliations	75%
police investigations	60%
general area DECO	54%
police PE	50%
general area PE	49%
police DECO	49%

Again NESB complainants reported higher than average no responses (61%) whereas people with high overall levels of satisfaction with the finding (92% very satisfied, 94% satisfied) and outcome (89% very satisfied and 92% satisfied) said yes compared to the 55% average.

The main reasons given for saying we didn't understand complaint or crucial issues was that we did not properly understand or examine the complaint and carried out no real investigation (39% of the no respondents) and that they felt the complaint

was dismissed and not investigated because it involved a police officer (26% of the no respondents).

Strategy implications

- summarise critical issues in initial action correspondence and ask do they agree or to supply other information if they don't
- say what the purpose of our enquiries/ investigation is
- as with prisons complaint form, wherever possible ask complainants what they want to happen or believe will resolve the complaint and correct perception if this is beyond powers or likelihood.

Helpfulness/pleasantness of staff by phone

35% reported positive contacts and only 4 % reported negative contacts. A significant proportion (51%) didn't know however which indicates that we continue to deal with the majority of complainants only by letter.

Complaint type influenced this with positive contacts reported as follows:

general area investigation	77%
police investigation	55%
police PEs	46%
general area PEs	42%
general area DECO	28%
police conciliations	25%
police DECO	23%

The more satisfied people were with findings/outcome, the more likely they were to report staff telephone contact as helpful and pleasant. Similarly with those seeing the outcome as resolution in their favour.

Helpfulness/pleasantness of staff in person

Only 15% reported positive contacts, 3% negative contacts with a massive 76% reporting a not applicable response.

The order of positive responses by complaint type was the same as for phone contact and again NESB complainants needing assistance reported helpful and pleasant personal contacts with staff at a significantly higher rate than other groups (32% compared to 15% average).

Correlations with satisfaction levels for finding/outcome were also positive.

Helpfulness/pleasantness of written contact with staff

47% of complainants reported positive responses with 18% reporting unhelpful/unpleasant responses and only 175 reported a not applicable/don't know response.

Women found written correspondence more helpful compared to male complainants (37%:28%).

There was a significant gap in positive responses among complaint types;

general area investigations	77%
police conciliations	40%
police investigations	35%
police PEs	29%
general area PEs	26%
police DECOs	24%
general area DECOs	23%

Again positive relationships between perceptions of helpful/pleasant correspondence and overall satisfaction levels with findings and outcomes were established.

A significant finding of these three measures is that complainants involved in general area investigations reported positive helpful/pleasant contact with staff, whether by phone, in person or in writing, at double the rate of the next highest complaint group. It is more likely than not that it with this group that we have the most extensive contact which produces this result.

Strategy implications

- use the phone more to make personal contact with complainants
- use phone and in person contacts with NESB complainants wherever possible

ASSURANCE

Perceptions of assurance were tapped by asking complainants questions about their confidence about the way the Ombudsman handled their complaints, their confidence in the knowledge and expertise of staff, their level of satisfaction with the finding and overall outcome on their complaint, and their perception of how they saw that outcome.

Confidence in way complaint handled

41% of respondents answered yes but 50% answered no.

The results indicate that more complainants did not have confidence in how their complaints were handled than did.

Some groups expressed more confidence than others. Among these were women compared to men (49%:37%), under 25s(49% cf. 41 average) and NESB needing assistance (56% cf. 41% average).

The highest confidence in complaint handling was expressed by police conciliation complainants (70%) and general area investigation complainants (62%). There was a significant drop to the next groups- police investigations (44%) and general area PEs (43%).

The highest no responses were registered by police DECOS (57%) and police PEs (56%), followed by police investigations and general area PEs both at 53%.

Police conciliations and general area investigations were therefore the only complaint actions where more than half of the complainants felt confident in the way their complaint was handled. In the first, apart from directing or concurring in the action, we don't do anything directly ourselves and in the second group, the number of complaints processed in this manner is very small.

There was a positive relationship with yes responses and complainants reporting high overall satisfaction levels with findings and outcomes.

81% of complainants who saw the outcome as a resolution in their favour or useful advice or information provided (76%) reported confidence in how their complaint was handled, irrespective of complaint type. This was higher than any specific complaint type. Conversely 69% of those seeing the outcome as no resolution by making complaint lacked confidence in the way their complaint was handled irrespective of complaint type. This was also higher than any specific complaint type.

Strategy implications

- increase use of resolution strategies and provide useful advice and information wherever possible to increase confidence in way complaints are handled
- build confidence through personal contact and three way conciliation/mediation sessions

Confidence in knowledge and expertise of staff

44% of respondents reported confidence in this aspect of staff, 28% said they did not have confidence and over a quarter, 28%, didn't know and gave a nil response.

Complainants under 40 tendered to have more confidence than those over 40.

Complainants involved in general area investigations (69%) and general area PEs (51%) reported the highest confidence in staff knowledge and expertise.

They were the only areas where more than half the complainants reported confidence in staff abilities.

A positive relationship was again found with overall satisfaction levels.

Strategy implications

- as for above section

Satisfaction with finding/decision

Overall 26% of complainants reported being satisfied (15%) or very satisfied (11%) with the finding/decision of the Ombudsman whereas 52% said they weren't with 9% expressing neither satisfaction or dissatisfaction.

The under 25s were significantly more satisfied than other groups (54%). Satisfaction among complaint types is significant. The order is:

police conciliation	65%
general area investigation	61%
police investigation	33%
general area PEs	29%
police DECOs	19%
police PEs	17%
general area DECOs	17%

There is a significant gap between general area investigation and police conciliations and all other complaint types in terms of producing satisfaction. It is also interesting to note that police PEs produced slightly lower levels of satisfaction than even police DECOs. Respondents gained significantly more satisfaction from police conciliations than police investigations or police PEs - almost twice as much.

Expressions of dissatisfaction were roughly equal between all complaint groups (53%-56%) except for general area investigations (39%) and police conciliations (15%).

There was a high level of dissatisfaction registered by complainants from interstate (67% cf. 51% average).

There was a positive relationship to how the outcome was perceived. 68% of those seeing resolution in their favour reported satisfaction with the finding as did 59% of those seeing the outcome as useful information or advice provided. Complainants who saw the outcome as resolution but not at all in their favour reported dissatisfaction in 76% of cases and those who saw no resolution at all by making complaint reported dissatisfaction in 75% of cases.

Satisfaction with the overall outcome

Findings about overall outcome were similar to results for satisfaction with finding/decision.

21% were satisfied and 58% were dissatisfied.

Under 25s tendered to be more satisfied than other groups (43%) and interstate complainants registered high dissatisfaction levels (71%).

By complaint type, satisfaction was highest among general area investigation complainants (54%) and police conciliations (53%). There was then a significant drop to the next group - general area PEs with 28% reporting dissatisfaction. Police investigations produced only 18% of complainants being satisfied with the overall outcome. Police PEs and DECOS and general area DECOs were slightly below this level.

The highest rate of dissatisfaction with overall outcome was registered by the police investigation group - a massive 66%. This was higher than police and general area DECOs (63% and 61%), and PEs (police 58%, general 56%).

General area investigations produced twice as many satisfied complainants than general area PEs.

Those seeing resolution in their favour reported being satisfied in 60% of cases. Those reporting outcome as useful information/advice provided were satisfied with overall outcome in 44% of cases. The people seeing resolution not in their favour or no resolution at all reported higher levels of dissatisfaction than average (75% and 80%).

Police conciliations and general area investigations were therefore the only areas where more than half of the complainants were satisfied with the finding and outcome and in every other category, more than two thirds of the complainants said they were dissatisfied.

The lack of resolution and resolution not in favour of complainants causes strong dissatisfaction, stronger than the positive satisfaction that comes from resolution or providing useful advice and information.

Negative outcomes therefore appear to be a stronger determining factor of satisfaction than positive outcomes.

There is little difference between the level of satisfaction produced general area investigations and police conciliations which has significant implications for cost effective approaches to complaint handling.

Strategy implications

- significantly raise number of police complaints sent for police conciliation
- introduce conciliation/mediation strategies into general area
- highlight the positive achievements in all determining correspondence to maximise perception of resolution
- provide more advice and useful information to complainants to maximise perception of resolution

Whether reasons for final decision were clearly explained

66% of complainants said yes and 26% said no.

NESB complainants needing assistance reported higher levels of the no answer.

Again there was a significant gap between general area investigations and police conciliations and other complaint types in positive responses:

general area investigations	85%
police conciliations	84%
general area DECOs	70%
police investigations	67%
police DECOs	62%
general area PEs	57%
police PEs	56%

The highest no responses came from the police and general area PE groups and the police DECO groups. One in three complainants in these groups said the reasons for the final decision were not clearly explained.

Presumably the extent of reporting and manner of reporting is the reason for the significant gap between general area investigations and police investigation decisions being perceived as clearly explained.

Overall levels of satisfaction certainly influenced the outcomes. 93% of complainants reporting satisfaction with finding said the reasons were explained clearly and a similar number satisfied with the outcome. Similarly, 78% of those who saw the outcome as resolution in their favour and 86% of these who saw outcome as useful information/advice provided reported that the findings were clearly explained against the average of 66%.

People seemed to appreciate the provision of useful information and advice slightly more than actual resolution in terms of reporting the finding on their complaint being explained clearly.

Strategy implications

- reasons for decisions in police and general PE cases and police DECO cases need to be more clearly explained
- provide complainants with more useful information and advice

Perceptions of outcome

Respondents saw outcome of complaining in the following ways:

resolved partially or substantially in my favour	21%
useful information/advice provided	20%
resolved not at all in my favour	18%
no resolution achieved by making complaint	62%

Almost two thirds of complainants found there was no resolution achieved by complaining to the Ombudsman.

Of the complainants reporting resolution in their favour, the ordering of complaint groups was as follows:

general area investigation	62%
police conciliation	51%
general area PEs	31%
police investigation	27%
police PEs	17%
police DECO	14%
general area DECO	8%

There is a significant gap between perceptions of resolution achieved through general area investigations and police conciliations and all other complaint types. In general, perceptions of resolution achieved through investigation or PEs is higher in the general area than the police area.

Reports of outcome being perceived as useful information/advice provided were ordered among complaint groups as follow:

police conciliations	35%
general area DECO	24%
general area PE	18%
police PE	17%
police investigation	16%
general area investigation	15%
police DECO	15%

General area DECOs were more likely to be found to provide useful

information/advice than general area PEs. Police conciliations were almost twice as likely to provide useful advice/information than police investigations or PEs.

Even so, the perception of the provision of useful advice/information is generally low with less than 1 in five complainants in most cases reporting such an outcome.

One in five also reported the outcome as resolution but not in their favour :

general area investigation	31%
police PEs	29%
police investigation	22%
general area DECO	18%
police DECO	18%
general area PEs	16%
police conciliation	7%

Dissatisfaction was highest about the outcome of general area investigations and police PEs where presumably findings were made in favour of the public authority.

The ordering of groups reporting no resolution at all by complaining to the Ombudsman was as follows:

police PEs	73%
police DECO	72%
general area DECO	69%
police investigation	58%
general area PE	54%
general area investigation	31%
police conciliation	26%

Only police conciliations and general area investigations were successful in convincing more than two thirds of complainants that there was some resolution achieved by complaining to the Ombudsman. In all other categories between one half and two thirds of complainants saw no resolution at all.

Strategy implications

- increase use of resolution/conciliation strategies across all complaint types
- provide more advice and information wherever possible
- highlight the positives in all final correspondence

AGBMcNair

Table 1: Written Complainants to Ombudsman and Selected Sample

	1991-92 Complainants No.	Selected Sample No.	Achieved Sample No.	Response Rate %
Police				
Declined at outset	1,529	460	98	21
Preliminary enquiry	244	105	48	50
Conciliation	451	195	57	29
Formal Investigation	975	360	55	15
Other Government				
Declined at outset	1,444	432	154	36
Preliminary enquiry	930	375	183	49
Formal Investigation	73	73	13	18
TOTAL	5,646	2,000	608	31

APPENDIX 5



OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

Our reference:

Your reference:

9 August 1994

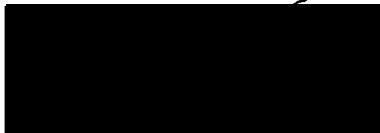
Andrew Fraser MP
Chairman
Joint Committee on the Office of the Ombudsman
Room 1144 Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Fraser

An overview of the complainant satisfaction survey carried out during 1993 was provided to the committee for the last general meeting. During that discussion, some members raised questions about gender breakdown of complainants by type of complaint.

I have had AGB McNair re-run the data to produce a further breakdown in order to provide this information and I attach a summary. As you will see, the responses to the survey indicated that 64% of complainants are male and 33% are female. Generally they make complaints against the police and non-police public authorities in roughly the same proportions. There are some slight variations on how the complaints were actually handled which presumably is a product of the nature of the particular complaints made. I hope this information is of interest to the committee.

Yours faithfully



David Landa
OMBUDSMAN

Complaint Type Broken Down by Gender
1993 Complainant Survey

	<u>Police</u>		<u>General Area</u>	
	M%	F%	M%	F%
DECO's	72	27	60	34
PE's	58	40	69	26
Conciliation	49	49		
Investigation	56	38	77	15

[Note: Overall 64% of complainants are male and 33% female]

Breakdown of Complaints made by Men & Women to the Ombudsman

	<u>Men</u> %	<u>Women</u> %	
outset	31	22	Police complaints declined at
	4	5	Police complaints made subject of preliminary enquiries
	6	12	Police conciliations
	15	20	Police investigations
outset	24	27	General complaints declined at
	18	13	General complaints made subject of preliminary enquiries
	2	1	General complaints made subject of formal investigations
Total Police	56	59	
Total General	44	41	

APPENDIX 6



OFFICE OF THE OMBUDSMAN

3RD FLOOR 580 GEORGE STREET, SYDNEY 2000
TELEPHONE: 286 1000

Our reference: G42034 DEL.js

Your reference:

13 July 1994

Mr Andrew Fraser, MP
Chairman
Joint Committee on the Office of the Ombudsman
Room 1144
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Fraser

Thank you for the opportunity to review a transcript of my evidence given before the Joint Committee at the general meeting on Thursday 23 June 1994. I enclose a copy of the transcript where I have indicated certain corrections in the margins.

With reference to the issue raised by Dr Burgmann concerning complaints about the Ombudsman (referred to at pages 37-39 of the transcript), I would wish to expand on the evidence that was given to the Joint Committee by Mr Pinnock.

While I agree with Mr Pinnock's view that the Joint Committee does not have the jurisdiction to review individual determinations made by the Ombudsman, the Joint Committee does have a function to monitor and review the exercise by the Ombudsman of the Ombudsman's functions under any Act (section 31B(1a)), which in my opinion would allow the Committee to look at such things as:

- (i) how this office deals with complaints in general or certain types of complaints;
- (ii) how this office has dealt with a particular complaint, in terms of the procedures adopted by the Office and possibly the behaviour of the Ombudsman and the staff of this office.

It is also open to members of the public who are dissatisfied with their treatment by this Office to raise the matter with their local member of Parliament, who could raise the matter in the House.

As referred to at page 37 of the transcript, if a complaint concerns alleged corrupt conduct as defined in the Independent Commission Against Corruption Act 1988, such complaint can be referred to the ICAC for action.

Taken together, it appears to me that the above avenues are adequate to ensure that I and my office are properly accountable.

Yours faithfully

A large black rectangular redaction box covering the signature of David Landa.

David Landa
NSW OMBUDSMAN

Encl.

APPENDIX 7

MEMO

Office of the Ombudsman
3rd Floor
580 George St
Sydney 2000

TO: ALL STAFF

FROM: David Landa

SUBJECT: THE MORLING REPORT - CONDUCT OF STAFF

DATE: 25 January 1994

NUMBER: M1/1/94

As a result of the recommendations by the Hon T Morling, QC in his report, I instruct all members of staff that the "e" mail system is to be used at all times with discretion and **SHOULD NOT** be used to disseminate information on any matter being investigated, except for those who are directly involved in that investigation.

All staff are required under the Code of Conduct to inform the Ombudsman of any concerns they may have about the way in which a complaint is being investigated, and are not to release any information concerning the complaint or matter related to it, to any person outside this Office.



David Landa
NSW OMBUDSMAN

APPENDIX 8



Room 1144
Parliament House
Macquarie Street
SYDNEY NSW 2000

Telephone: 230 2737

MINUTES OF THE MEETING OF THE JOINT COMMITTEE
ON THE OFFICE OF THE OMBUDSMAN

Thursday, 23 June 1994
Waratah Room, Parliament House, 2.00 p.m.

Members Present:

LEGISLATIVE COUNCIL

The Hon. Dr. M. Burgmann, The Hon. S. Mutch (Vice-Chairman).

LEGISLATIVE ASSEMBLY

Mr A Fraser (Chairman), Mr K Moss, Mr M Richardson, Mr A Humpherson, Mr A Windsor.

Apologies

The Hon. L Coleman and Mr C Scully.

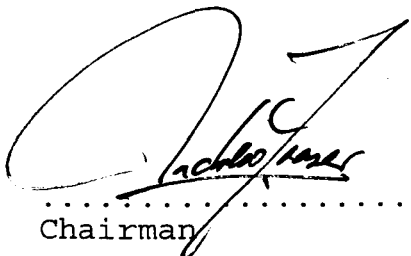
In attendance:

Ms R Miller (Clerk), Ms H Minnican (Project Officer), Ms V Lovett (Assistant Committee Officer).

The Chairman opened the meeting and sought advice regarding the status of the Police Area Manual presented by the Ombudsman. The Ombudsman advised that the document was confidential under S.31H of the Ombudsman Act. The Ombudsman tabled his Answers to the Committee's Questions on Notice for the General Meeting.

Mr David Landa, NSW Ombudsman, Mr John Pinnock, Deputy NSW Ombudsman, and Mr Gregory Robert Andrews, Assistant NSW Ombudsman (General Area), all on former oath, answered questions put by the Committee.

The Committee adjourned at 4.50 p.m.


.....
Chairman


.....
Clerk