

OMBUDSMAN TASMANIA

ANNUAL REPORT 2008-2009



Ombudsman Tasmania Annual Report 2008/9

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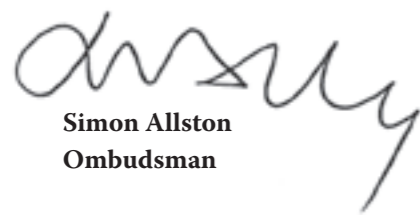
The Honourable the President of the Legislative Council

and

The Speaker of the House of Assembly

Pursuant to section 30 of the *Ombudsman Act* 1978, I present to the Parliament the annual report of the Ombudsman for 2008-09.

Yours faithfully


Simon Allston
Ombudsman

October 2009

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HIGHLIGHTS

Ombudsman complaints up 28%

Health complaints up by 30%

Energy complaints up by 34%

Significant investigation activity, both in relation to complaints and own-motion

Demanding role proposed under Right to Information legislation

Proposed membership of Tasmanian Integrity Commission

Now administering Mental Health Official Visitor Scheme

From the Ombudsman

TASMANIAN OMBUDSMAN - SIMON ALLSTON

On the morning that I started to draft this preface to my 2008/09 annual report, one of my staff received a note which read -

I just wanted to warmly thank you for your efforts in the complaint I recently pursued. Yours is not an easy role I'm sure, but I always felt you treated me with a great deal of fairness and respect. You probably don't realise how much your compassionate handling of this complaint helped in resolving it for me. All the best and thanks again.

The note highlights essential elements of work in the various jurisdictions in which I work, with my staff, as Ombudsman and Health Complaints Commissioner - effort on behalf of others, fairness, respect and compassion. As the writer correctly surmised, the work of handling complaints in this environment is not easy. Yet it is work of central importance to the Tasmanian community.

This year marks the 200th anniversary of the appointment, in Sweden, of the first Parliamentary Ombudsman. This was celebrated at an International conference of Ombudsmen in Stockholm between 9 and 12 June 2008. I intended at one stage to attend, but decided that this was not justified.

The anniversary is an important milestone. From the appointment of the first Swedish Parliamentary Ombudsman in 1709, the position has now been reached where the institution of a Parliamentary Ombudsman, or something akin to it, has spread throughout the world, to more than 120 countries. The title has also spread outside the governmental sphere, to industrial and other settings. Almost universally, the term has come to denote an officer who is expected to independently, fairly and impartially investigate and address matters of complaint - just as the officer did who received the note that I have quoted.



SIMON ALLSTON

This report

This is my fourth annual report under section 30 of the *Ombudsman Act 1978*. As with last year, I treat this as my opportunity to describe the work of my office as a whole, including in the report a brief picture of my work as Health Complaints Commissioner during the reporting year. My purpose in this is to make sure that the diversity of functions that my office fulfils is recognised.

I publish a separate annual report as Health Complaints Commissioner, and this can be seen at www.healthcomplaints.tas.gov.au.

Caseload and statistics

During October 2008 we commissioned a new case management system for the office. This provided an opportunity to more accurately track the receipt of enquiries, as distinct from complaints, and an opportunity to change data which we record about complaints, such as issues, outcomes and closure reasons. As a result, the statistics for the year are not in many respects directly comparable with previous years. The statistics provided in this report do not therefore in all instances include the figures for past years, and any comparison which might be made with figures in previous annual reports is likely to be misleading.

Recognising that the enquiry data is not comparable, we have recorded 1253 enquiries in the Ombudsman jurisdiction for 2008/09 as against 628 for 2007/08.

In contrast, the complaint data in the Ombudsman jurisdiction for this year and last is directly comparable, and this shows an increase in the number of complaints being opened during the year, from 433 in 2007/08 to 552 in 2008/09, an increase of 28%. Case closures during the year also rose, from 420 to 520, an increase of 24%.

The increased complaint numbers seem to be generally spread across all areas of government, including local government, but particular nodes of increase lie in the Department of Justice (in relation to Prisons and Corrective Services) and the Medical Council of Tasmania. A large number of complaints were lodged against the Council by reason of the action which it took to suspend an apparently popular general practitioner in Scottsdale, Dr Paul McGinity. The Council made two decisions to suspend, with the first of these being quashed by the Supreme Court. I am currently carrying out an investigation into the second suspension, in response to one of the complaints received.

The Health Complaints data record 410 enquiries, compared to 475 in 2007/08. There were 243 complaints, excluding grievances notified to me by registration boards under s 57 of the *Health Complaints Act 1995*. This represents an increase of 30% over the number of new complaints in 2007/08 (187). If the s 57 cases are included, the increase is from 235 cases to 281, an increase of 20%. The s 57 cases do not normally involve the level of work associated with a complaint file, so that the 30% figure is a more reliable indicator of demand.

The Energy Ombudsman data record 155 enquiries in that jurisdiction, compared to 82 for 2007/08. There were 279 new complaints, representing an increase in complaints of 34% over the equivalent figure for 2007/08 (227).

Resources

In August 2008, the Premier announced a 10-point plan to strengthen trust in democracy in Tasmania. Within that 10-point plan were three initiatives which directly affect my office. One was the review of the resources available to my office. Another was a review of the *Freedom of Information Act 1991* (FOI Act). The initiatives also included review of the *Public Interest Disclosures Act 2002*.

The resourcing review was carried out by the Department of Treasury and Finance (DOTAF). I know from Hansard that the review was complete by June, but I did not receive a copy of the report until September.

I was provided with an early draft of the report in February 2009 but it reflected a fundamental misapprehension, being based upon the notion that own-motion work by an Ombudsman is entirely elective, and not part of the Ombudsman's core functions. I unsuccessfully sought to correct that error by a letter to DOTAF, which I subsequently followed with another letter in which I provided projections on caseloads for the reporting year. That letter concluded with me observing that "we are coping with the complaint management load, and can continue to do so unless it increases unexpectedly, but our capacity to carry out own-motion work and major investigations is very limited". I then renewed an earlier request for a Deputy and for an additional Senior Investigation Officer.

Thereafter, the State's financial situation worsened with the global financial crisis, and I wrote to the Secretary of DOTAF on 19 May, withdrawing my request for a Deputy for that reason. I did not withdraw my request for the additional investigation officer.

Whilst these events were occurring, the review of the FOI Act was under way. A Directions Paper was published in March which proposed a greater role under the Act

for the Ombudsman. At present, the Ombudsman's only task under the Act is that of a review officer; under the reforms being proposed, the role becomes more akin to that of an Information Commissioner. I have indicated to the Government that I will need more staff to cope with the new demands in this jurisdiction, and discussions have commenced with DOTAF about this and my other requirements.

A further development since the end of the reporting year is the publication on 23 July 2009 of the Final Report of the Joint Select Committee on Ethical Conduct, a committee which was established by the Parliament in May 2008. The Government has said that it will implement the core recommendations of that Committee. At the centre of these is the proposal that a Tasmanian Integrity Commission be established, and that the Ombudsman, the Auditor-General and the State Service Commissioner be ex officio members of this body. This is a highly significant role to add to those which the Ombudsman already discharges. The appointment of a Deputy becomes all the more important in this new environment.

Links to Parliament

I note in passing that the report of the Joint Select Committee recommends (at Recommendation 19) that the *Ombudsman Act* be amended to establish a Joint Parliamentary Committee to carry out a number of functions in relation to the Ombudsman. These include to monitor and review the performance of the Ombudsman; to report to both Houses of the Parliament on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the Ombudsman's functions; and to participate in the selection process for the Ombudsman.

At present, although the Ombudsman is answerable to the Parliament, the links between the Office and the Parliament are few. I report to the Parliament in my annual reports as Ombudsman and Health Complaints Commissioner, and I attend and make submissions to Parliamentary Committees which bear upon my work. In this last year, I gave evidence and made submissions to the Joint Select Committee on Ethical Conduct and the Legislative Council Select Committee into the Public Hospital System. I have in the past appeared before Estimates Committees of both Houses, but was not called upon to do so in the year under review. I also have occasional contact with Members of Parliament in relation to matters of complaint.

I welcome the recommendation for the proposed Joint Select Committee, which can only benefit the statutory office of Ombudsman, and the State.

Own motion investigation

The annual Budget Papers contain a separate chapter for the Office of the Ombudsman. The major initiatives which I foreshadowed in the chapter for 2008/09 included undertaking a number of major investigations that address public interest issues. By this I meant major investigations which do not necessarily stem from complaints.

I have mentioned above that I pointed out to DOTAF in the review of the resources of my office that own-motion investigation work is part of an Ombudsman's core functions. It was necessary for me to do so because the draft report provided to me contained the following statement - *Should the Government have the Budget capacity and consider it a priority, the provision of permanent additional funding to the Office of the Ombudsman would allow more major and own motion investigations to be conducted, in addition to its core complaint management functions.*

In response I pointed out that there is only one core function, spelt out in s 12(1) of the Ombudsman Act - *Subject to this Act, the Ombudsman may investigate any administrative action taken by or on behalf of a public authority.*

and that it is clearly explained in s 13 of the Act that this power to investigate may be carried out on the Ombudsman's "own motion, or on a complaint or reference made" in accordance with the Act. Amongst the points that I then made was the following - *If Government does not provide the Ombudsman with the funding needed to act on the Ombudsman's own motion, it frustrates the will of Parliament as expressed in the Act. The proposition that Government should only provide such funding if this is a Budget priority is inconsistent with the Act, and with the role of an Ombudsman worldwide.*

As at the end of the reporting year, I was conducting three own-motion investigations under the *Ombudsman Act*. One was an investigation into the manner in which the Tamar Unit in the Risdon Prison Complex and its associated Behaviour Management Program are being managed. Another was into a decision by the Director of Prisons in August 2008 not to allow an inmate of the Mary Hutchinson Women's Prison to have her newborn daughter accommodated with her at the Prison. The third was into the adequacy of processes used for selecting, appointing and supervising a particular staff specialist at the Royal Hobart Hospital. I was also on the threshold of commencing an own-motion investigation under the *Health Complaints Act* into issues involving a specialist at another public hospital in the State, referred to me by the Medical Council of Tasmania.

On present staffing levels, it is very difficult to expeditiously complete such investigations whilst properly servicing our complaint management work. Experience has shown that it is necessary to take officers off-line in order to give such cases the concentrated attention that they deserve.

Health Complaints

I have indicated above that the complaint load in this jurisdiction has increased by 30% over the 2007/08 level, disregarding cases notified to me by registration boards under s 57 of the *Health Complaints Act*, most of which stay with the boards but nonetheless involve a reasonable level of work by my office.

We have continued to work hard to assess health complaints within the 45 and 90-day limits required by the Act, but the transition to the new Resolve database slowed case handling times down considerably for a period. By year's end, only one of the 27 of the active cases in assessment was over the 90-day limit. This is a major achievement for my assessment staff.

I have also continued with the policy of only subjecting health complaints to investigation where public interest issues arise, and of conciliating cases whenever appropriate. (Public interest issues can often be addressed in conciliation in any event.) The result this year, compared with last, has been a drop in cases referred to investigation, from 8 to 4, a rise in cases referred to conciliation, from 45 to 50, and a rise in completed conciliations, from 40 to 51.

We are experiencing a trend for public hospitals to refer complaints to us at an early stage, so that we can facilitate early discussion about adverse events, and in some cases compensation.

Energy Ombudsman

As indicated earlier the number of new complaints received in this jurisdiction rose by 34% in the reporting year. A total of 304 new complaints were received, and 330 were closed. At the end of the year, 43 complaint files were current. In contrast, the highest number of complaints that we had on hand in this jurisdiction at any one time during the year was 81, in August 2008. This followed a surge in complaint activity for which there was no obvious explanation.

The low continuing case load reflects the success of a policy introduced in June 2007, of referring suitable complaints to designated officers in Aurora Energy upon receipt, to give the company the opportunity to address the complaint in-house. Our experience

is that complaints referred to the company in this way tend to be resolved very quickly, without need for our continuing involvement. Thus, the cases that remain in our hands are mostly ones which are more difficult.

As can be seen from the statistics at the end of this report, the 342 issues of complaint recorded include a high proportion of complaints about high bills (46), disconnections (21) and payment difficulties (31). This is not surprising, given the economic downturn and the increase in electricity prices which took place during the year.

I personally met twice during the year with Aurora Energy executives about issues of concern.

Freedom of Information

I have earlier mentioned the review of the State's FOI legislation, in which I played a role as one of the members of the expert panel that was consulted. I provided two written submissions to the review team, in part proposing changes to the FOI Act which I see as desirable in light of my experience with applications for review under the Act. One change that I sought, and which is proposed as a result of the review, is to relieve the Ombudsman of the absurd requirement to determine an application for review within 30 days of receipt. The fact that I am unable to meet this timeframe gives rise to understandable but unavoidable criticism of my office from some applicants.

The proposed reforms, which will result in a *Right to Information Act*, are intended to change the culture of agencies (in which I include "prescribed authorities" and councils) in favour of the voluntary disclosure of information. This will require considerable effort on behalf of agencies and the Ombudsman.

The new legislation will radically extend the role of the Ombudsman into such significant areas as the publication of guidelines, the issue and maintenance of a manual related to the operation of the Act, and the provision of oral and written advice to public authorities. (I also anticipate a wider educational role.) The new legislation will provide wider powers, including the power to conciliate applications, to direct an agency to provide better reasons for a decision, to examine witnesses and to have full and free access to agency records. As I have said above, the role of the Ombudsman will thus shift towards including the role of an Information Commissioner.

Subsidiary jurisdictions

There have been only two new approaches to me under the *Public Interest Disclosures Act 2002* (PID Act) during the year, but one was out of jurisdiction and the other did not merit investigation. I also completed an investigation under this Act which had been commenced in the previous financial year, the result being a finding that no improper conduct had occurred. A brief summary of this case can be found in the Public Interest Disclosures chapter of this report.

My office was also involved in the review of the PID Act that I have mentioned above. Richard Connock, Principal Officer (Ombudsman), participated in a working party which assisted the review team.

As in previous years, I have received no complaints under the *Personal Information Protection Act 2004*, and nothing has been required of me under the *Witness Protection Act 2000* or the *Adoption Act 1988*.

The necessary inspections have been completed under the *Telecommunications (Interception) Tasmania Act 1999* and the *Police Powers (Surveillance Devices) Act 2006*.

Official Visitors

During the last few months of the reporting year I was involved in discussions with officers from the Department of Health and Human Services (DHHS) about whether I would accept responsibility for the administration of the Mental Health Official Visitor Scheme. As at the end of 2008/09, there were 14 Official Visitors appointed under s 74P of the *Mental Health Act 1996*, of whom one was the Manager of the Scheme. The Scheme operated under the auspices of the Mental Health Council of Tasmania, from offices in Sandy Bay.

I indicated that I would be prepared to administer the Scheme, on the basis that its existing budget also come to me. The principal reason for seeking to relocate the Scheme was to find it a home which was transparently independent from the DHHS. My office was considered to be the best of a number of options in that regard. The fact that I already provide administrative support to the Official Visitors to the State's prison facilities, who are appointed under the *Corrections Act 1997*, was a relevant factor in coming to this decision, and in my willingness to consider taking on this added responsibility.

The Minister approved the transfer of the Scheme to my office on 4 June 2009, and the transfer was duly effected by 1 July. The Scheme has bedded down successfully in its new location, largely due to the efforts of its interim Manager, Phil Donnelly.

The Prison Official Visitor Scheme has continued to operate successfully during the reporting year. These Official Visitors do excellent work on a largely voluntary basis, monitoring the treatment, behaviour and conditions of prisoners and detainees, and receiving and investigating complaints. The transition of the Mental Health Official Visitors to my office highlights a discrepancy between the treatment of the two types of Official Visitor. Those who visit the prisons receive an honorarium of \$500/annum plus travel expenses, whilst those who visit mental health institutions receive a basic payment of \$25/hour plus allowances. I have made representations to Government to be given the funds to treat these two types of Visitor equally, and hope to be able to report by this time next year that this has been done.

Other matters

As mentioned, our new Resolve case management database was commissioned in October 2008. The transition from the old database was testing for most members of the office, but looked at in totality went extremely well. This is a tribute to the project management skills and forbearance of Lianne Jager, our Administration Manager. Lianne has since been trained by the supplier of Resolve to carry out adjustments to the database that would otherwise need to be outsourced, which is a real advantage for the future.

A major advantage of the new database is the quality of reporting which is now possible, giving us much better information over the operation of the office, and saving administration time.

In outreach, we distributed brochures in relation to all jurisdictions widely in the first part of the reporting year, emphasising Health Complaints. We did a huge mail-out, to public offices and officers, legal practitioners, medical practitioners, pharmacists, health institutions etc.. We also did some advertising in relation to the Health Complaints jurisdiction in the three major newspapers in the State. Successful stalls were also held at Agfest, at the Hobart Show and at Orientation Day at the University of Tasmania. At the first and last of these, we were joined by officers from the Commonwealth Ombudsman and from two industry ombudsman schemes.

Our three websites will be upgraded in the coming year, a project that has had to follow the work in replacing our case management database.

Conclusion

I trust that this report gives the impression of an office which works hard to fulfil its many mandates, which are ever more numerous.

I completed my annual report last year with the statement that I believed that we had reached the point where additional functions could not be absorbed without additional resources. Fortunately, the Mental Health Official Visitor Scheme came across to me with its own budget. I trust that I will be suitably resourced in light of the additional responsibilities that will come with the Right to Information legislation, and the proposed Tasmanian Integrity Commission.

As ever, I conclude by thanking my staff. The work that we do is often thankless. It is not every day that we receive letters like the one which opened this preface. Often the work that we do and the limits to my several jurisdictions and to what we can achieve are poorly understood, and complainants can be hard to satisfy. However, we do each have the satisfaction of daily work which is fundamentally purposeful, both in what it achieves for complainants and in what it achieves for our community at large.

Simon Allston
Ombudsman

October 2008

The Role

OMBUDSMAN ACT 1978

The Tasmanian Ombudsman has a very wide jurisdiction to investigate the administrative actions of public authorities. The *Ombudsman Act 1978* does not prescribe by name the public authorities that fall within the jurisdiction of the Ombudsman except for the Police Service and the University of Tasmania. In terms of the other public authorities, the Act relies on broad inclusive definitions which ensure that if not directly excluded, then a public authority is within jurisdiction. These definitions extend from State service agencies and Local Council authorities to Government Business Enterprises and State owned companies. They also include a body or authority which is established under an Act for a public purpose or whose members are appointed by the Governor or a Minister. A person appointed to an office by the Governor or a Minister under an Act is also considered a public authority.

Certain Statutory Office Holders, Judges and Magistrates are not considered public authorities for the purposes of the Act.

The Ombudsman has also been appointed as the Health Complaints Commissioner, under the *Health Complaints Act 1995*, and administers the *Energy Ombudsman Act 1998*. The Ombudsman also reviews decisions related to requests for information under the *Freedom of Information Act 1991*; receives and investigates disclosures made under the *Public Interest Disclosures Act 2002*; receives and investigates complaints in relation to the alleged contravention by a personal information custodian of personal information protection principles under the *Personal Information Protection Act 2004*; reviews certain decisions under the *Adoption Act 1988*; oversees compliance by Tasmania Police with the provisions of the *Telecommunications (Interception) Tasmania Act 1999* and the *Police Powers (surveillance Devices) Act 2006*; and oversees witness protection programs under the *Witness Protection Act 2000*.

The Ombudsman, Health Complaints and Energy jurisdictions operate largely as separate entities, with some cross jurisdiction movement of investigation staff, according to demand. Most are located at 99 Bathurst Street, Hobart. There is a branch office in Launceston, staffed by an investigation officer who deals with matters in relation to the Ombudsman and Health Complaints jurisdictions, as well as undertaking some conciliation work. Administrative and corporate support services are shared and the Ombudsman exercises an overseeing, corporate management role across all jurisdictions. There is a Principal Officer to head each of the Ombudsman, Health Complaints and Energy jurisdictions.

All of the jurisdictions operate on the principles of independence, impartiality, equity, fairness and accessibility, with a commitment to the resolution of disputes in an efficient manner.

Ombudsman

Under the *Ombudsman Act 1978*, the Ombudsman receives complaints related to the administrative actions of State Government departments, Local Government bodies and specified public authorities. The Ombudsman will investigate complaints that fall within jurisdiction and if there is evidence of defective administration, will prepare a report for the agency head, which will include recommendations for rectifying action. If necessary, a report will also be prepared for the relevant Minister and/or Parliament. While the Ombudsman has no power to enforce recommendations and is dependent on persuasive arguments, it is rare for an authority to not accept the Ombudsman's recommendations.

FOI review

Under the *Freedom of Information Act 1991*, the Ombudsman receives requests for the review of decisions made by State Government departments, local government and various public authorities not to release information sought under the Act. The Ombudsman has the power to make a fresh determination if he believes that an inappropriate decision has been made, and the authority concerned is obliged to implement his decision.

Public Interest Disclosures

The *Public Interest Disclosures Act 2002* commenced on 1 January 2004. The Ombudsman has a major role under the Act to receive and investigate disclosures and oversee the way public bodies deal with disclosures.

Personal Information Protection

The *Personal Information Protection Act 2004* commenced on 5 September 2005. The Ombudsman provides the opportunity for a person to seek redress in relation to the alleged contravention by a personal information custodian of a personal information protection principle that applies to the person.

Health Complaints Commissioner

Under the *Health Complaints Act 1995*, the Commissioner receives complaints related to the provision of any health service in both the public and the private sectors.

Under the Act the Commissioner is required to:

- assess, conciliate, investigate or dismiss complaints;
- refer appropriate matters to the relevant registration board;
- promote the principles of the Charter of Health Rights within the community;
- provide information, education and advice to stakeholders;
- promote equity, access and fairness and bring about improvements in the quality and standard of health care in Tasmania; and
- prepare reports and make recommendations to the Secretary and to the Minister for Health and Human Services.

Energy Ombudsman

Under the *Energy Ombudsman Act 1998*, consumers are able to refer complaints against energy entities to the Ombudsman for investigation and resolution. Under the Act, the Ombudsman has the power to make determinations and awards against the energy entities.

Cross-jurisdiction services

The Ombudsman's Office plays an important role in referring members of the public to an appropriate source for the redress of grievances that fall outside the Ombudsman's jurisdictions. Alternatives would include, for example, the Financial Industry (Banking) Ombudsman, the Telecommunications Ombudsman, the Anti-Discrimination Commissioner and the Commonwealth Ombudsman.

Approaching the office

Any member of the Tasmanian community who feels they have been "wronged by the system" in respect of a service provided by a State Government agency, and who has tried to resolve their grievance directly with the agency without satisfaction, may bring their matter to the Ombudsman. The Ombudsman will decide whether the matter is accepted. If accepted, inquiries will commence and an investigation may ensue, the main objectives being to improve and promote the quality of public administration.

The Office offers a free service characterised by fairness, impartiality and confidentiality.

Energy Ombudsman

ENERGY OMBUDSMAN ACT 1998

The Ombudsman administers the *Energy Ombudsman Act 1998*, supported by a Principal Officer (Energy) and an Investigation Officer. Appendix B of this report is dedicated to the Energy Ombudsman and provides statistical information for 2008-2009. This section is included because the *Energy Ombudsman Act 1998* does not require a separate annual report, presumably expecting that reporting on the Ombudsman's functions under that Act will occur under the *Ombudsman Act 1978*. (An annual Energy Ombudsman report is nonetheless produced as a matter of good practice, and as a resource for the energy entities, consumers and others. A full report can be viewed at www.energyombudsman.tas.gov.au).

The introduction to this report contains a description of the more significant aspects of the administration of this jurisdiction during the year, and the statistics in Appendix B demonstrate increasing demand for the services of the Energy Ombudsman. The number of new complaints received during the year increased from 227 to 304, an increase of 34%. The number of complaints closed during the year also increased, from 292 to 328, a 30% increase. We still manage to close approximately 80% of cases within the first three months, and more than 35% within a week.

We have also logged an increase in enquiries. These have gone from 82 to 155, an increase of 89%. I regard this as not necessarily reflecting an increase in workload. The transition to our new Resolve case management database in October 2008, together with new office systems, has led to greater discipline and accuracy in recording the constant workload of addressing enquiries that do not necessarily lead to the lodging of a complaint. Often it is a matter of referring the person making the enquiry to the energy entity involved, or to another complaint management service.

Most of the work in this jurisdiction relates to services provided by Aurora Energy Pty Ltd, because of its position as the sole retailer of electricity to domestic and small business consumers. The proportion of the complaint load attributable to this one company did not change significantly, going from 97.4% of the total in 2007-2008 to 97.8% in the reporting year. Only one of the 322 electricity complaints closed was against another electricity entity, that being Hydro Tasmania.

Only six of the 328 complaints closed during the year related to gas, and only four of the 304 new complaints opened during the year were against a gas entity.

We have continued with the process introduced in 2006-2007 of referring suitable complaints back to Aurora Energy upon receipt, for immediate internal action by the company. The number of complaints dealt with in this way during this year was 84, or 28% of the total. The corresponding figure in 2007-2008 was 108, or 48%. This would suggest that complaint management processes in Aurora Energy may have improved.

Readers of this report may notice that the data on complaint issues dealt with during the year is presented differently from previous years. This makes comparison with previous issues data difficult and potentially misleading. The new presentation results from the adoption of a new system of categorising complaints, as part of our transition to the new case management database. This system has been adopted by ANZEWON, the Australia and New Zealand Energy and Water Ombudsman Network, with a view to enabling the members of the Network to better compare the performance and experience of our respective offices. The adoption of comparable data also makes it possible to present a national picture, which becomes progressively more important as national regulation of the energy market develops.

FOI Reviews

FREEDOM OF INFORMATION ACT 1991

Role of the Ombudsman

The role of the Ombudsman is to independently review decisions of agencies under the *Freedom of Information Act 1991* (the FOI Act).

FOI Act

The FOI Act gives to every person a legally enforceable right to:

- obtain information contained in the records of government agencies and Ministers specified in the FOI Act; and
- have information in such records which relates to their personal affairs amended where it is incorrect, incomplete, out of date or misleading.

The entitlements conferred under the FOI Act are limited only by necessary exceptions and exemptions. The Act contains exemption provisions that limit the right of access to information and embody Parliament's assessment of interests that justify an exception to the general right. Several exemption provisions are subject to an overriding "public interest" test. This means that in order for an agency or a Minister to refuse access to the information, the agency (or Minister) must show, on balance, that it would be contrary to the public interest to release the information.

Powers

The Ombudsman's powers are limited to reviewing the specific categories of decision specified in s 48(2) and (3) of the FOI Act. For example, a decision that a person is not entitled to the information requested, that the information requested is exempt information, or a decision not to amend personal information.

The Ombudsman can review a decision where an agency has, for example, decided to provide personal or business affairs information to the applicant (a "reverse" FOI application). In carrying out a review the Ombudsman has the same power as the agency and is required to make a fresh decision. The Ombudsman can affirm, vary or set aside the decision under review. The agency is obliged to implement the Ombudsman's decision.

Who can lodge an FOI application

Any individual person or corporate entity can apply for access to information under the FOI Act. An individual can apply to amend information that relates to his or her personal affairs.

All applications are, in the first instance, made directly to the agency that has possession of the relevant information.

Applicants who are dissatisfied with an agency decision may apply for an internal review within the agency, unless the agency's principal officer made the initial decision. A person can apply for an external review by the Ombudsman if:

- they have received a notice of an internal review decision by the agency; or
- the initial decision was made by the agency's principal officer; or
- the prescribed time limit for making the agency decision has expired.

Who applies for external reviews?

External review applicants continue to come from every part of society.

Applications are made by:

- politicians
- journalists
- interest groups
- businesses
- people who have made (or intend to make) complaints to an agency
- people who have been the subject of a complaint to an agency
- people seeking access to medical records
- prisoners
- people wanting access to information for use in legal proceedings
- people seeking information about an agency decision that has affected them.

Some applications make it necessary for Ombudsman staff to make preliminary enquiries to establish whether the Ombudsman has jurisdiction to conduct a review and, for example, to ascertain whether there are any third parties who might need to be consulted during the review process. Where the information in dispute is voluminous, or complex factual or legal issues exist, the review raises certain practical difficulties and the task of preparing a written determination requiring the provision of reasons for decision is time consuming.

FOI workshops

During the reporting period, staff conducted seven workshops aimed to give Agency FOI officers practical material to acquaint them with the responsibilities, appointment and functions of authorised officers under the FOI Act.

Website

The Ombudsman’s website (www.ombudsman.tas.gov.au) contains information in relation to FOI reviews. Assistance in making an application for review can be found under the “Freedom of Information Reviews” tab, and significant review decisions are presently published under the “Investigations” tab.

Freedom of Information statistics

During the reporting period the office received 64 (63 in 2007/8) new applications under the FOI Act. During the same period, 59 FOI files were closed, 33 (20 in 2007/8) of which required a formal determination. The average number of FOI determinations per annum over the last 4 years has been 28.25.

FOI TABLE 2.
REVIEWS AGAINST STATE GOVERNMENT DEPARTMENTS

Departments	Applications received	Closed	Reviews undertaken	Agency decision Varied
Department of Economic Development	2	1	1	11
Department of Education	1	2	1	
Department of Environment Parks Heritage and Arts	2	1	1	
Department of Health and Human Services	12	12	7	
Department of Infrastructure, Energy and Resources	2	1		
Department of Justice	2	3	2	
Department of Premier and Cabinet	2	2	2	
Department of Primary Industries & Water	5	4	2	
Department of Tourism, Arts and the Environment		1	1	
Minister for Energy	3	2		
Minister for Environment	1	1		
Minister for Health	1	1		
Office of the Tasmanian Energy Regulator		1		
Tasmania Police	11	6	6	
Treasurer	2	2		
Sub-total	46	40	23	

FOI TABLE 1.
RESULTS OF FINALISED CASES

** The term "other" denotes those applications that did not result in reviews. There can be numerous reasons for this – e.g., out of jurisdiction, application withdrawn, resolved without review, etc.*

Decision	2008/9
Agency decisions affirmed	14
Agency decisions varied	17
Agency decisions set aside	2
Other*	26
Total	59
External reviews/determinations	33

FOI TABLE 3.
REVIEWS AGAINST LOCAL GOVERNMENT

Departments	Applications received	Closed	Reviews undertaken	Agency decision Varied
Central Coast Council			2	3
Clarence City Council	2	1	1	
Derwent Valley Council	1	1	1	
George Town Council	1	1		
Glamorgan/Spring Bay Council	1			
Kingborough Council		1	1	
Launceston City Council	1	1		
Sub-total	6	7	5	

FOI TABLE 4.
REVIEWS AGAINST STATUTORY AUTHORITIES AND OTHER BODIES

Departments	Applications received	Closed	Reviews undertaken	Agency decision Varied
Aurora Energy	6	6	2	3
Forestry Tasmania	3	3	2	
Law Society of Tasmania	1	1	1	
Office of the Tasmanian Energy Regulator	1			
Registrar of Motor Vehicles		1		
Transend Networks		1		
Workplace Standards Tasmania	1			
Sub-total	12	12	5	
Grand Total (Tables 2,3 and 4)	64	59	33	17

INFORMATION AFFECTING PERSONAL PRIVACY
DEPARTMENT OF PREMIER & CABINET (DPAC)

In this case, a journalist with the Australian Broadcasting Corporation sought access to all documents in the possession of DPAC and created since the beginning of 2008 which mentioned or referred to Nigel Burch. Mr Burch had been a ministerial adviser to Steve Kons MP when Mr Kons had been Deputy Premier, Attorney-General, and Minister for Infrastructure, Resources, Planning and Workplace Relations. Revelations by Mr Burch led indirectly to Mr Kons' resignation as a Minister in April 2008.

DPAC identified 23 documents as falling within the request. Access to most of these documents was refused in the initial decision on the request, with the claim that they were variously exempt under ss27, 29 and 30 of the FOI Act. An internal review decision resulted in the release of some additional information, but the claim for exemption was largely maintained.

The Ombudsman's decision resulted in the release of most of the information at issue.

In his decision, the Ombudsman made a couple of preliminary observations –

“The first of these observations is that the process of making a decision on a request for information under the Act requires intellectual rigour. When faced with a request, an agency might legitimately look at the political or policy consequences of release as a first step, but only for the purpose of deciding whether or not to release information irrespective of whether or not an exemption might be claimed under the Act - see s12. Beyond that, the correct process is to look at the information which is identified as being responsive to the request and determine with objectivity whether or not any exemption applies to it. Some sections of the Act, such as ss27 and 30, bring public interest issues into play in this process, but political or policy consequences of release are only relevant in that context.

The second observation is that the application of exemption provisions frequently requires evidence. If an agency fulfils its obligations under s 22 of the Act in making both the original decision and any internal review decision, I should have the necessary evidence to make my decision on an application for review under s48. If evidence necessary to make out a claim for exemption is not provided, there is no prospect of me upholding that claim.”

The case raised an interesting issue in relation to s30, being the section in the Act under which information is exempt if its disclosure would involve the unreasonable disclosure of information relating to a person's personal affairs. DPAC had raised various grounds for arguing, in relation to the relevant information, that its release would be unreasonable,

but these grounds generally concerned public interest considerations of interest to government which had nothing to do with Mr Burch's privacy or the effect upon him of disclosure. Meanwhile, Mr Burch did not oppose release.

The Ombudsman ruled that, in deciding whether or not release would be reasonable, it was not legitimate to consider factors which only bore on the public interest in general, not on the privacy interests of the individual. He observed that to do otherwise negated the purpose of s30, and gave primacy to public interest considerations other than those which the section sought to protect. In so doing, this approach risked frustrating the object of the Act, which is to improve democratic government in Tasmania in the ways stated s3: “by giving members of the public the right to obtain information contained in the records of agencies and Ministers limited only by necessary exceptions and exemptions”.

The full text of the decision can be seen on the Ombudsman's website.

P AND TASMANIA POLICE

The applicant was charged and convicted of an offence under s124 of the *Criminal Code* (sexual intercourse with a young person). After the conviction the applicant applied to Tasmania Police under s13 of the *Freedom of Information Act 1991* for access to the “witness statements” of certain third parties. The “witness statements” were generated during the course of a police investigation into allegations concerning drugs and child prostitution. The applicant wanted the information to pursue legal remedies.

Before making a decision on the request, the FOI officer was informed that the third parties had given evidence in the applicant's trial which was subsequently found not to be correct. Tasmania Police disclosed to the applicant edited versions of statutory declarations made by the third parties and a recorded interview conducted with one of them. At the time of making the declaration, one of the third parties was a minor. Tasmania Police claimed that the deleted information was exempt under s30 (the exemption for personal affairs information) of the Act.

The applicant applied to the Ombudsman for a review of the decision. The information at issue consisted of certain identifying information relating to the third parties (their signatures, dates of birth, private addresses and telephone numbers), the name of the victim and other information about the police investigation which did not involve the applicant.

The Ombudsman was satisfied that the information could properly be characterised as

information relating to the personal affairs of the third parties, the victim and other individuals being investigated by Tasmania Police. The question therefore was whether it would be unreasonable to disclose the information under the Act.

The Ombudsman decided that it would be unreasonable to disclose the identifying information. The third parties had not given evidence during the applicant’s trial and the information had not otherwise been made public. There is a strong public interest in the protection of information provided to law enforcement agencies about allegations of physical or sexual abuse of children.

More problematic was the disclosure of the identity of the victim. Each case must be decided on its own facts. The Ombudsman considered that disclosure of the victim’s name under the Act must be viewed in the context of assertions of fact made by the third parties. Section 194K of the *Evidence Act 2001* demonstrates the concern of the community to protect the identity of the victims of sexual crime, although the section does not directly deal with publication under the Act. The applicant did not give any reason for wanting this information which raised a matter of public interest sufficient to outweigh the public interest in protecting the privacy of individuals mentioned in the information or the free flow of information to a law enforcement agency. The Ombudsman decided that it would be unreasonable to disclose the victim’s name.

The Ombudsman was also satisfied that it would be unreasonable to disclose the other information relating to the police investigation on the basis that the information was “not a matter of public knowledge or a public record” and did not relate to the applicant.

ACCESS TO COUNCIL INFORMATION FROM A CLOSED MEETING

Information was requested from the Clarence City Council under the FOI Act, for documents concerning a person’s residential property. The Council released some information, but claimed an exemption for a report provided to Council which was dealt with in a closed meeting. The report was prepared for the purpose of advising Council about possible enforcement action in respect of allegedly illegal building work at the property. The Council withheld this on the basis that the *Local Government (Meeting Procedures) Regulations 2005* required all reports relating to a closed meeting to be kept confidential.

Under the Regulations, a council may close a council meeting to the public when matters relating to actual or possible litigation involving the council are to be discussed. The Regulations also provide that any associated reports and documents which relate to the litigation must be withheld from the public, and that under the FOI Act, any information withheld is exempt information. An opinion was sought from the Solicitor-General on whether the Regulations in so far as they relate to the FOI Act were valid. The Solicitor-General was of the opinion that they were not and that the Ombudsman was at liberty not to apply them.

The reason for the invalidity was fundamental. It is not legitimate for a regulation to be made which is “repugnant to any express enactment in force” (*Acts Interpretation Act 1931*, s47(1)), unless express authority for such repugnancy has been given by another statute. There was no power in the *Local Government Act 1993* to make regulations giving such authority. The application for review was therefore determined as if the Regulations did not exist.

The report at issue came into being as part of deliberative processes within the Council on whether enforcement action should be taken, and contained recommendations for consideration by the Council which were prepared by Council officers. This brought the information within s27 (internal working information) of the FOI Act. The issue was whether it would be “contrary to the public interest”, in the terms of s27(1)(b), for these recommendations to be released.

The recommendations at issue were totally unremarkable. They put before Council bare recommendations to enforce what were said to be clear breaches of the law. The Ombudsman saw no reason for saying that it would be contrary to the public interest for these particular recommendations, or for recommendations such as these, to be released and a determination was made that this should occur.

H AND THE LAW SOCIETY OF TASMANIA

The applicant applied to the Society under s13 of the *Freedom of Information Act 1991* for access to information concerning the complaints that the applicant had made to the Society about certain legal practitioners. The Society did not notify the applicant of a decision on the request. Initially, at least, the Society also refused an application for a waiver of fees under s17(1)(g) of the Act. (The applicant was impecunious.)

Pursuant to s50(1) of the Act, the applicant applied to the Ombudsman for a review on the grounds of a deemed refusal by the principal officer of the Society to grant the request. The Society took over three months to give the Ombudsman the information

to carry out the review. In forwarding the information identified as falling within the terms of the request, the Society decided that some of the information could be released to the applicant, without being reviewed.

The Society claimed that the information remaining in dispute was exempt under s29 of the Act (the exemption for information affecting legal proceedings). On inspection, it was apparent that some documents were not created for the dominant purpose of a legal practitioner giving or the Society receiving legal advice about the applicant's complaints. These were documents relating to the payment of the costs of legal practitioners employed by the Society in relation to the applicant's complaints, and documents relating to routine administrative matters concerning legal services.

The most problematic documents forwarded by the Society related to certain communications between the Society and a past President, who is a Senior Counsel. The Society did not provide the Ombudsman with any evidence that communications took place in the context of the Society seeking legal advice from the then President about the applicant's complaints.

The Ombudsman determined that the information contained in the documents relating to the payment of legal costs, dealing with routine matters concerning legal services and consisting of communications between the Society and past President was not exempt under s29 of the Act.

In concluding, the Ombudsman said that the case brought no credit on the Society. He stated that, as the organisation which represents the legal profession in this State, one might have hoped that the Society would act more diligently in its application of legislation that is central to the delivery of good public administration.

The Ombudsman noted that the Society had failed to make a decision on the applicant's request in time, giving rise to a deemed refusal. The Society also subsequently failed to expeditiously provide the Ombudsman with the information needed to carry out the review. Only at the time of delivering that information to the Ombudsman did it identify that it was willing for a large part of the information to go to the applicant. Even then, it was necessary for the Ombudsman to prompt the Society into providing that particular information to the applicant, when it could plainly have volunteered the information to him a long time before. Finally, it turned out on analysis of the information that was left that a good deal of it, such as correspondence about costs, was unarguably not covered by legal professional privilege.

Public Interest Disclosures

PUBLIC INTEREST DISCLOSURES ACT 2002

The Act

The *Public Interest Disclosures Act 2002* commenced on 1 January 2004. The Act gives the Ombudsman a major role in both receiving and investigating disclosures and also overseeing the way public bodies deal with disclosures.

The main objective of the Act is to encourage and facilitate the making of disclosures about improper conduct by public officers and public bodies. The Act provides protection for persons making a disclosure and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

The Act applies to a "public body", which is defined to include all agencies, councils, government business enterprises, State owned companies and statutory authorities. The Act provides that an officer, employee or member of a public body (or a contractor to a public body) may make a disclosure to the public body, the Ombudsman or, in certain circumstances, other specified persons.

Under the Act, the main functions of the Ombudsman include:

- publishing guidelines to assist public bodies in interpreting and complying with the Act;
- reviewing written procedures established by public bodies;
- determining whether a disclosure received by the Ombudsman warrants investigation;
- investigating disclosures;
- monitoring investigations which have been initiated by public bodies or which have been referred to public bodies; and
- collating and publishing statistics about disclosures handled by the Ombudsman.

The Guidelines and model procedures for public bodies set out in detail the operation of the Act and the suggested processes for bodies to comply with the Act. The Guidelines, model procedures and a complete training package are available on the Ombudsman website at www.ombudsman.tas.gov.au/publicinterestdisclosures. A hard copy may be viewed on request at the Ombudsman's office located on the ground floor, at 99 Bathurst Street, Hobart, during business hours.

Annual reporting requirements under section 84

Section 84 of the Act sets out the annual reporting requirements for the Ombudsman (refer PID Table 1).

In Table 1, it can be seen that two disclosures were received in the reporting year. In both cases the Ombudsman declined to investigate. One case was out of jurisdiction. The other was an anonymous disclosure with insufficient evidence provided to support the claims made, and particularly to establish “improper conduct” within the terms of the PID Act. An investigation commenced in 2007/08 was completed early in the reporting year.

PID TABLE 1.
SECTION 84(A TO L) - PERIOD COVERED: 1 JULY 2008 TO 30 JUNE 2009

Sub-section	Annual Report requirements	Response
(a)	Information as to how persons may obtain or access copies of the current guidelines published by the Ombudsman under Part 6.	Ombudsman's website or office
(b)	The number and type of disclosures made to the Ombudsman during the year.	2
(c)	The number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures.	1
(d)	The number and types of disclosed matters that during the year the Ombudsman has investigated.	Nil
(e)	The number and types of disclosed matters that during the year the Ombudsman has referred –	
	i. under section 41, to the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; or	Nil
	ii. to a public body to investigate under Part 7.	Nil
(f)	The number and types of disclosed matters –	
	i. that the Ombudsman has declined to investigate during the year; or	2
	ii. that were referred by a public body during the year to the Ombudsman to investigate.	Nil
(g)	The number and types of disclosures referred to the Ombudsman under this Act by the President of the Legislative Council or the Speaker of the House of Assembly during the year.	Nil
(h)	The number and types of investigations of disclosed matters taken over by the Ombudsman during the year.	Nil
(i)	The number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year.	Nil
(j)	The recommendations made by the Ombudsman during the year in relation to each type of disclosed matter.	Nil
(k)	The recommendations made by the Ombudsman during the year re the procedures established by a public body under Part 7.	Nil
(l)	The action taken during the year on each recommendation of the Ombudsman under this Act.	N/A

CASE SUMMARY

An investigation under the Act was completed during the reporting year. It related to the hiring practices of a municipal Council, and in particular to alleged partiality when filling vacancies and an alleged failure to comply with Council's equal opportunity policy. It is not possible to provide a full report of the investigation without providing information which might identify the whistleblower.

Although there appeared to be some deficiencies in recruitment and records management processes on first review of the Council's documentation, the investigation demonstrated that these processes had been gradually improving over a number of years and that reasonable explanations for recruitment decisions could be given. The deficiencies identified did not warrant any adverse finding by the Ombudsman. There was no evidence of any impropriety or partiality in the recruitment of staff members in the period covered by the disclosure or, for that matter, prior to that time.

Personal Information Protection

PERSONAL INFORMATION PROTECTION ACT 2004

The *Personal Information Protection Act 2004* regulates the collection, maintenance, use and disclosure of personal information relating to individuals.

A complaint may be made under the Act to the Ombudsman, in relation to the contravention by a personal information custodian of a personal information protection principle that applies to the person.

To date, the Ombudsman has not received any complaints under the Act, which commenced in September 2005.

Inspections under Police Legislation

POLICE POWERS (SURVEILLANCE DEVICES) ACT 2008
TELECOMMUNICATIONS (INTERCEPTION) TASMANIA ACT 1999

The Police Powers (Surveillance Devices) Act 2006 came into effect on 1 January 2009. The Act governs the use that a law enforcement agency makes of surveillance devices and also the records that it is obliged to keep in respect of each warrant for which it applies. The Act requires the appointment of an inspection entity and the Ombudsman has been appointed as that entity. The inspection entity is required to inspect the records of the law enforcement agency from time to time, but at least once every 12 months. Under s41 of the Act, the inspection is conducted in order to determine the extent of compliance with the Act by the agency as well as by the law enforcement officers of the agency. The entity is obliged under s 42 to make a written report which includes a report on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating the inspection.

There are two organisations that are defined as “law enforcement agencies” under the Act: the Police Service (Tasmania Police) and the Australian Crime Commission (ACC). No applications for warrants have yet been made by the ACC under the Act. The first inspection of records held by Tasmania Police was conducted on 25 June 2009.

Twenty warrants had been applied for by Tasmania Police in the first seven months of the Act coming into operation. In terms of compliance with the record keeping requirements of the Act, there were some initial teething problems identified which were readily acknowledged and were already in the process of being rectified. The Ombudsman’s officers were informed that, with the first few warrant applications especially, both Tasmania Police and the courts were implementing and fine-tuning appropriate processes. Strategies have been put in place that should rectify the inconsistencies that have given rise to the small number of failures to comply with requirements of the Act.

In general, the Ombudsman is satisfied with the efforts made by Tasmania Police to comply with the record keeping requirements of the Act and is confident that the initial minor difficulties noted here are being addressed and will be resolved in a timely manner.

The Ombudsman has now been conducting inspections under the *Telecommunications (Interception) Tasmania Act 1999* since December 2006. Pursuant to Part 3 of the Act, the Ombudsman may at any time inspect the records of Tasmania Police to ascertain the extent of compliance with the requirements of Part 2 of the Act as to the keeping of records and provision of advice to the appropriate Minister. S10 of the Act requires that the Ombudsman make such an inspection at least once every six months. Regular inspections have been taking place in June and December of each year.

Overall, the Ombudsman has been impressed with the standard of record keeping, level of security and general compliance with the requirements of the Act demonstrated by Tasmania Police. Due to the number of warrants granted to Tasmania Police and the length of time for which some of the records are being retained, he is considering using random sampling methods of inspection in the future. However, the details of this method are yet to be finalised.

Police Complaints

INDEPENDENT REVIEWS

During the reporting year, the Ombudsman was the only independent body able to review the activities and conduct of Tasmania Police and its officers. The Ombudsman's jurisdiction in this regard, however, is confined to the administrative actions of Police; matters of an operational nature do not come within that jurisdiction. Many of the complaints received by the Ombudsman involving Police in the reporting year, as in previous years, concerned the manner in which individual officers performed their duties in the field rather than issues of administration and could not, therefore, be accepted.

Those complaints received that were within jurisdiction were handled in accordance with the long standing Guidelines developed by the Ombudsman and the Commissioner of Police. Those Guidelines provide for complaints to be initially referred to Police Internal Investigations for enquiry with the Ombudsman monitoring the process. Internal Investigations either conducts an investigation itself, or refers the complaint to the Commander of the relevant Police region. Internal Investigations reports the outcome of enquiries to the Ombudsman and, in the case of complaints that have been substantiated, outlines the action proposed to be taken. The Ombudsman remains satisfied that complaints are dealt with promptly, thoroughly and fairly through this process.

There are occasions when the Ombudsman steps outside the Guidelines and makes enquiries of his own without referring a complaint to Internal Investigations. On every occasion when this has happened, Police have provided assistance and cooperation. There are also occasions when complaints that are outside the Ombudsman's jurisdiction have – with the consent of the complainant – been referred to Police, and on those occasions, Police have treated the complaints as Customer Service Complaints and carried out their own investigations.

Some complainants complained because they did not believe Police provided an adequate service; others thought that they had been the centre of undeserved attention from Police. Some were concerned that Police were reluctant to prosecute offenders; others complained that Police had wrongly charged innocent parties (quite often the complainant himself or herself, or a family member). Complaints of harassment were common, as were complaints of delay.

Last year's Annual Report noted a steady decline in the number of complaints against Police received over several years. In this reporting year, however, the number of complaints received rose by 34%. There is no obvious explanation for this increase, and the nature of complaints received remained largely consistent with previous years.

These included complaints alleging:

- wrongful arrest;
- failure to secure a motor vehicle after it had been searched, resulting in the loss of personal property;
- failure to investigate allegations of criminal behaviour;
- use of excessive force when making an arrest; and
- inadequate investigation into the causes of a motor vehicle collision.

As has been the case historically, the bulk of complaints that were closed during the reporting year were either declined for one reason or another (50%), discontinued (10.5%) or not substantiated (31.6%). Less than 8% of complaints were determined to be substantiated.

CONTROL OF BOXING MATCHES

Two complaints were received from people associated with the Tasmanian Amateur Boxing League (TABL) involving the refusal by the Commissioner of Police to allow boxing tournaments to be conducted by their organisation.

In response to the complaints, the Acting Deputy Commissioner of Police advised that he needed to be satisfied that a particular boxing contest would be conducted in keeping with national best practice before issuing a permit. Another organisation, Boxing Tasmania, is recognised by Boxing Australia while TABL is not, and it was the Acting Deputy Commissioner's position that Boxing Tasmania's rules represented best practice and any club wishing to conduct a tournament should be affiliated with Boxing Tasmania.

TABL argued that if an association could show that it could achieve the same standards set down by another association, then the fact that it was not affiliated with that association should not preclude it from holding contests.

Two pieces of legislation have relevance to the control of boxing events:

- s 49B of the *Police Offences Act 1935* which gives power to the Commissioner of Police to control public entertainments and allows the Commissioner, where there is the likelihood of danger to a performer or other person, to prohibit or regulate the holding of any public entertainment; and
- s 82 of the *Criminal Code Act 1924* which prohibits prize fights. The expression prize fights is not defined, but s 82(2) provides that a boxing contest held with the consent of the Commissioner of Police is not to be deemed to be a prize fight.

The Ombudsman's view, based on the legislation, was that there was no legislative requirement that a person wishing to hold a boxing match needed the consent of Tasmania Police. However, it appeared that people and organisations wishing to hold boxing contests had historically applied to the Commissioner for consent to avoid any possible contravention of s 82 of the Code and/or the possibility that they may have their plans disrupted by a decision by the Commissioner to prohibit or regulate the event under s49B. The Ombudsman considered it was unsatisfactory for the existing consent process to have such an uncertain basis. If the State considered that, as a matter of policy, the consent of the Commissioner should be required before any boxing contests could legitimately be held, then clear legislation to that effect should be introduced.

The Ombudsman conveyed his view to the Acting Deputy Commissioner, and suggested that, depending on the facts, while it might be acceptable to assume that any club which was affiliated with Boxing Tasmania would conduct its boxing contests in accordance with the required standards, it was not acceptable to assume that any club which was not affiliated would not do so. He suggested that consent should perhaps have been given on condition that such standards be met.

Having considered the Ombudsman's comments and suggestions, the Acting Commissioner advised that Tasmania Police had decided to commence a review of the safe and proper conduct of boxing in Tasmania. It was his intention in the meanwhile to withdraw from involvement in the regulation of boxing contests under s 49B of the *Police Offences Act 1935*, unless in response to a complaint received regarding the conduct of a past or future event. In his view, that section of the Act needed amendment and he would seek appropriate advice with regard to such an amendment. He would also consider amendments to the Criminal Code to reflect State policy on whether the consent of the Commissioner should be required before any boxing contests could legitimately be held.

The Ombudsman was satisfied that the issues raised in the complaint had been addressed appropriately and that Police procedures had been amended as a result. On that basis he decided to close the case.

CUSTOMER RELATIONS

A complaint was received from a resident of a small rural district, aggrieved by the contents of an entry in a district newsletter written by the local Police Officer. The newsletter is published and distributed fortnightly and in each issue, one page is devoted to police matters and news. The entry that attracted the complainant's displeasure was one in which the Police Officer advised that a particular named business would shortly

have a windscreen installer in the area and suggested that anyone with a damaged windscreen should avail themselves of the opportunity to have it repaired or replaced by the named business. The Officer went on to say that anyone who didn't have a damaged windscreen replaced would be put off the road and fined. The complainant operated a smash repair business in the district, specialising in windscreen fitting - as did two other local businesses – and said that there was a concern among residents that the Police Officer might have had some sort of financial arrangement with the named business.

The Ombudsman was concerned about the impression the entry conveyed, not only that the Police Officer appeared to be promoting one business over others, for whatever reason, but also because of the possible implication that there would be adverse consequences for those who did not patronise the named business. In addition to the concern raised by the complainant, the Ombudsman was of the view that the subject Police Page contained several other items of questionable probity. These included:

- a list naming a number of people from the district who had been before the Magistrates' Court, the offences they had been charged with and the penalties imposed, which did not seem appropriate given the district's small population;
- under the heading Back to the Zoo, a description of an amorous encounter between two people on a bus on the way home from a wedding which contained sufficient information to enable residents to identify one of the participants; and
- under the heading Drugs, a suggestion that people in the district who knew or associated with people involved in growing and selling marihuana and did not report them should have a good hard look at themselves and consider whether they were worthy of being members of the district's community, which seemed to adopt an overly simplistic and judgemental position in relation to a complex problem.

In addition, following enquiries, it was ascertained by the Ombudsman that several of the items in the name and shame list were incorrect in that convictions were said to have been entered against two people, when in fact the first had been acquitted and the second had had his charges adjourned without conviction and been bonded to be of good behaviour.

The Ombudsman brought his concerns to the attention of the Acting Commissioner of Police who, in accordance with the Guidelines referred to, caused an investigation to be undertaken by the Acting Deputy Commissioner. As a result, the district's Police Officer was disciplined and the Acting Commissioner was confident that no further inappropriate entries would appear in the newsletter. A senior officer met with the complainant to discuss the situation and the outcome of the investigation. The complainant was satisfied with the Police response, and so too was the Ombudsman.

Prison Complaints

INDEPENDENT REVIEWS

The Ombudsman provides the only external and independent review service for the prisoners and detainees in Tasmania's correctional facilities, and complaints from prisoners and detainees account for a substantial amount of the Ombudsman's work. Compared to 2007/08, there was an increase in the number of complaints from prisoners and detainees of nearly 30%, and complaints in 2007/08 had increased by over 100% compared to the year before. Most complaints continue to be received from inmates in the maximum and minimum security units of the men's Risdon Prison Complex, although the other facilities – the Mary Hutchinson Women's Prison, the Ron Barwick Minimum Security Prison, the Hobart and Launceston Reception Prisons and the Hayes Prison Farm – have all been represented.

The continuing increase in the number of complaints is, in large part, due to the ease with which prisoners and detainees can access the services of the Ombudsman by using the secure free-call line established on the Prison Service's Arunta telephone system, an initiative commenced at the start of the last reporting year. Complaints can now be taken by telephone and many can be resolved swiftly and effectively without the delays occasioned by reliance on the postal system. Inmates with more complex complaints requiring a more formal approach are able to exchange information easily with the officers handling their cases by using the telephone system, and this has streamlined the handling of those more complex complaints. Now that the free-call line has been in place and operating efficiently for over a year, inmates have become used to it and use it readily; any suspicion or scepticism as to the security and confidentiality of calls made to the Ombudsman which might have existed on their part in the early days of the line's operation, seems to have been largely dispelled.

A development in the reporting year which has further enhanced the efficiency of prisoner complaint handling was the establishment by the Director of Prisons of a dedicated Compliance Unit. Formal Ombudsman complaints are referred to the Unit, whose officers have responded promptly and constructively. Access by officers of the Ombudsman to those people within the Prison Service best able to respond to particular issues of complaint has been facilitated and encouraged, and this has meant that the time taken to complete enquiries has been lessened, that there has been enhanced access to relevant information and that the Ombudsman has been more readily able to make determinations as to the substance or otherwise of complaints.

The Ombudsman has also enjoyed a closer working relationship with the Director of Corrective Services in this reporting year than in the past, and by directly communicating with the Director has been able to resolve a number of systemic issues raised by inmates and Official Visitors which would otherwise have required some level of investigation and a concomitant diversion of resources (see Case Summary over page).

As has historically been the case, complaints received from prisoners and detainees have varied between simple and comparatively minor concerns to matters of more complexity and seriousness. Complaints have included complaints about:

- the amount of time spent in lock-down;
- transfers and escorts, particularly in relation to medical appointments;
- visits;
- classification and accommodation issues;
- the penalties imposed for prison offences; and
- access to education and programmes.

Of note, despite the calculation of remissions having been the subject of complaint and investigation in the last two reporting years and recommendations having been made by the Ombudsman for reviewing the manner of their calculation, further complaints were received during this reporting year which demonstrated that miscalculations were still occurring (see Case Summary). However, a new procedure for calculating remissions has now been developed by the Prison Service, in liaison with officers of the Ombudsman's office, and the Ombudsman is satisfied that the sorts of errors in calculation which gave rise to the complaints will not recur.

REMISSIONS

The complainant was in custody at Risdon Prison, and after a verbal altercation with a custodial officer was placed in solitary confinement and told that his remission had been revoked. The inmate had been sentenced to ten months' imprisonment in December 2007 and if he remained of good behaviour during that sentence, he would have been eligible to be considered for a possible maximum of three months' remission. In April 2008 he was sentenced to a period of six weeks' imprisonment, cumulative with the earlier sentence. No remission can be granted on sentences of less than three months, so any remission the complainant might have been entitled to had to be in relation to the ten month sentence. Whether or not a grant of remission is made is at the discretion of the Director of Prisons.

The inmate's complaint was that the sentence on which remission had been granted - the 10 months - had been served, minus the remission period, that there was no remission to revoke on the sentence that he was currently serving - the six weeks - and he was therefore eligible for release.

A response was sought from the Director of Prisons as a matter of some urgency. The Ombudsman was notified the day after receiving the complaint that the inmate was to be released later that day. A full response was received a few days later. The Director

acknowledged that he should have considered the matter of remission for the complainant in relation to the ten month sentence in July 2008 - that is, the day before the maximum period for remission of three months commenced. However, there was apparently a problem with the computerised process used by the Tasmania Prison Service (TPS) for calculating remissions on multiple sentences - the Custodial Information System - and as a result, the Director did not consider the inmate's remission at the appropriate time.

As events had transpired, on 31 July 2008 the Director received a report from a Senior Custodial Officer requesting that he consider not granting remission to the inmate due to a series of episodes during July. The Director accessed the Custodial Information System which indicated that the complainant had a release date, but he did not look at the paper file. He then made a determination that the complainant had not been of good behaviour during his sentence and wrote to him informing him that he would not be exercising his discretion to grant the complainant remission on his sentences.

By not accessing and reviewing the paper file, the Director had overlooked the fact that remission was not available on the six week sentence and that if remission was to be considered, bearing in mind that the grant of remission is at the discretion of the Director, it could only have been in relation to the ten month sentence. If remission was to be granted, and the Director saw nothing on the complainant's file to suggest that it should not have been prior to the events brought to his attention on 31 July 2008, it would have applied to his first sentence and should have been considered earlier in July 2008, as mentioned above.

The failure to consider remission on the ten month sentence by, or before, the requisite date had caused the problem with the complainant's release date. This issue apparently arose due to the limitations of the computer program being utilised by the Prison Service. The calculation of remission on multiple sentences has since been addressed by the Prison Service in the context of another complaint to the Ombudsman and a new Remission Policy has been developed, in consultation with the Ombudsman, to ensure that the same problem does not arise again.

LOCK-DOWNS

Preliminary inquiries were commenced into a complaint made by an inmate of the Mary Hutchinson Women's Prison that she had been kept locked in her cell for a week and had been fed by staff sliding food in to her under her cell door.

Following a request from the Ombudsman, Corrective Services provided copies of all the material relating to the management of the inmate during the period of the alleged lock-down. These documents included: Prison Offence Reports; Disciplinary Process Forms; internal memoranda; and Prison Service Reports. Perhaps the two most informative documents reviewed were the Daily Running Log kept in relation to each inmate and a Summary Sheet recording events as they occurred on a daily basis. These documents were helpful as they were completed by a range of different Corrections Officers, indicating not only the events which had occurred, but also how those events had been perceived at the time.

The material obtained recorded that the complainant had been rude and abusive to staff on several occasions between 16 August 2008 and 20 August 2008, when she was charged with threatening and abusing a Correctional Officer. On 21 August 2008, it was recorded that the inmate had been removed to another cell on lock-down as a disciplinary measure. On that day it was also recorded that she threw her meal out of the cell, narrowly missing a member of Correctional Health’s nursing staff. It is clear from the records that the following day staff were instructed not to open the hatch to her cell and, in those circumstances, sandwiches were indeed provided to her by sliding them on paper under the cell door. Later that day the inmate was transferred to another cell as she had broken the sanitary unit in the first one. It was also recorded that she subsequently threw out food provided for her.

From 23 August 2008 until early in September, Corrective Services records indicate no adverse behaviour on the inmate’s part and contain no further mention of any refusal to provide food in the normal manner. They also indicate that out of cell time was appropriately permitted.

The Ombudsman was satisfied that the allegations of the inmate that the hatch to her cell had been kept closed and that she had been fed under the door were substantiated, but that this had only occurred on one occasion, and had resulted directly from her own actions and behaviour. The Ombudsman did not consider there was a need for further involvement in relation to the matters the complainant had raised.

However, one issue that came to light as a consequence of the complaint and the Ombudsman’s enquiries, was that there is no discrete Director’s Standing Order in place setting out how inmates separated for disciplinary reasons in the Women’s Prison should be managed. Decisions in this regard appear to be the responsibility of the Facility Manager and are made on an ad hoc basis, taking into account considerations of prison safety and security, and inmate and staff wellbeing.

While in the instance of the complaint the decisions made were reasonable, the Ombudsman was of the view that it would be preferable if a Standing Order were developed to ensure that all such instances are dealt with appropriately and consistently.

Corrective Services has now referred this aspect of the matter to the Assistant Director of Prisons to ensure the development of an appropriate Standing Order in conjunction with the Tasmanian Prison Service Policy Unit. The implementation of such a Standing Order will ensure that the sanctions that may be imposed when an inmate is separated for disciplinary reasons in the Mary Hutchinson Women’s Prison in the future are clearly defined and that there are guidelines for the staff to follow.

ACCESS TO LIBRARY SERVICES

A number of inmates complained to the Ombudsman about access to library materials and resources in the various correctional facilities throughout the State. The inmates all complained in the same terms and referred to the Australian Prison Libraries: Minimum Standard Guidelines to support a call for separate libraries in each facility where more than 25 inmates are housed.

The Guidelines, published by the Australian Institute of Criminology, were compiled by the Australian Library and Information Association, which is affiliated with the International Federation of Library Associations. The Guidelines rely heavily on their British and American counterparts. While the Guidelines represent a statement of the two Associations’ views as to best practice in relation to prison library standards, they have not been incorporated into any legislation and, therefore have no legal force or effect.

Thus Corrective Services is not obliged to comply with the Guidelines, and in any event, the Ombudsman is satisfied that it lacks the resources to do so. However, another issue raised in the complaints concerned the access that inmates have to the library facilities that are available to them. There is a branch of the State Library of Tasmania located in the Ron Barwick Minimum Security Prison, but the Ombudsman was concerned that not all inmates were able to access the books and materials it contains.

The Ombudsman’s enquiries in this regard revealed that books available to be borrowed by inmates are not just those housed in the Prison Library, but include the State Library’s full catalogue. Only those inmates rated minimum security can have physical access to the Prison Library, but all inmates can register to use the entire range of library services.

However, not all inmates - particularly those accommodated in maximum security units - had access to the library's printed catalogue.

The Ombudsman raised the issue with the Director of Corrective Services, and as a result steps were taken to commence placing the entire catalogue on CD so that inmates would be able to view it electronically. Not all maximum security units have access to computers, but arrangements are being made to address this. In the interim, six hard copies of the catalogue have been printed and made available to maximum security units.

The Ombudsman was satisfied that the above actions indicated that the importance of facilitating inmates' access to library services is acknowledged and that that access should be improved in the near future.

Ashley Youth Detention Centre

RESIDENTS WITH CONCERNS

Residents of the Ashley Youth Detention Centre (AYDC) with concerns about their treatment and conditions can complain to either the Secretary of the Department of Health and Human Services or the Ombudsman. The complaint process was revised in early 2007 to make clear to residents that these two avenues of complaint are open to them, and since that time residents have regularly complained to the Ombudsman. However, the number of complaints received in the reporting year was significantly lower than in the previous year.

Most complaints related to comparatively minor matters which were capable of being resolved through discussion by staff of the AYDC with the young person concerned, with the Ombudsman overseeing the process. By an arrangement between the Ombudsman, the Department and AYDC management, complaints such as these are referred initially to AYDC management and an attempt is made to resolve them quickly and efficiently. Management notifies the Ombudsman once it has addressed the complaint in order to ensure that the Ombudsman is satisfied that the outcome is appropriate.

As in previous years, complaints largely involved alleged unfair treatment by staff including:

- staff making harsh comments about residents;
- restrictions being imposed on outside time and 'phone calls; and
- lock-downs and other disciplinary measures.

Again as in previous years, it was found that staff had acted in accordance with legislative requirements and within their own guidelines. Most complaints were resolved by way of the informal process referred to above and the Ombudsman was satisfied that the complaints had been dealt with fairly and reasonably.

Prison Official Visitor Program

MONITORING AND REPORTING ON TREATMENT AND CONDITIONS

The Official Visitors in the State’s prisons, co-ordinated by the Ombudsman, continue to play a vital role in monitoring and reporting on the treatment and conditions of prisoners and detainees, and in assisting prisoners and detainees to raise and resolve concerns and complaints.

There were once again seven Official Visitors throughout the reporting year, between them visiting all the State’s correctional facilities. Visitors are appointed by the Minister under the *Corrections Act 1997* for a fixed term of two years. They are not salaried, but receive a small annual honorarium and a contribution to their expenses. The current Visitors come from diverse backgrounds with a range of experience, and each brings their own perspective to the role. Their combined observations provide a detailed picture of the prison environment, its management and the prevailing concerns of prisoners and detainees.

Corrective Services and Correctional Officers recognise and respect the role of the Official Visitors, who regularly report a high level of cooperation from management and staff during their visits. They are allowed free access to prisoners and detainees, who are able to raise matters of concern to them in an informal and confidential way. If these concerns relate to matters of routine or day to day management, the Visitors are often able to resolve them on the spot. The Visitors regularly debrief with custodial managers at the conclusion of their visits and are able to convey things that they have seen or that have been brought to their attention which need to be addressed.

Matters raised by prisoners and detainees with the Visitors during the reporting year included:

- prisoner contract levels;
- access to medication and medical treatment;
- the cost of telephone calls and access to telephones;
- the cost of canteen items and the variety of items available;
- dietary issues;
- access to art and craft materials and programmes;
- lost property; and
- concerns about outside issues such as Centrelink benefits, utility bills, etc.

The Official Visitors regularly report their observations and concerns to the Ombudsman, who refers more serious or systemic issues to Prison Management for its response, which continues to be positive and constructive. The Visitors’ reports keep the Ombudsman informed about the state of the prison system, which is an otherwise largely closed environment.

For example, the Official Visitors were instrumental in bringing to the attention of the Ombudsman the condition of inmates in the Behaviour Management Programme housed in the maximum security Tamar Unit, which is the subject of an ongoing own motion investigation under the *Ombudsman Act 1978*.

Official Visitors also facilitate the making of more formal complaints to the Ombudsman by providing inmates with complaint forms – these are provided to prisoners and detainees by prison officers and management upon request, but many are not comfortable asking for them – and explaining the process to them. Visitors also act as conduits for the small number of inmates who wish to communicate with the Ombudsman but who still distrust the Arunta telephone system and are not convinced that their letters are forwarded unopened.

Because Visitors visit each facility and unit on a regular basis, they are able to monitor change and the manner in which prisoners’ concerns are being dealt with.

Public Authorities

GOVERNMENT DEPARTMENTS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
COMPLAINT HANDLING

A complaint was lodged by the CEO of a private organisation (which is funded by the Department to provide accommodation and services for people with disabilities) concerned about how complaints against his organisation were being managed by the Disability Services Division of the Department. Disability Services had advised him that complaints had been received, but refused to advise him of the substance of the complaints on the basis that the complainants had requested anonymity. This situation obtained for over two months. The complainant claimed that, by giving precedence to the confidentiality of the people complaining, Disability Services had denied his organisation the opportunity to respond to and address the matters of complaint. These had been described as serious by Disability Services, giving rise to a concern on the part of the CEO that if they remained undealt with, there could be adverse consequences for clients of his organisation. The complainant said that Disability Services had also disregarded its own Compliments and Complaints Policy (the Policy).

At a meeting between Disability Services and the Private Service Provider, two months after the complaints were raised, the complaints were finally put to the complainant and were effectively resolved in 40 minutes. It also became clear that there had been no compelling reason why particulars of the complaints could not have been made available to the complainant in the first instance.

Disability Services' Compliments and Complaints Policy relevantly provides that:

- Disability Services will ensure that the principals of natural justice and procedural fairness are adhered to in the management of all complaints (General Principle 1.1.2);
- Disability Services will abide by the choice of a complainant to remain anonymous or confidential, however it should be noted that this decision may constrain and/or impact upon the investigation process (General Principle 1.1.8); and
- Complaints concerning funded non-government disability organisations should be raised with the Non-Government Organisation in the first instance and managed in accordance with the Non-Government Organisation's Grievance/Complaints Management processes (General Principle 1.1.10).

In the section of the Policy under the heading Definitions/Glossary, is the following:

Natural justice: The rules of natural justice

- The person accused should receive notice of, and know the nature of the accusation made against him or her;

- The person accused should be given the opportunity to state his or her case;
- The person or body hearing the case should act in good faith and without bias.

In the Ombudsman's view, Disability Services gave the complainant's desire for anonymity and confidentiality priority over all other considerations. This does not sit squarely with General Principle 1.1.8 of the Policy referred to above, which recognises that such a requirement may constrain or impact upon the investigative process. In addition, Disability Services commenced an investigation into the allegations received without providing the substance of the allegations to the Private Service Provider in direct contravention of General Principle 1.1.2, which requires that the principles of natural justice be adhered to in the management of all complaints.

Nor was there any apparent attempt to manage the complaints in accordance with General Principle 1.1.10, which requires complaints against non-government organisations to be referred in the first instance to the organisation, to be managed in accordance with its own complaints procedure. Further, pertinent information in relation to the complaints was retained entirely within Disability Services, which assumed the responsibility of investigating them. The complainant had pointed out at an early date that if the complaints were indeed serious they should be passed to Tasmania Police, and that otherwise they should be referred to him so that he could properly address them. He also pointed out that he was being obstructed by the process adopted by Disability Services from acting in accordance with his organisation's Service Agreement, which required him to act to improve the service his organisation provided.

The actions of Disability Services in relation to the management of the complaints failed to follow the Compliments and Complaints Policy. The Ombudsman was satisfied that those actions had been unreasonable and had placed the complainant in an untenable position; he was aware that potentially serious concerns had been raised about his organisation, but for two months was unable to act to resolve them, or indeed, to respond to them in any way.

While the Ombudsman did not deal with the complaint by way of a formal investigation, it was suggested that some steps should be taken by Disability Services to address the shortcomings in its actions identified by the Ombudsman's enquiries, namely that it:

- provide an apology in writing to the complainant for its failure to deal with the complaints in accordance with the provisions of the Policy; and
- provide training to ensure that staff at all levels understand the Compliments and Complaints Policy provisions and apply them to all complaints received.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
INACTION BY CHILD PROTECTION - SWIFT REMEDY

A single mother contacted the Ombudsman by email to complain about lack of action by Child Protection authorities in the Department of Health and Human Services (DHHS). She was having trouble with her 13 year old boy, who was engaging in very difficult behaviour both at home and at school.

Child Protection had agreed to take the boy into care. The case manager rang the mother to inform her that he would pick up the child from their home on a particular day, being a Monday. The case manager did not turn up that day, or contact her the following day, and she was unable to make contact with him by telephone. A telephone call to Child Protection resulted in unhelpful advice, and the statement that the case manager would contact her when he was able to do so. Meanwhile, the child continued to be difficult to control.

The mother contacted the Ombudsman early in the afternoon on the Wednesday. The Ombudsman contacted the DHHS's Director of Children and Family Services the following afternoon by email, seeking an immediate response to the complaint, and expressing concern about the case. The mother contacted the Ombudsman again by email late that evening. The child had by then been taken into care.

DHHS agreed that the lack of response to the mother's request for care for her son had been serious, and stated that the matter had been addressed with the case manager. An apology was made to the mother.

DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT
MARINE RESOURCES - LICENCES

A complaint was received from an East Coast fisherman concerned about the distribution of calamari licences in southeast Tasmania. In essence, the complainant alleged that the Department had moved the goal posts by changing the manner in which licences are awarded in relation to a calamari fishery lying roughly between Lemon Rock and Whale Head, close to East Coast ports. It is a lucrative fishery, but it has been recognised for some time by all stakeholders that it needs careful management if it is not to be overfished. The complainant did not question the need for management through quotas and licensing, only the method used for determining the allocation and distribution of licences.

On 12 August 1999 the Minister issued a Warning as to how quotas and licences for the catching of scalefish, such as calamari, were likely to be implemented, and that this was by reference to catch records. The Ministerial Warning was designed to discourage

potential fishers from investing in capital equipment for an industry from which they might in future be excluded, and was based on a supposition that the introduction of a management plan was then imminent. However, it was not until 1 August 2008, nine years later, that the plan, embodied in the *Fisheries (Scalefish) Amendment Rules*, actually came into operation.

The Department's alleged moving of the goal posts was said by the complaint to have occurred after the Ministerial Warning was issued. According to the Warning, catch records after 12 August 1999 were to have no bearing on any future access to the fishery for the taking of calamari, whereas the final format for licence entitlement did take into account catch records after 12 August 1999, given the lapse of time between the Warning and the implementation of the plan.

In December 2005 the proposals that eventually became the *Fisheries (Scalefish) Amendment Rules* were put forward. Only at that point did those in the fishery realise what the criteria would be, and because the criteria was based on past catches, it was by then too late to do anything about it. For that reason, it was determined that fishers who had made large catches (over four tonnes) in 2003 and 2004 could also qualify for a licence. The Complainant did take calamari from the fishery in 2003 and 2004, but his catches had been less than the required four tonnes. He was aggrieved because the size of the catch he needed had been determined retrospectively. He had taken large amounts of calamari from the fishery in the years before 2003, but had not been aware of the amount of calamari he needed to take to qualify for a licence and the time during which he would need to take them.

The Ombudsman reviewed some of the discussion papers in relation to the proposed changes to the fishery, and it was clear that the Department wished to prevent latent licence holders, who had not previously participated in the calamari fishery, entering the fishery in order to qualify for a licence – hence the retrospectivity in relation to qualification. It is nevertheless understandable that those with a substantial catch history over the preceding years should consider the imposition of these retrospective conditions unfair.

While the Ombudsman could see merit in both sides of the argument, the new Rules were made in accordance with s33 of the *Living Marine Resources Management Act 1995* and all of the provisions of that section were apparently complied with. That section empowers the Minister to make rules after consulting with the relevant fishing bodies. The issuing of the Warning and the decision to publish the rules in the form they now are were both decisions of the Minister, the merits of which the Ombudsman is not entitled to question by virtue of s12(5)(a) of the *Ombudsman Act 1978*.

DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT
SHACK SITES PROJECT

The complainant was the occupier of a shack on Crown Land at Binalong Bay which the Department determined in 2002 should be removed. The initial decision to remove the shack was made by the Department in about September 2002 and was the subject of an appeal by the complainant to the Shack Sites Commissioner. The appeal was resolved in October 2002 by way of a negotiated settlement whereby:

- 1. the Crown agreed to pay the complainant \$5,000 by way of relocation allowance following the removal of the shack;
- 2. the existing lease of the shack was to run for a further 36 months from the date of the settlement; and
- 3. the Department would give the complainant the option of purchasing a block in a proposed subdivision elsewhere in Binalong Bay once it had been completed.

A date for the demolition of the complainant’s original shack was set, but then the development application for the subdivision, which was to have created the alternative block, was withdrawn. By bringing his complaint, the complainant sought to have his existing shack remain until such time as its replacement had been built, and to set the purchase price for any alternative block of land at its value in 2002 when the proposal was originally made.

The administrative actions of the Department in this instance were the initial decision to remove the shack, and the later decision to withdraw the development application in relation to the subdivision, neither of which manifested any defective administration. The withdrawal of the development application was apparently based on environmental considerations and the Minister had indicated to the complainant that the Department would continue to search for alternative land in the area.

The difficulties which the complainant faced, however, were that:

- the withdrawal of the development application had created uncertainty as to an alternative site, while the requirement that the shack be removed by a fixed date remained in place; and
- the cost of an alternative block had increased as a result of a general increase in the value of real property since the Department and the complainant reached settlement in October 2002.

In relation to the latter, there have been acknowledged delays in implementing the Project and some shack owners have been disadvantaged as a result, particularly by the

increase in the value of their sites over time which means that they have been required to pay considerably more at the date of transfer than their shacks were worth when the Crown first gave them the option to purchase. This situation was the subject of a report by the Parliamentary Standing Committee of Public Accounts, published on 18 November 2008. The report followed a review by the Committee of the administration of the Shack Sites Project and identified the disadvantage to some shack owners referred to above. The report contained recommendations, including a recommendation that an appeal process be established under which aggrieved leasehold owners of shacks who subsequently purchased the freehold title could seek compensation to redress valuation increases caused by delays.

While the report related to the sale of shack sites to licence holders rather than the purchase of alternative sites from the Crown when a Removal Order had been made, it nonetheless recognised the change to land values over time and the disadvantage this can cause. However, as a matter of policy, Government declined to accept any of the report’s recommendations.

The Ombudsman also recognised the difficulties being faced by some shack owners as a result of increases in land value over time, but in the absence of any defective administration on the part of the Department, was unable to take the matter further.

DEPARTMENT OF INFRASTRUCTURE, ENERGY AND RESOURCES
LAND TRANSPORT SAFETY DIVISION (REGISTRAR OF MOTOR VEHICLES)

Several complaints were received by owners of motor vehicles who complained that they had not received renewal notices in relation to the registration of their vehicles, that the registration had lapsed and that they had then been required to go to the expense and inconvenience of having their vehicles inspected before they could be reregistered. The failure to issue renewal notices apparently occurred as a result of problems with the Registrar’s computer system.

Preliminary enquiries were made in relation to the complaints, and the relevant provisions of the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (the Regulations), which govern renewals of registration, were reviewed. Regulation 59(3) provides that an application for the renewal of registration cannot be made if the registration expired more than three months before the date of the application, which was the case with the complainants. The Regulation does not give the Registrar any discretion; if more than three months has elapsed since the registration expired, it cannot be renewed and the subject vehicle must be registered afresh. Before a vehicle can be registered, the Regulations require the Registrar to be satisfied that it is eligible for registration, hence the inspection.

In refusing to renew the registration of the complainants' vehicles and requiring that they be presented for inspection before issuing a new certificate of registration, the Registrar acted as he was obliged to by the Regulations.

In relation to the renewal notice, the Regulations do not require the Registrar to send such a notice and Regulation 58(3) provides that a failure by the Registrar to send a notice of renewal, or the non-receipt of the notice, does not postpone the expiry of the registration or affect the obligation of the registered operator to ensure that the registration is renewed if the registered operator wishes to continue to use the vehicle on public streets. That being the case, the Registrar's advice to one of the complainants was correct; the onus is on the vehicle's owner to pay the registration by the due date whether or not a notice of renewal has been received, and there is nothing the Registrar can do to alter that.

The Ombudsman was satisfied that the Registrar acted in compliance with the relevant Regulations as he was required to do, and no defective administration had been demonstrated.

UNIVERSITY OF TASMANIA
OVERSEAS STUDENTS

Several complaints were received from overseas students seeking review by the Ombudsman of decisions made by the University to exclude them from further study because of poor academic performance, and to report their class attendance rates to the Department of Immigration and Citizenship (DIAC). Complainants in the latter category were particularly concerned because adequate attendance at a course of study is a condition of their International Student Visas.

The University, as an education provider under the *Education Services for Overseas Students Act 2000* (CW), is obliged to inform DIAC if an overseas student's attendance rate falls below a certain rate. The University has some discretion in relation to reporting if a student's attendance rate is between 70% and 80%. An attendance rate of 80% is DIAC's minimum requirement, unless the University is satisfied that the student is making academic progress and his or her attendance rate is more than 70%. If the rate goes below 70%, however, reporting is mandatory and it then becomes a matter for DIAC as to whether or not the student's visa should be cancelled.

Protocols adopted by the University provide for students to receive a warning notice before their attendance rates fall below 80%. If the student's attendance rate falls below 80%, he or she is issued with a Breach Notice by email noting the University's reporting obligations and setting out its Internal Complaints and Appeals Policy should the

student wish to challenge the Breach Notice. If a student's appeal is unsuccessful, he or she is sent a further email asking whether they wish to lodge a more formal complaint with the University and advising of their rights in this regard. In addition, despite the mandatory reporting requirements, a determination by the University that a student's attendance rate is 70% or less, or that a student has not met academic performance requirements, are reviewable decisions under the University's student grievance system. After a decision has been reviewed internally, the student is advised that he or she has the right to seek a further review by the Ombudsman.

Many of the students who came to the Ombudsman sought to explain why they had not been able to attend or why their results had not been good enough, rather than to complain that their attendance rates had been incorrectly calculated or their academic performance improperly or unfairly assessed. The Ombudsman can only review decisions of the University to ensure that they have been taken properly, fairly and reasonably and cannot – and would not – do anything to prevent the University from complying with its obligations under Commonwealth legislation. If a student does not attend the requisite number of classes, even if with good and valid reason, the University must refer the matter to DIAC and its decision to do so is not open to question.

An example of where the Ombudsman was able to assist was in the case of an overseas student who complained that the University had asserted that her attendance had fallen below the required percentage for her English classes and therefore, that it was required to notify DAIC that she was not complying with her visa requirements. The complainant said that she had not been aware that she was supposed to be doing the particular course module in relation to which her attendance was in question, and complained that it was well into the second week of this module before she had been contacted and asked to explain why she was not attending. Having been contacted, the complainant immediately started attending but by then it was too late to bring her attendance rate to the level required. She subsequently received letters from the University saying that her appeal had failed. However, the complainant said that, as far as she knew, she had never appealed.

The Ombudsman sought a response to the matters raised by the complainant and, having reviewed its records, the University acknowledged that there was substance to the complaint. It transpired that the complainant had been wrongly enrolled in the class in question and the University acted to rectify the situation by cancelling her enrolment in that module to ensure that her attendance percentage at the end of the course proper remained within the requirements. The University further acknowledged that the error should have come to light during its internal complaints process and undertook to implement changes to that process to ensure that the likelihood of the problem happening again would be lessened.

Public Authorities

LOCAL GOVERNMENT

FLINDERS COUNCIL FUNERAL ARRANGEMENTS

A complaint was lodged against the Flinders Council alleging inappropriate charging of expenses for conducting a funeral on Flinders Island. It is the usual practice that Flinders Council conducts funerals on the Island - in the absence of any other funeral director.

The deceased, a former resident of the Island, died interstate and the complainant, his mother, engaged a funeral director from that State. The funeral director initially contacted Council to make arrangements for the repatriation and burial of the body on the Island. The funeral director indicated that she was making arrangements for transport of the body from interstate as well as its transport to Flinders Island, at the request of the mother.

The funeral director requested that Council arrange the grave site, place the appropriate notice in the paper and arrange for the digging and filling of the grave.

The funeral director did facilitate the transport of the coffin from interstate and eventually to Flinders Island and from the wharf to the gravesite. At the gravesite, the funeral director performed the burial ceremony. In response to enquiries by the Ombudsman, she indicated that all the Council representatives had done on the day of the funeral had been to lead the vehicle carrying the deceased to the gravesite.

The Flinders Council then sought payment from the complainant of \$1,916.46 for the following services:

Preparation Single depth Site	\$587.00
Burial Administration Charges	\$599.26
Purchase of cemetery Plot	\$205.00
Surcharge for Weekend Funeral Service	\$474.00
Examiner Funeral Notice	\$51.20

In all the circumstances the Ombudsman did not consider it appropriate for Council to make a charge for a weekend funeral service if it was not acting as the funeral director. The Ombudsman was able to conciliate resolution of the complaint on that basis and a long running dispute was satisfactorily resolved.

All parties recognised the need in future for their respective roles and responsibilities to be clearly specified before the event, to ensure that the families of deceased persons are not put under further pressure at an already emotional and stressful time.

GEORGE TOWN COUNCIL STRIKING OF RATES

The complainants owned land in a heavy industrial zone within the George Town municipal district, used by them for light industrial purposes. In the previous rating year, Council had rated land according to its predominant use not its zoning; in the case of land predominantly used for light industrial purposes, the rate was set at 11.2 cents in the dollar on the assessed annual value of land, with a minimum general rate of \$2,000. The total amount of rates payable by the complainants, excluding fire levies, was \$5,959.46. In the current rating year, however, the complainants received a rates notice in the amount of \$11,702.40, excluding fire levies. The complainants complained that they had wrongly been reclassified as heavy industrial, and that other landowners operating similar light industrial businesses to them (who also received services from Council that they did not) were only required to pay half the amount of rates.

Council had determined to base its new rate on the zoning of land rather than its predominant use; it had not reclassified the complainant's land, but rather had used its actual zoning to calculate the rates. In the case of the complainants this meant that they were required to pay the amount of 21.997 cents in the dollar on the assessed annual value of their land. Though significantly higher than the rate for land zoned light industrial, the amount of 21.997 cents in the dollar for land zoned heavy industrial represented an increase of only 4.5% on the previous year's rate for such land. The Ombudsman considered the complaint, and while recognising the significant impact of the change to the basis for striking rates on the complainants, was satisfied that Council was lawfully entitled to make that change.

Section 90 of the *Local Government Act 1993* (the LGA) allows Council to make a general rate in any year between 1 June and 31 August. The general rate applies to all rateable land in the municipal district whether or not Council supplies any services in respect of the land, and is based either on the land value of the land, the capital value of the land or its assessed annual value. When making a general rate, Council can also set a minimum amount payable.

In this instance, Council made its 2008-2009 rate resolution on 1 July 2008 and based the general rate for that year on the assessed annual value of land in the municipality. It also set a minimum rate of \$10,000 for land zoned Heavy Industrial under the George Town Planning Scheme 1991, which represents a significant increase to the minimum rate charged in previous years.

The Ombudsman noted that Council does have a discretion under s107 of the LGA to vary the general rate within the municipal district or within different parts of the district according to various factors, including:

- the use or predominant use of the land;
- non-use of the land;
- the existence or otherwise of a water meter;
- the locality of the land; and/or
- the zoning of the land.

As noted, variations are discretionary and in the 2007-2008 rating year, Council exercised that discretion and allowed for variations in its general rate based predominantly on the use of the land. In the current year, however, Council determined to base the rate not on the use of land but its zoning, as it was entitled to do under the LGA. The fact that the complainants' land was then rated according to its zoning rather than its predominant use caused the major change to the amount payable by them. S123 of the LGA allows for formal objection to be made to a rates notice, but while the listed grounds of objection include an objection that the amount of rates has not been calculated having regard to relevant factors, they do not include an objection to the amount of the general rate per se.

The Ombudsman was satisfied that Council had acted according to law and that there had, therefore, been no defective administration on its part.

Appendix A: Statistics

REASONS FOR CLOSURE OF FILES

The important figures in the statistics relating to all public authorities are separated into categories depending on the reasons for the closure of a file. These are divided into declined, discontinued, no defective administration and substantiated.

Declined

Upon receipt, a complaint is assessed to ensure that it meets the threshold required for acceptance by the Ombudsman, and the following matters may be considered:

- Is the person making the complaint personally aggrieved?
- Is the complaint made within the required time limits?
- Are there alternative remedies available?
- Has the complaint issue been raised with the public authority?
- Is the complaint trivial?
- Is the complaint made in good faith?

In situations where the complaint does not meet those requirements, the Ombudsman may decline to proceed. In declining, the Ombudsman may refer the complainant to another avenue to deal with the issues, including to the public authority against which the complaint is made.

Discontinued

This category may relate to a file that does not progress because the complainant does not provide additional information to identify the issues of complaint adequately. It may also include the situation where, after preliminary inquiries have been undertaken, the Ombudsman may decide that the investigation of the matter is unnecessary or unjustified.

No defective administration

This category may relate to a matter that is resolved at either the preliminary inquiry stage or that proceeds through to an investigation. What it means is that the Ombudsman is satisfied, given the material available, that the administrative actions of the public authority are appropriate and reasonable in the circumstances.

Substantiated

This category describes those complaints where the Ombudsman considers that the administrative actions of the public authority are not appropriate or reasonable. Action to redress the position may already have been taken, in which case the Ombudsman will acknowledge this in final correspondence.

Alternatively, the Ombudsman may make recommendations to ensure that similar situations do not arise in the future.

TABLE 1.
ENQUIRY ACTIVITY FOR 2008/9

	2007/8	2008/9
Enquiries opened and closed in the period		510
OOJ Enquiries		1738
Total Enquiries	628	2248

TABLE 2.
COMPLAINT ACTIVITY FOR 2008/9

	2007/8	2008/9
Carried forward from previous period	117	130
Opened in period	433	552
Closed in period	420	520
Carried forward (Still open)	130	162

TABLE 3.
COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS

Department	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No defective administration	Partly / fully substantiated
Economic Development and Tourism (Dept of)		4	3	1	2		
Business and Community Development		1	1	1			
Industry Development Division		1					
Sport and Recreation		1	1		1		
Departmental / Not specified		1	1		1		
Education (Dept of)	13	25	18	9	3	5	1
Office of the Secretary		1					
State Library and Information Service	1						
TAFE (Tasmania)	1	1	1	1			
Tasmanian Polytechnic		1	1	1			
University of Tasmania	5	13	13	6	2	4	1
Departmental / Not specified	6	9	3	1	1	1	
Environment, Parks, Heritage and the Arts (Dept of)	5	2	4		2	2	
Parks and Wildlife Service	1		1			1	
Tasmanian Heritage Council		1	1		1		
Departmental / Not specified	4	1	2		1	1	
Health and Human Services (Dept of)	105	96	94	44	23	16	11
Ashley Youth Detention Centre	21	12	8	2	2	4	
Children & Families Division	6	4	6	3	1	1	1
Community, Population & Rural Health			4		2	1	1
Department of Health & Human Services	24	1	2		2		
Health Services		3	3	1			2
Hospitals and Ambulance Service		1					
Housing Tasmania	32	18	21	8	7	2	4
Human Services	5	47	41	25	7	7	2
Population Health		4					
Statewide Systems Development		1	1	1			
Departmental / Not specified	17	5	8	4	2	1	1
Infrastructure, Energy & Resources (Dept of)	11	26	26	9		14	3
Driver Licencing Unit		3	3			3	
Land Transport Safety	3	14	16	4		10	2
Registrar of Motor Vehicles	1	1	1	1			
Roads and Traffic Division	5	2	3	3			

Department	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No defective administration	Partly / fully substantiated
Transport		1	1				1
Departmental / Not specified	2	5	2	1		1	
Justice (Dept of)	78	108	100	28	20	35	17
Anti-Discrimination Tribunal		1	1	1			
Attorney General	1						
Community Corrections	5		1				1
Consumer Affairs and Fair Trading	1	4	3	1	1	1	
Corrective Services	57	19	24	3	6	9	6
Fines Enforcement	3		1			1	
Guardianship and Administrative Board		1	1	1			
Magistrates Courts	3	1	1	1			
Monetary Penalties Enforcement Service		15	14	3		9	2
Office of the Anti-Discrimination Commissioner	1	2	2	1		1	
Prison Services		55	43	17	11	10	5
Resources Planning		1	1			1	
Victims Support Services		1					
Workplace Standards Tasmania	1	7	5		1	1	3
Departmental / Not specified	6	1	3		1	2	
Premier and Cabinet (Dept of)	5	3	2			1	1
Local Government Division	1						
Minister for Energy	1						
Office of the State Service Commissioner		1					
Office of the Governor	1						
Policy Division		1	1			1	
Service Tasmania Unit		1	1				1
Departmental / Not specified	2						
Primary Industries and Water (Dept of)	18	14	16	6	2	6	2
Food Agriculture & Fisheries		1	1			1	
Information & Land Services	5	6	7	3	1	3	
Shack Sites Project Manager		4	2	1		1	
Strategic Policies	1						
Departmental / Not specified	12	3	5	1	1	1	2
Police and Emergency Management	35	47	38	19	4	12	3
Eastern District	1						
Internal Investigations		1	1			1	
Departmental / Not specified	34	46	37	19	4	11	3
Treasury and Finance (Dept of)	3	6	6	4	2	0	0
Office of the Tasmanian Energy Regulator		1	1		1		
State Revenue Office	2	5	5	4	1		
Departmental / Not specified	1						
Grand Total	273	331	307	120	58	91	38

TABLE 4.
COMPLAINTS AGAINST LOCAL GOVERNMENT

Council	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No defective administration	Partly / fully substantiated
Break O'Day Council	4	6	4	2		2	
Brighton Council	3	1	1	1			
Central Coast Council	3						
Central Highlands Council	1	1	1	1			
Clarence City Council		5	4	2		2	
Derwent Valley Council	4	3	2	1		1	
Devonport City Council		2	2	1		1	
Dorset Council	1	4	2	1		1	
Flinders Island Council	1		1				1
George Town Council	2	2	1			1	
Glamorgan/Spring Bay Council	5	1	2				2
Glenorchy City Council	4	5	7	2	1	4	
Hobart City Council	5	9	7	2		4	
Huon Valley Council	4	4	4	3		1	
Kentish Council	1	5	5	2	2	1	
King Island Council	9						
Kingborough Council	1	6	7	1	1	5	
Latrobe Council	1	3	3	1		2	
Launceston City Council	6	9	7	1	2	4	
Meander Valley Council	2						
Northern Midlands Council	2	1	2	2			
Sorell Council	8	7	7	4		3	
Southern Midlands Council	2	2	2	1		1	
Tasman Council	2	4					
Waratah/Wynyard Council	2	2	3		1	2	
West Coast Council	1	1	2	2			
West Tamar Council	1	3	3			1	2
Total	75	86	79	30	7	36	6

TABLE 5.
COMPLAINTS AGAINST PUBLIC AUTHORITIES

Public Authorities	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No defective administration	Partly / fully substantiated
Director of Public Prosecutions	1						
Government Prices Oversight Commission	1		1	1			
Guardianship and Administration Board	3	2	1	1			
FOI Advisory Officer	1						
Law Society of Tasmania	1	1	1		1		
Legal Aid Commission	5	10	5	5			
Marine and Safety Tasmania	2	1	2			2	
Medical Council of Tasmania		25	21	21			
Nursing Board of Tasmania	1						
Office of the Tasmanian Energy Regulator	1	1	1	1			
Property Agents Board		1	1	1			
Psychologists Registration Board of Tasmania	2	1					
Retirement Benefits Fund Board	8	7	9	1	1	3	4
Rivers and Water Supply Commission	1						
Tasmanian Fire Service	3	0	2		1		1
Tasmanian Ports Corporation Pty Ltd		2	2	2			
The Public Trustee	17	8	12	2	3	7	
Total	47	59	58	35	6	12	5

TABLE 6.
COMPLAINTS AGAINST GOVERNMENT BUSINESS ENTERPRISES AND OTHER AUTHORITIES

GBEs and Other Authorities	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No Defective Administration	Partly / fully substantiated
Aurora Energy	8	3	2	2			
Forest Practices Authority	5	1	1	1			
Forestry Tasmania	8		1	1			
Hydro Tasmania	1	1					
Motor Accidents Insurance Board	4	3	5	3	1	1	
Tasmanian Greyhound Racing Council	1						
Transend Networks	1	1	1				1
TT Line	4	2	3	1			2
Total	32	11	13	8	1	4	

TABLE 7.
TOTAL CASES OPENED, CLOSED AND SUBSTANTIATED

	Received 2007/8	Received 2008/9	Closed 2008/9	Declined	Discontinued	No defective administration	Partly / fully substantiated
Out of jurisdiction	6	1	2	2			
GRAND TOTAL (Tables 3 – 7)	433	488	459	195	72	143	49

Note:

1. The "declined" category includes matters out of jurisdiction, matters for which alternative means of redress are available, and matters which have not been taken up with the agency in the first instance.
2. Discontinued" includes matters largely resolved through negotiations with agencies as well as matters where the complainant does not wish to continue.

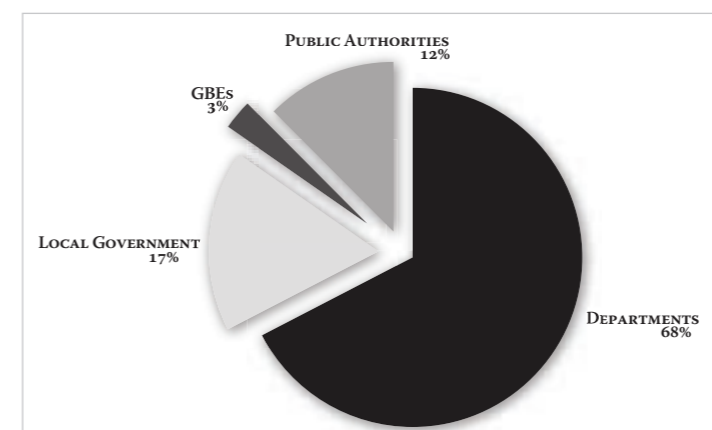
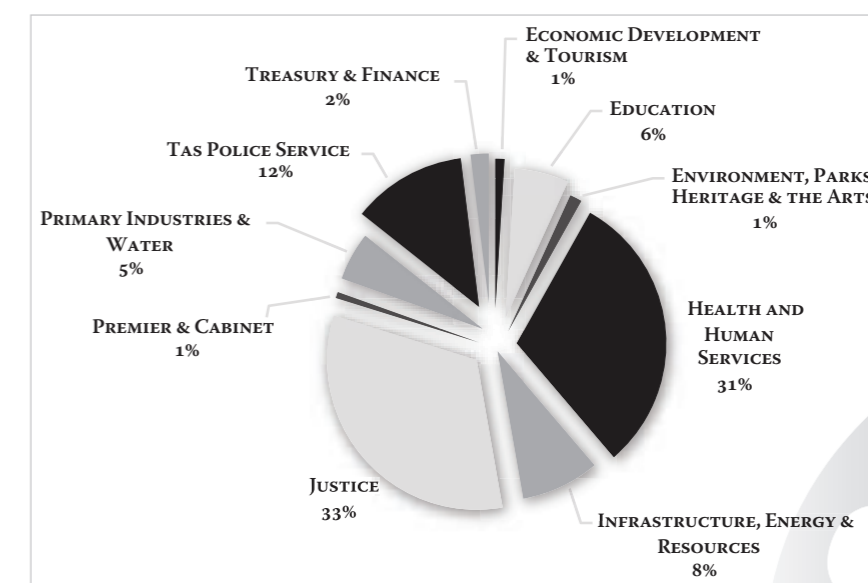
FIGURE 1.
WHO IS BEING COMPLAINED ABOUTFIGURE 2.
WHAT IS THE BREAKDOWN OF COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS?

FIGURE 3.
REASONS FOR CLOSURE (EXCLUDING FOI)

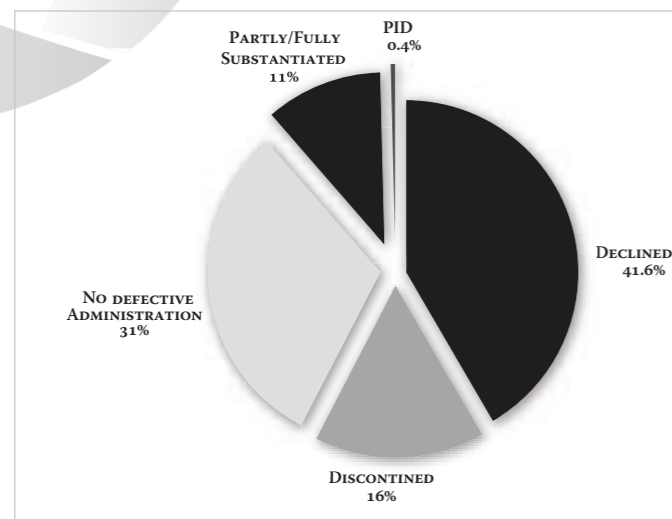


FIGURE 4.
WHAT WERE COMPLAINANTS' OBJECTIVES?

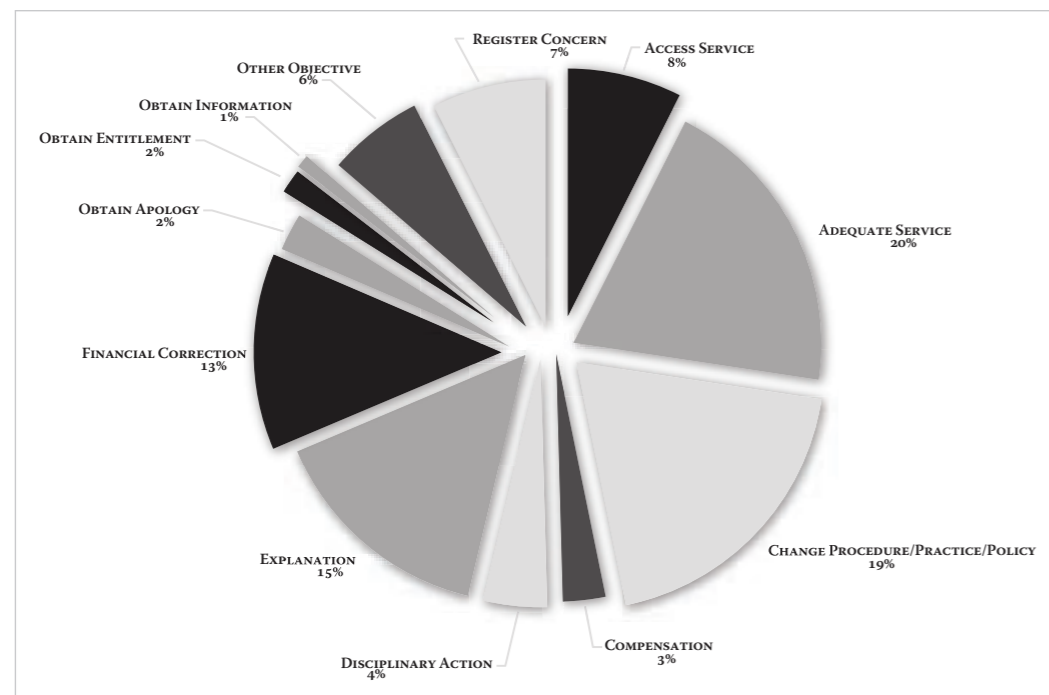


FIGURE 5.
TIME TAKEN TO RESOLVE COMPLAINTS (EXCLUDING FOI)

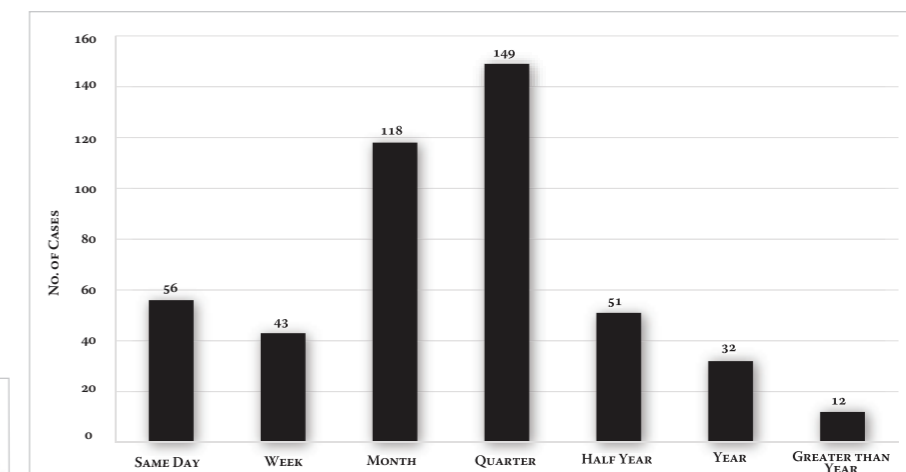
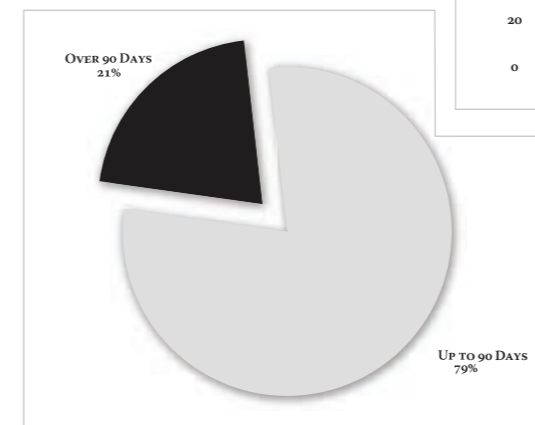


FIGURE 5A.
COMPLAINTS RESOLVED WITHIN 90 DAYS



Complaint Issues

FIGURE 6.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST TASMANIA POLICE (DPPS)?

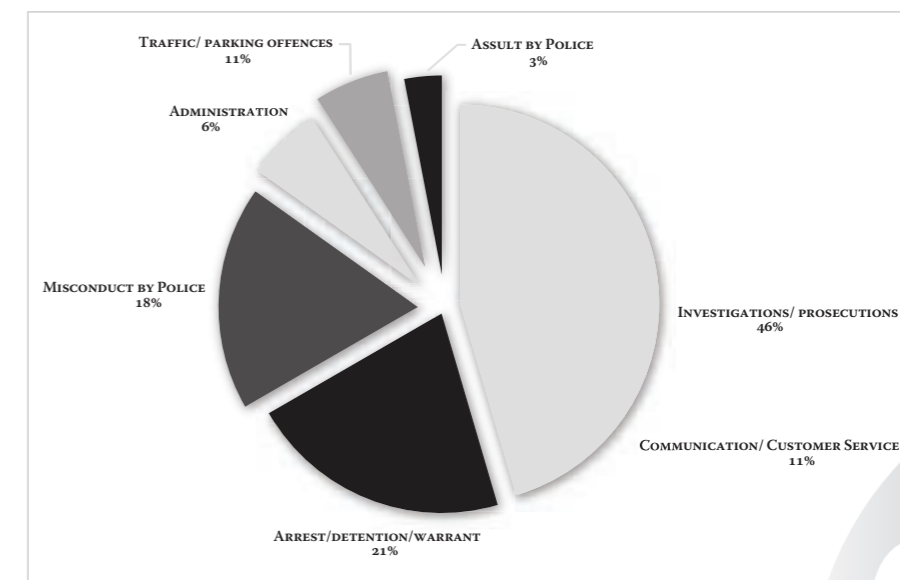


FIGURE 7.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST STATE DEPARTMENTS
AND PRESCRIBED AUTHORITIES?

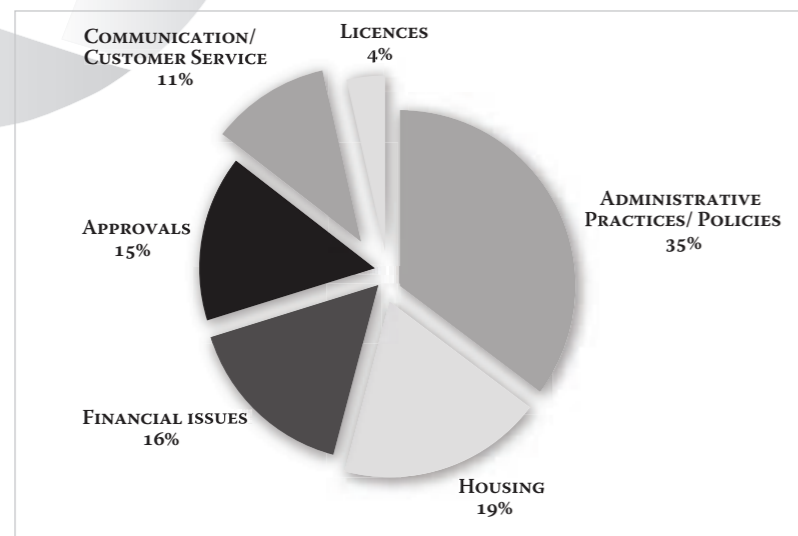


FIGURE 8.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST CORRECTIVE SERVICES?

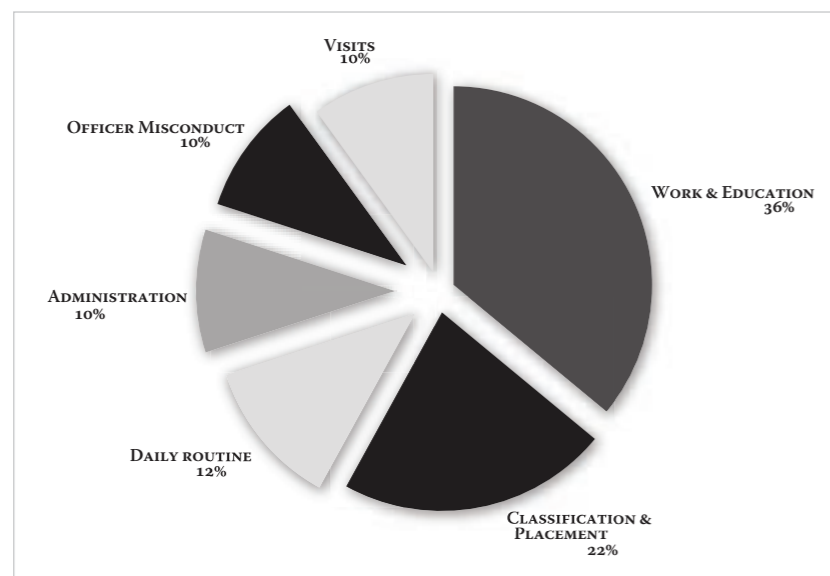


FIGURE 9.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST LOCAL GOVERNMENT?

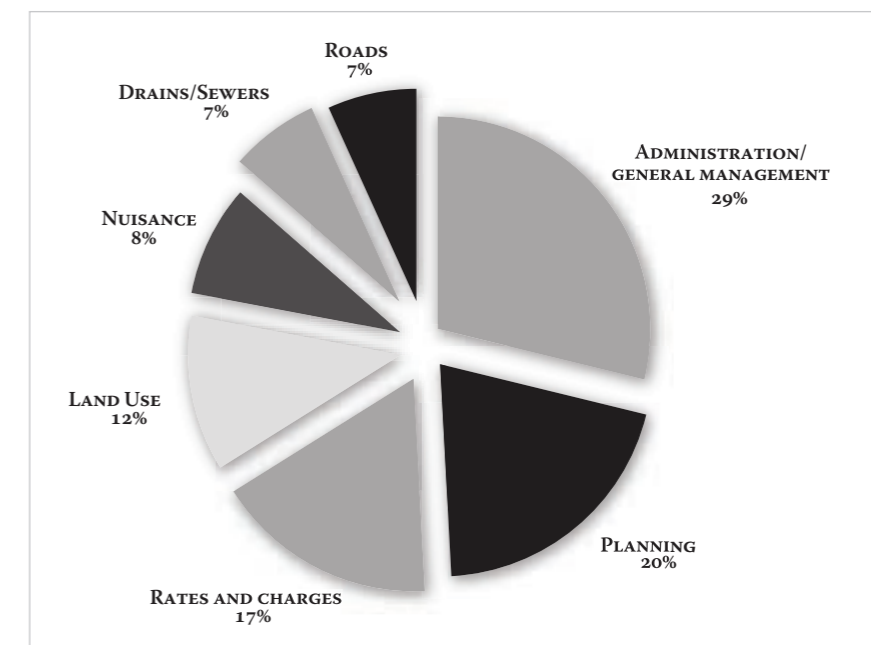
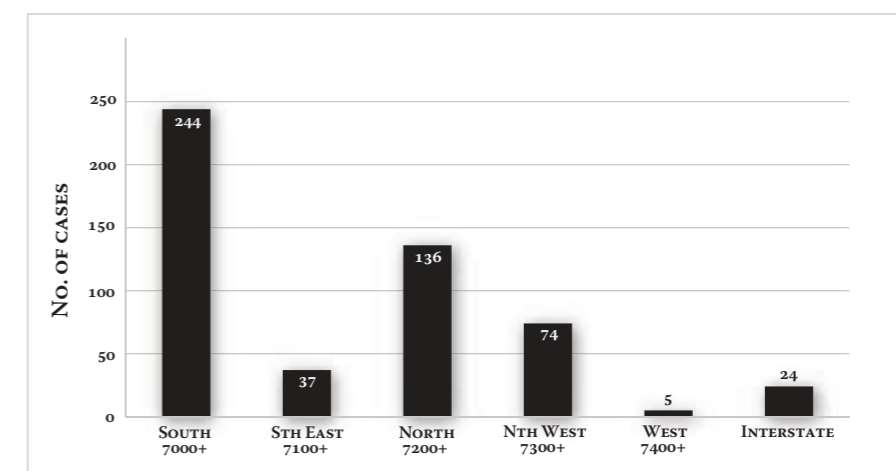


FIGURE 10.
GEOGRAPHICAL LOCATION OF COMPLAINANTS



Appendix B: Energy Ombudsman
COMPLAINT ACTIVITY

ENERGY TABLE 1.
ENQUIRY ACTIVITY

	2007/8	2008/9
Enquiries opened and closed in the period		121
OOJ Enquiries		34
Total Enquiries	82	155

ENERGY TABLE 2.
COMPLAINT ACTIVITY

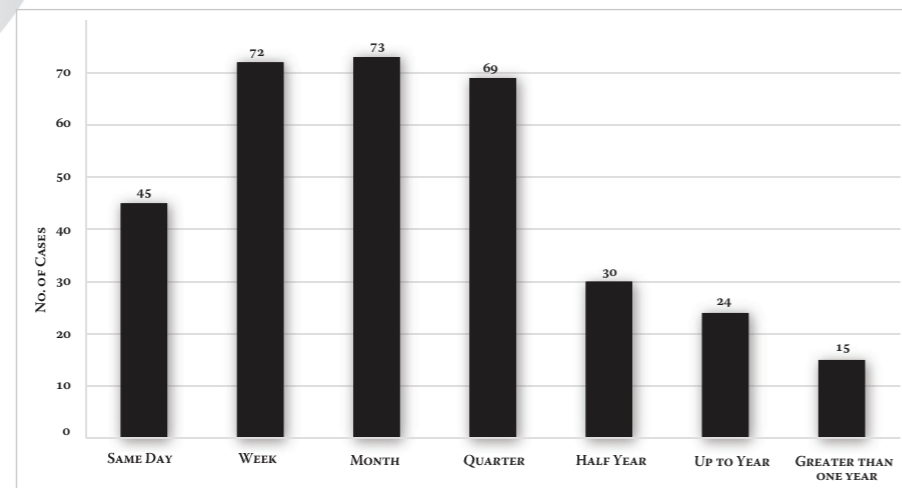
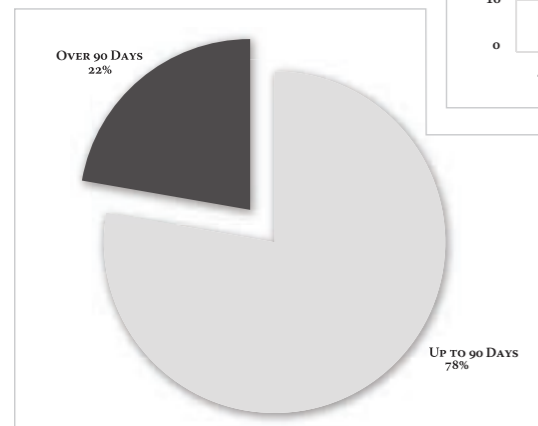
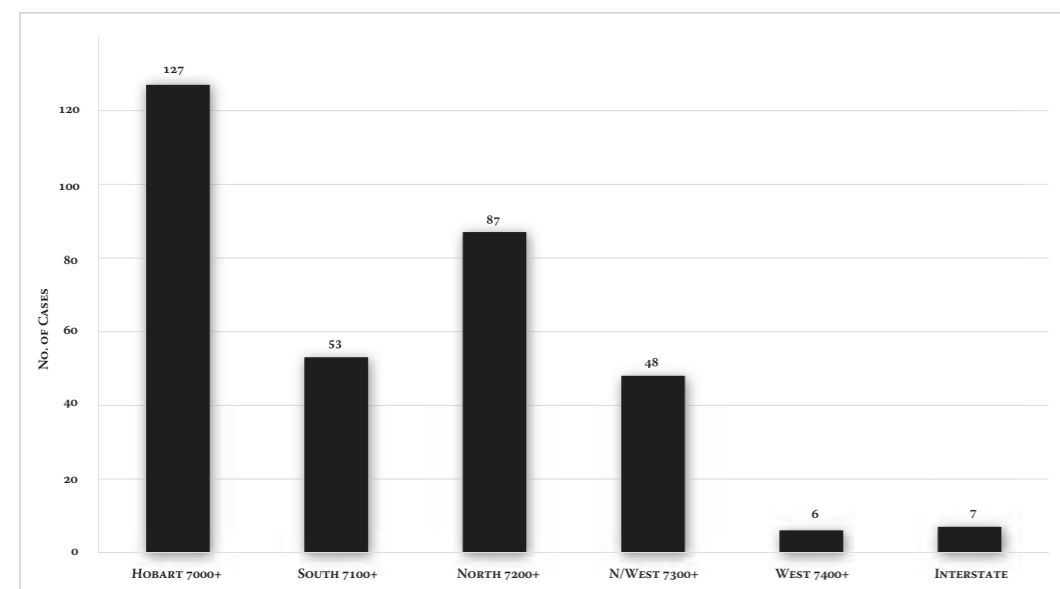
	2007/8	2008/9
Carried forward from previous period		69
Opened in period	227	304
Closed in period	292	328
Carried Forward (still open)		45

ENERGY TABLE 3.
CLOSURE REASONS BY ENTITY

Provider name	Complaints referred to higher level	No further in - fair/reasonable offer	No further inv - insufficient grounds/not warranted	No further inv - no further contact from customer	No further inv - withdrawn by customer	Out of Jurisdiction	Resolved - facilitated resolution	Resolved - negotiated resolution	Grand Total
Aurora Energy	84	10	18	14	1	2	99	93	321
Hydro Tasmania							1		1
Powerco			1						1
Tas Gas Retail				3		2			5
Grand Total	84	10	19	17	1	2	102	93	328

ENERGY TABLE 4.
CLOSURE REASONS

Category	Issue	2008/9
Billing		152
	delay	3
	error	29
	estimation	4
	fees & charges	14
	high	52
	meter	27
	other	2
	rebate/concession	11
	tariff	10
Credit		60
	collection	4
	disconnection/restriction	21
	payment difficulties	35
Customer Service		21
	failure to consult/inform	7
	failure to respond	3
	incorrect advice/information	6
	poor/unprofessional attitude	1
	poor service	3
	privacy	1
Land		17
	network assets	10
	other	1
	street lighting	1
	vegetation management	5
Provision		61
	disconnection/restriction	7
	existing connection	23
	new connection	31
Supply		29
	off supply (planned)	8
	off supply (unplanned)	15
	quality	4
	variation	2
Grand Total		340

ENERGY FIGURE 1.
TIME TAKEN TO RESOLVE COMPLAINTSENERGY FIGURE 1A.
COMPLAINTS RESOLVED WITHIN 90 DAYSENERGY FIGURE 2.
GEOGRAPHICAL LOCATION OF COMPLAINANTS

Explanation of closure reasons

1. *Complaints referred to a higher level:* A total of 84 complaints were referred to a higher level during the reporting period. Complaints against Aurora Energy that are not complex and appear to be relatively straight forward are referred to a higher level within the organisation to seek a quick resolution. When the Ombudsman determines a complaint should be referred back to Aurora Energy, and the complainant agrees to this process, the complaint details are forwarded to the company by email with a request that the complainant be contacted to seek to resolve the complaint. The complainant is advised to come back to the Ombudsman only if Aurora Energy has not contacted them within two business days, if they are not happy with the outcome of the contact with Aurora Energy, or if the complaint has not been satisfactorily resolved within 21 days. Once the email has been forwarded to Aurora Energy, the complaint file is immediately closed as “referred to a higher level”. If the complaint comes back a new file is opened.
2. *No further investigation – fair/reasonable offer:* There were ten complaints dismissed under this category during the reporting year. A complaint is closed under this category when the entity suggests or offers a resolution that is accepted by the complainant.
3. *No further investigation – insufficient grounds/not warranted:* There were 19 complaints recorded under this category. Complaints are closed under this category when it becomes clear that there is no merit in pursuing the matter further. For example, a complaint about a high bill may obviously be the result of the customer’s patterns of use and not the result of any billing anomaly. Another example could be a complaint about a planned electricity outage, and it is quickly found that the entity has complied with all requirements for the provision of notice.
4. *No further investigation – no further contact from customer:* This category recorded 17 complaints for the reporting period. Complaints are recorded in this category when a complainant fails to respond to letters or telephone contacts from the Ombudsman. Often the complainant simply becomes aware that there is little merit in the complaint or, after initially raising their concerns with the Ombudsman and venting their frustration, they change their mind and do not pursue the matter any further.
5. *No further investigation – withdrawn by customer:* There was only one complaint in this category. A complainant may withdraw a case for a number of reasons. For

example, the problem may have resolved itself, the information provided along the way to the complainant may have resulted in a change of mind about a perceived problem, or the complainant may just no longer wish to proceed with the complaint.

6. *Out of Jurisdiction:* Two matters were deemed to be out of jurisdiction during the reporting period. A complaint is closed under this category when it is identified that it is not strictly about any service of, or relating to, the sale and supply of, electricity or natural gas by an energy entity: *Energy Ombudsman Act 1998*, s 6.
7. *Resolved – facilitated resolution:* There were 102 complaints recorded in this category. Most complaints that fall into this category are where the entity has provided an explanation for the issues raised in a complaint and the complainant has been satisfied with that explanation. These are cases where the Ombudsman has been able to facilitate a response that the complainant has not been able, or would not have been able, to receive without the Ombudsman becoming involved.
8. *Resolved – negotiated outcome:* There were 93 complaints closed in this category during the reporting year. Complaints are recorded in this category where a mutually acceptable outcome has been reached, following negotiations between the entity and the Ombudsman, to resolve the issues raised by the complainant. This category differs from “facilitated resolution” in that the Ombudsman is involved in the ongoing process of negotiation to achieve an outcome, usually in the form of a positive result for the complainant.

Complaint trends

There has been a significant increase in the number of new complaints received for this reporting year. In 2007-2008, 227 new complaints were received, whereas 304 new complaints were received during 2008-2009. These 304 complaints raised 340 separate issues. As this shows, a complaint can raise more than one recorded issue.

For this reporting year, it is difficult to provide meaningful trends in the different categories of complaints. This is because we have redefined complaint issues to fall into line with issues reported on by other jurisdictions in the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO). Further, the transition to the Resolve customer management system has also had an effect on the information reported on, particularly in providing more precise data across the reporting fields.

With these changes, it will be possible in the future to provide far more consistent commentary on trends across the energy jurisdiction on a year by year basis.

Despite the difficulty in comparing this year with last year, and the overall increase in complaint numbers, there has not been any significant move in any of the complaint categories.

Since 98% of the complaints received relate to Aurora Energy, this section of the report is essentially an analysis of complaints about services provided by Aurora Energy.

Billing

There were 152 complaints involving billing issues for the reporting year.

Over one half of the billing complaints were about disputed accounts or perceived errors in the accounts provided.

Billing issues comprise almost 50% of all issues raised with the Ombudsman. Increases in standard tariffs have caused concern for electricity customers who find it hard to understand increases in their electricity accounts.

One issue that arose on a number of occasions was the delay in some Aurora Energy customers receiving electricity accounts. It is apparent that as a result of Aurora Energy moving to a new billing system, to comply with the requirements of the national market, many customers received accounts for two or three quarters at the same time. This caused concern for customers who had budgeted for quarterly accounts, or who had found a sudden high bill difficult to manage. Aurora Energy was aware of this problem and put in place payment plans or other acceptable payment options for complainants who raised this issue with the Ombudsman as a complaint.

Credit

This is a new category, separating credit issues from billing issues. Complaints about credit issues usually arise from difficulties a complainant experiences in paying arrears on their account, and the disconnection or pending disconnection that may arise from the non payment.

It is a reflection of the difficulties many people face with paying accounts that the Ombudsman received 60 complaints in this category for the reporting year.

In particular, there were 35 complaints which raised payment difficulties. These are difficult complaints to resolve, although where a complainant is genuine in their attempt to pay arrears it is generally possible to find some option or payment plan that allows for payment of arrears and ongoing consumption.

It is rare for a welfare agency to be able to make a significant contribution to resolving these cases, using the hardship monies made available by Aurora Energy to such organisations. As the monies are spread thinly, it is often the case that a complainant can only obtain a benefit of only \$100 to \$200.

A small percentage of complaints in this area are from electricity customers who come to the Ombudsman as a last resort, or who have a history of poor payment. These cases can be very difficult to resolve.

Customer service

There were 21 complaints in this category that mainly involved a failure to consult or provide information. Complaints about call centre services fall into this category. It is not unusual for a complainant to include customer service issues as an aside to a complaint over another issue. However, the Ombudsman will generally only investigate customer service issues that are the primary reason for a complaint, rather than a side issue arising from a complainant's frustration.

Provision

Complaints in this category are down a little from last year. Many of the complaints relate to new connections being delayed, and thus outside prescribed timeframes. This issue continues to be a cause for some concern. The Ombudsman intends to continue to monitor Aurora Energy's ability to respond in a timely manner to requests for new connections.

Supply

Complaints in this category have dropped a little from last year. However, complaints associated with unplanned outages have risen from last year. These complaints generally relate to damage to a customer's electrical items. Unless Aurora Energy has acted negligently or inappropriately, such complaints are difficult to resolve in the complainant's favour. An electricity customer is expected to take some action to protect electrical equipment, as the electricity supply can be impacted from a number of sources outside the responsible entity's control.

Impacts such as bird strikes, wind borne vegetation or a car impacting a power pole can give rise to outages that are outside the control of the entity.

Land

Complaints recorded in this category might relate to alleged damage to a customer's property as a result of provisioning work, or the use of easements. Complaints might also be about access to meters or the actual placement of meters or transmission towers. Land related complaints remain much the same as last year.

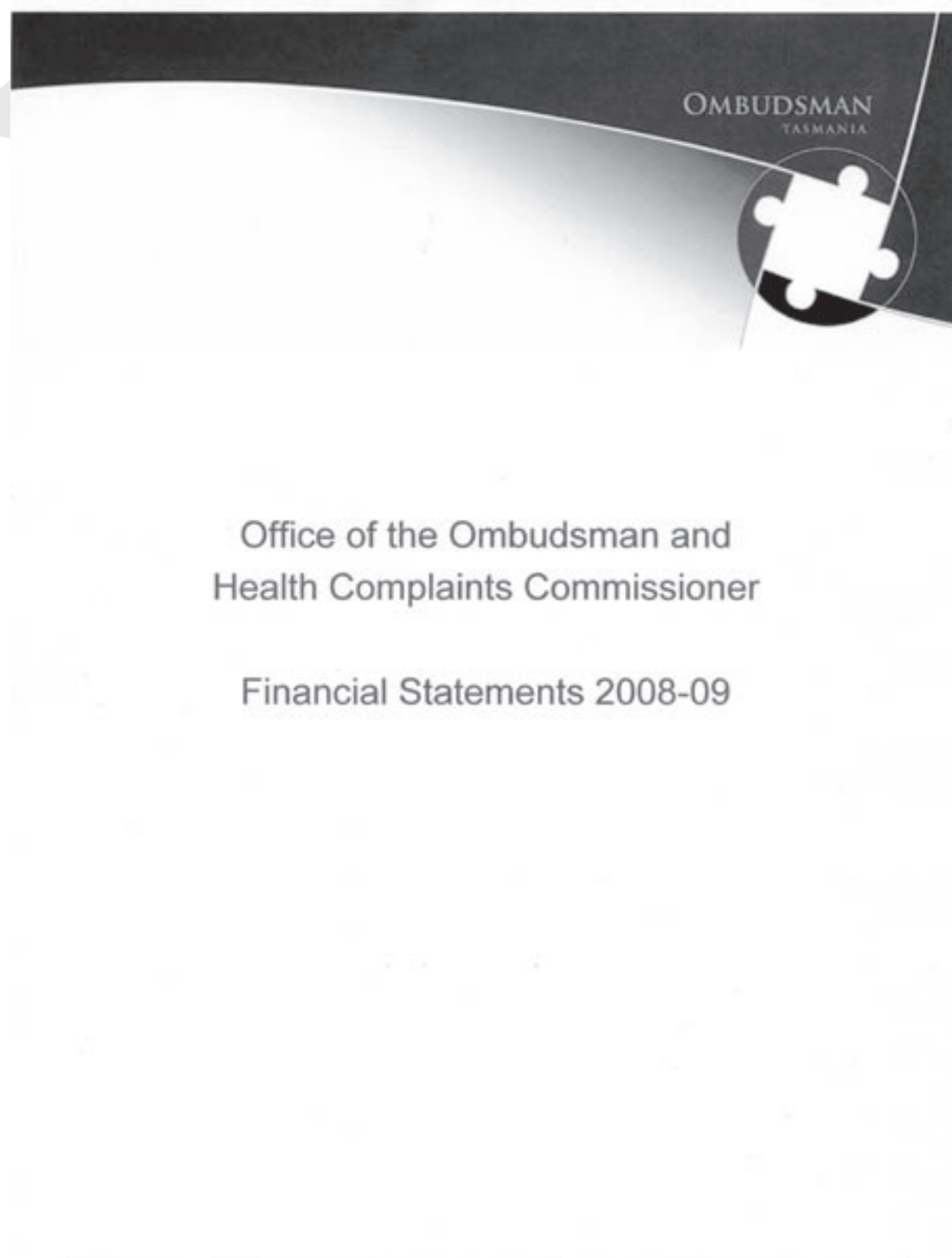


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Income Statement for the year ended 30 June 2009

		2009	2009	2008
	Notes	Budget	Actual	Actual
		\$'000	\$'000	\$'000
Revenue and other income				
Revenue from Government				
Appropriation revenue – recurrent	1.6(a), 4.1	1 372	1 364	1 280
Revenue from Energy Entities	1.6(b), 4.2	430	403	397
Other revenue	1.6(c), 4.3	45	19	45
Total revenue and other income		1 847	1 786	1 722
Expenses				
Employee benefits	1.7(a), 5.1	1 342	1 370	1 244
Amortisation	1.7(a), 5.2	-	23	-
Supplies and consumables	1.7(d), 5.3	234	182	211
Impairment losses	1.7(c), 5.4	-	-	106
Operating leases	1.10, 5.5	168	168	172
Other expenses	1.7(d), 5.6	112	108	95
Total expenses		1 856	1 851	1 828
Net deficit attributable to the State		(9)	(65)	(106)

This Income Statement should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Balance Sheet as at 30 June 2009

		2009	2009	2008
	Notes	Budget	Actual	Actual
		\$'000	\$'000	\$'000
Assets				
<i>Financial assets</i>				
Cash and deposits	1.8(a), 9.1	339	208	266
Receivables	1.8(b), 6.1	-	41	4
<i>Non-financial assets</i>				
Intangibles	1.8(c), 6.2	-	136	80
Total assets		339	385	350
Liabilities				
<i>Financial Liabilities</i>				
Payables	1.9(a), 7.1	5	86	49
Other liabilities	1.9(d), 7.3	-	14	11
<i>Non-financial Liabilities</i>				
Employee benefits	1.9(b)(c), 7.2	201	247	187
Total liabilities		206	347	247
Net assets		133	38	103
Equity				
Accumulated funds		133	38	103
Total equity	8.1	133	38	103

This Balance Sheet should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Cash Flow Statement for the year ended 30 June 2009

Notes	2009	2009	2008
	Budget	Actual	Actual
	\$'000	\$'000	\$'000
Cash flows from operating activities	Inflows		Inflows
	(Outflows)		(Outflows)
Cash inflows			
Appropriation receipts - recurrent	1 372	1 364	1 280
GST Receipts	46	-	-
Other cash receipts	475	422	442
Total cash inflows	1 893	1 786	1 722
Cash outflows			
Employee benefits	(1 333)	(1 245)	(1 246)
GST payments	(46)	-	-
Supplies and consumables	(402)	(207)	(225)
Other cash payments	(112)	(314)	(220)
Total cash outflows	(1 893)	(1 766)	(1 691)
Net cash from/(used by) operating activities	9.2	-	20
			31
Cash flows from investing activities			
Cash inflows			
Cash inflow on administrative restructure	8.2	-	-
Total cash inflows		-	315
Cash outflows			
Cash payment for purchase of intangible asset		-	(78)
Net cash from/(used by) investing activities		-	(78)
			235
Net decrease in cash held		-	(58)
			266
Cash and cash equivalents at the beginning of the reporting period		339	266
			-
Cash and cash equivalents at the end of the reporting period	9.1	339	208
			266

Note: In 2007/08, the purchase of an intangible asset was incorrectly categorised as an operating activity under "Other cash payments". This has been corrected in 2008/09 and categorised as an investing activity under "Cash payment for purchase of intangible asset".

This Cash Flow Statement should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Statement of Recognised Income and Expense for the year ended 30 June 2009

Notes	2009	2008
	\$'000	\$'000
Income and expenses recognised directly in equity		
Increase in net assets due to administrative restructuring	8.2	-
Net income recognised directly in equity		209
		-
Net deficit for the financial year	8.1	(65)
		(106)
Total recognised income and expense for the financial year		(65)
		103

This Statement of Recognised Income and Expense should be read in conjunction with the accompanying notes.

Notes to and forming part of the Financial Statements for the year ended 30 June 2009

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Note 1 Significant Accounting Policies

1.1 Objectives and Funding

The Office of the Ombudsman and Health Complaints Commissioner (the Office) operates under the *Ombudsman Act 1978* and is responsible for the enquiry and investigation into complaints regarding the administrative actions of Tasmanian government agencies, local councils and a broad range of other public authorities. The Ombudsman also has a number of other responsibilities including being the Health Complaints Commissioner under the *Health Complaints Act 1995*, and the Energy Ombudsman under the *Energy Ombudsman Act 1998*. The Office therefore also investigates complaints under these Acts.

By providing impartial investigations and seeking to resolve individual grievances, the Office aims to:

- promote fairness and equity;
- improve the quality of public administration; and
- improve health and energy services provided to the Tasmanian community.

The Office activities are classified as controlled as they involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Office in its own right.

The Office is predominantly funded through Parliamentary appropriations. The financial report encompasses all funds through which the Office controls resources to carry on its functions.

1.2 Basis of Accounting

The Financial Statements are a general purpose financial report and have been prepared in accordance with:

- Australian Accounting Standards (AAS) issued by the Australian Accounting Standards Board (AASB); and
- The Treasurer's Instructions issued under the provisions of the *Financial Management and Audit Act 1990*.

The financial statements were signed by the Head of Agency on 14 August 2009.

Compliance with the AAS may not result in compliance with International Financial Reporting Standards, as the AAS include requirements and options available to not-for-profit organisations that are inconsistent with IFRS. The Office is considered to be not-for-profit and has adopted some accounting policies under the AAS that do not comply with IFRS.

The Financial Statements have been prepared on an accrual basis and, except where stated, are in accordance with the historical cost convention. The accounting policies are consistent with the previous year.

1.3 Functional and Presentation Currency

These financial statements are presented in Australian dollars, which is the Office's functional currency.

1.4 Changes in Accounting Policies

(a) Impact of new and revised Accounting Standards

In the current year, the Office has adopted all of the new and revised Standards and Interpretations issued by the AASB that are relevant to its operations and effective for the current annual reporting period. These include:

- AASB 2008-10 *Amendments to Australian Accounting Standards: Reclassification of Financial Instruments* permits the reclassification of certain non-derivative financial assets. The Office has not reclassified its financial assets in the current period, accordingly there has been no financial impact.
- AASB 2007-9 *Amendments to Australian Accounting Standards arising from the Review of AASs 27, 29 and 31* – The primary focus of this Standard has been on relocating, where necessary, the requirements in AASs 27, 29 and 31, substantively unamended (with some exceptions), into topic-based Standards. The Standard did not have a material financial impact on the Financial Statements.

(b) Impact of new and revised Accounting Standards yet to be applied

The following new standards relevant to the Office have been issued by the AASB and are yet to be applied:

- AASB 2007-8 *Amendments to Australian Accounting Standards Arising from AASB 101* - revised Standard to be applied in reporting periods beginning on or after 1 January 2009. The Standard will not have a financial impact on the Financial Statements but will require a number of changes in disclosures.
- AASB 2007-10 *Further Amendments to Australian Accounting Standards arising from AASB 101* - revised Standard to be applied from reporting periods beginning on or after 1 January 2009. This Standard changes the term "general purpose financial report" to "general purpose Financial Statements" and the term "financial report" to "Financial Statements", where appropriate, in Australian Accounting Standards (including Interpretations) and the *Framework* to better align with IFRS terminology. The Standard will not have a financial impact on the Financial Statements.
- AASB 2008-5 *Amendments to Australian Accounting Standards arising from the Annual Improvements Project* – revised Standard to be applied from reporting periods beginning on or after 1 January 2009. The amendments to some Standards result in accounting changes for presentation, recognition or measurement purposes, while some amendments that relate to terminology and editorial changes are expected to have no or minimal effect on accounting. The Standard will not have a material financial impact on the Office's Financial Statements.

The future adoption of these standards is not expected to have a material impact on the financial statements of the Office.

1.5 Transactions by the Government as Owner – Restructuring of Administrative Arrangements

Transactions and balances relating to a trustee or an agency arrangement are not recognised as Office revenues, expenses, assets or liabilities in these Financial Statements.

Net assets received under a restructuring of administrative arrangements are designated as contributions by owners and adjusted directly against equity. Net assets relinquished are designated as distributions to owners. Net assets transferred are initially recognised at the amounts at which they were recognised by the transferring agency immediately prior to the transfer. Details of the 2007/08 transactions are provided at Note 8.2.

1.6 Income

Income is recognised in the Income Statement when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably.

(a) Revenue from Government

Appropriations, whether recurrent or capital, are recognised as revenues in the period in which the Office gains control of the appropriated funds. Control arises in the period of appropriation.

(b) Revenue from Energy Entities

Revenue from energy entities is recognised in the period in which the Office gains control of the funds. A membership fee is payable by each energy entity, within the meaning of the *Energy Ombudsman Act 1998*. A complaint levy is payable based on the number of complaints and enquiries received by the Ombudsman against an entity during the previous calendar year, as a proportion of the total number of complaints and enquiries received by the Ombudsman during that period.

(c) Other Revenue

Revenue from other sources is recognised when the Office gains control of the funds and can be reliably measured.

1.7 Expenses

Expenses are recognised in the Income Statement when a decrease in future economic benefits related to a decrease in asset or an increase of a liability has arisen that can be measured reliably.

(a) Employee Benefits

Employee benefits include, where applicable, entitlements to wages and salaries, annual leave, sick leave, long service leave, superannuation and any other post-employment benefits.

(b) Amortisation

All intangible assets having a limited useful life are systematically amortised over their useful lives reflecting the pattern in which the asset's future economic benefits are expected to be consumed by the Office. The Case Management System software is amortised on a straight-line basis over 5 years.

(c) Impairment Losses

All assets are assessed to determine whether any impairment exists. Impairment exists when the recoverable amount of an asset is less than its carrying amount. Recoverable amount is the higher of fair value less costs to sell and value in use. The Office's assets are not used for the purpose of generating cash flows; therefore value in use is based on depreciated replacement cost where the asset would be replaced if deprived of it.

All impairment losses are recognised in profit or loss unless an asset has previously been revalued, in which case the impairment loss is recognised as a reversal to the extent that the previous revaluation with any excess recognised through profit or loss.

(d) Supplies & Consumables and Other Expenses

Expenses from ordinary activities are recognised when it is probable that the consumption or loss of future economic benefits resulting in a reduction of assets or an increase in liabilities has occurred and can be reliably measured.

1.8 Assets

Assets are recognised in the Balance Sheet when it is probable that the future economic benefits will flow to the Office and the asset has a cost or value that can be measured reliably.

(a) Cash and Deposits

Cash means notes, coins, any deposits held at call with a bank or financial institution, as well as funds held in the Special Deposits and Trust Fund. Deposits are recognised at amortised cost, being their face value.

(b) Receivables

Receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.

(c) Intangibles

An intangible asset is recognised where:

- it is probable that an expected future benefit attributable to the asset will flow to the Office; and
- the cost of the asset can be reliably measured.

The development costs towards the installation of RESOLVE (the Office's new case management system) are recognised as an intangible asset and are currently valued at cost. The system went live and the asset was commissioned in mid October 2008 at which point amortisation commenced.

1.9 Liabilities

Liabilities are recognised in the Balance Sheet when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably.

(a) Payables

Payables, including goods received and services incurred but not yet invoiced, are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Office becomes obliged to make future payments as a result of a purchase of assets or services.

(b) Employee Benefits

Liabilities for wages and salaries and annual leave are recognised when an employee becomes entitled to receive a benefit. Those liabilities expected to be realised within 12 months are measured as the amount expected to be paid. Other employee entitlements are measured as the present value of the benefit at the reporting date, where the impact of discounting is material, and at the amount expected to be paid if discounting is not material.

A liability for long service leave is recognised, and is measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date.

(c) Superannuation

The Office does not recognise a liability for the accruing superannuation benefits of Office employees. This liability is held centrally and is recognised within the Finance-General Division of the Department of Treasury and Finance.

(d) Other Liabilities

The Office has separately recognised a liability for the Payroll Tax on the accruing employee Annual Leave and Long Service Leave entitlements calculated at 6.1% of the outstanding leave provisions.

1.10 Leases

The Office has entered into a number of operating lease agreements for property, plant and equipment, where the lessors effectively retain all the risks and benefits incidental to ownership of the items leased. Equal instalments of lease payments are charged to the Income Statement over the lease term, as this is representative of the pattern of benefits to be derived from the leased property.

The Office is prohibited by Treasurer's Instruction 502 Leases from holding finance leases.

1.11 Judgements and Assumptions

In the application of Australian Accounting Standards, the Office is required to make judgements, estimates and assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

Judgements made by the Office that have significant effects on the financial statements are disclosed in the relevant notes to the financial statements.

The Office has made no assumptions concerning the future that may cause a material adjustment to the carrying amounts of assets and liabilities within the next reporting period.

1.12 Comparative Figures

Comparative figures have been adjusted to reflect any changes in accounting policy or the adoption of new standards. The impact of changes in accounting policy has not resulted in any changes to comparative figures.

1.13 Budget Information

Budget information refers to original estimates as disclosed in the 2008-09 Budget Papers and is not subject to audit.

1.14 Rounding

All amounts in the Financial Statements have been rounded to the nearest thousand dollars, unless otherwise stated. Where the result of expressing amounts to the nearest thousand dollars would result in an amount of zero, the financial statement will contain a note expressing the amount to the nearest whole dollar.

1.15 Taxation

The Office is exempt from all forms of taxation except Fringe Benefits Tax and Payroll Tax and is not registered for GST. All taxation issues are managed by the Department of Justice on the Office's behalf.

1.16 Goods and Services Tax

Revenue, expenses and assets are recognised net of the amount of Goods and Services Tax, except where the GST incurred is not recoverable from the Australian Taxation Office. Receivables and payables are stated inclusive of GST. The net amount recoverable, or payable, to the ATO is recognised as an asset or liability within the Balance Sheet.

In the Cash Flow Statement, the GST component of cash flows arising from operating, investing or financing activities which is recoverable from, or payable to, the Australian Taxation Office is, in accordance with the Australian Accounting Standards, classified as operating cash flows.

Note 2 Explanations of Material Variances between Budget and Actual Outcomes

The following are brief explanations of material variances between Budget estimates and actual outcomes. Variances are considered material where the variance exceeds the greater of 10 per cent of Budget estimate and \$20,000.

2.1 Income Statement

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Other revenue	(a)	45	19	26	58
Depreciation and amortisation	(b)	-	23	(23)	(100)
Supplies and Consumables	(c)	234	182	52	22

Notes to Income Statement variances

(a) Commonwealth Ombudsman funding arrangements changed resulting in a decrease of \$22,000 from 2007/08 to 2008/09.

(b) The amortisation of the case management system intangible asset was not included in the original budget. The 2010/11 budget will be updated to reflect this asset.

(c) Considerable savings for IT, consultants, travel and advertising expense resulted in total expenses coming in under the original budget.

2.2 Balance Sheet

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Cash and deposits	(a)	339	208	131	39
Receivables	(b)	-	41	(41)	(100)
Intangibles	(c)	-	136	136	(100)
Payables	(d)	5	86	(81)	(1620)

Notes to Balance Sheet variances

(a) The variance is mainly due to software and IT consultancy costs of \$100,000 to finalise the implementation for new case management system not being included in the original budget.

(b) Receivables were not included in the original budget. The 2010/11 budget will be updated to reflect this asset.

(c) The capitalisation of the case management system intangible asset was not included in the original budget. The 2010/11 budget will be updated to reflect this asset.

(d) The variance is mainly attributed to a payroll system issue resulting in the Department of Justice paying employee entitlement creditors on behalf of the Office. This will be resolved in 2009/10. In addition, there were unpaid invoices for Commissioner for Taxes and ATO of \$12,000 that were not due until July and a longstanding \$9,000 GST payment owing to Justice for the CART overdue account.

2.3 Cash Flow Statement

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
GST Receipts	(a)	46	-	46	100
Other cash receipts	(b)	475	422	53	11
GST Payments	(a)	46	-	46	100
Supplies and Consumables	(c)	402	207	195	49
Other cash payments	(c)	112	314	(202)	(181)
Purchase of intangible asset	(d)	-	78	(78)	(100)

Notes to Cash Flow Statement variances

(a) The Office is not registered for GST. All taxation matters are managed by the Department of Justice on behalf of the Office. GST Receipts and Payments were included in the budget but no actual receipts or payments were transacted.

(b) The variance is due to a change in Commonwealth Ombudsman funding arrangements which resulted in a decrease of \$22,000 from 2007/08 to 2008/09 but was not reflected in the original budget. In addition to this, some energy entities ceased operation (after the original budget was set) and annual membership fee revenue decreased as a consequence.

(c) The variance is mainly due to operating lease costs of \$168,000 for office accommodation was budgeted against Supplies and Consumables but reflected as Other expenses in the actual costs. The budget will be reallocated during the preparation of the 2009/10 budget. In addition there were some additional payments to fully implement the case management system that were not budgeted for in the original budget.

(d) Additional expenses in relation to the case management system were not included in the original budget. Expenses that were budgeted for were categorised under "Other cash payments".

Note 3 Events Occurring After Balance Date

The transfer of the Mental Health Official Visitors Scheme (the Scheme) occurred after the reporting date on 1st July 2009.

Prior to 1 July 2009, Official Visitors were auspiced in the performance of their functions by the Mental Health Council of Tasmania with funding from the Department of Health and Human Services (DHHS) through Mental Health and State Wide Services. The Mental Health Council of Tasmania is a Community Service Organisation and is the peak body for non government mental health organisations in Tasmania.

The Minister for Health approved the transfer of the administration of the Scheme to the Office of Ombudsman and Health Complaints Commissioner from 1 July 2009.

The transfer of administrative responsibility was made to enhance the functional and financial independence of the Scheme from Mental Health Services and from government.

Funding for the Scheme, totalled \$175,000 in 2008/09 and a transfer of the recurrent funding will be arranged through Department of Treasury and Finance. The office rent expense of \$20,000 per annum has been included in the Operating Lease Commitments (see Note 7.4). The financial effect of this event has had no impact on net assets as no assets or liabilities have been brought across.

Note 4 Income

4.1 Appropriation Revenue

	2009 Budget \$'000	2009 Actual \$'000	2008 Actual \$'000
Appropriation revenue - recurrent			
Current year	1 372	1 364	1 280
Total revenue from Government	1 372	1 364	1 280

4.2 Revenue from Energy Entities

	2009 Budget \$'000	2009 Actual \$'000	2008 Actual \$'000
Energy Entities Membership and Complaint Levy Fees	430	403	397
Total	430	403	397

4.3 Other Revenues

	2009 Budget \$'000	2009 Actual \$'000	2008 Actual \$'000
Commonwealth Ombudsman Funding	40	17	40
Seminar Fees	5	-	5
AGFEST Reimbursements	-	2	-
Total	45	19	45

Note 5 Expenses**5.1 Employee Benefits**

	2009	2008
	\$'000	\$'000
Wages and salaries	1 211	1 099
Superannuation – contribution scheme	128	120
Other employee expenses	31	25
Total	1 370	1 244

Superannuation expenses relating to defined benefits schemes relate to payments into the Superannuation Provision Account (SPA) held centrally and recognised within the Finance-General Division of the Department of Treasury and Finance. The amount of the payment is based on an employer contribution rate determined by the Treasurer, on the advice of the State Actuary. The current employer contribution is 11 per cent of salary.

Superannuation expenses relating to the contribution scheme are paid directly to the superannuation fund at a rate of nine per cent of salary. In addition, departments are also required to pay into the SPA a "gap" payment equivalent to two per cent of salary in respect of employees who are members of the contribution scheme.

5.2 Amortisation**(a) Amortisation**

	2009	2008
	\$'000	\$'000
Intangibles	23	-
Total	23	-

5.3 Supplies and Consumables

	2009	2008
	\$'000	\$'000
Consultants	29	21
Property services	8	7
Maintenance	-	2
Communications	30	20
Information technology	45	60
Travel and transport	21	29
Advertising and promotion	9	19
Printing	12	12
Plant and Equipment	11	12
Other supplies and consumables	17	29
Total	182	211

Note: Office Requisites, Library and Personnel Expenses were reported under "Other Expenses" in 2007/08 but are included in "Other supplies and consumables" in 2008/09.

5.4 Impairment losses

	2009	2008
	\$'000	\$'000
Financial assets – impairment losses		
Receivables (bad and doubtful debts)	-	106
Total	-	106

Descriptions of any circumstances of any material impairment losses or reversals are at Note 6.1.

5.5 Operating Lease

	2009	2008
	\$'000	\$'000
Operating leases	168	172
Total	168	172

5.6 Other Expenses

	2009	2008
	\$'000	\$'000
Salary on-costs	90	84
Other expenses	18	11
Total	108	95

Note: The Office categorised Office Requisites, Library and Personnel Expenses under "Other expenses" in 2007/08 but in 2008/09 re-categorised these expenses under "Other supplies and consumables" (Note 5.3).

Note 6 Assets

6.1 Receivables

	2009	2008
	\$'000	\$'000
Receivables	147	110
Less: Provision for impairment	(106)	(106)
Total	41	4
Settled within 12 months	41	4
Total	41	4

During 2007-08, a debt of an organisation associated with the Child Abuse Review Team (CART) project was assessed as being impaired. The impairment arose as a result of the debtor having failed to settle the outstanding amount and thus the amount was deemed unrecoverable. The Office continues to pursue this matter and the provision for impairment loss continues to be recognised in the Balance Sheet in 2008/09.

	2009	2008
	\$'000	\$'000
Reconciliation of movement in provision for impairment of receivables		
Carrying amount at 1 July	106	-
Amounts written off during the year	-	106
Carrying amount at 30 June	106	106

6.2 Intangibles

	2009	2008
	\$'000	\$'000
Intangibles with a finite useful life		
At cost (RESOLVE Case Management System)	159	-
Work in Progress (RESOLVE Case Management System)	-	80
Less Accumulated amortisation	(23)	-
Total Intangibles	136	80

(a) Reconciliation of movements

	2009	2008
	\$'000	\$'000
Carrying amount at 1 July	80	-
Additions – internal development	79	80
Amortisation expense	(23)	-
Total Intangibles	136	80

Note 7 Liabilities

7.1 Payables

	2009	2008
	\$'000	\$'000
Trade Payables	86	49
Total	86	49
Settled within 12 months	86	49
Total	86	49

Settlement is usually made within 30 days.

7.2 Employee Benefits

	2009	2008
	\$'000	\$'000
Accrued salaries	21	15
Annual leave	81	65
Long service leave	145	107
Total	247	187
Settled within 12 months	102	77
Settled in more than 12 months	145	110
Total	247	187

7.3 Other Liabilities

	2009	2008
	\$'000	\$'000
Other liabilities		
Employee benefits – on-costs	14	11
Total	14	11
Settled within 12 months	5	4
Settled in more than 12 months	9	7
Total	14	11

7.4 Schedule of Commitments

	2009	2008
	\$'000	\$'000
By type		
<i>Capital Commitments</i>		
RESOLVE Implementation Project	-	53
Total capital commitments	-	53
<i>Lease Commitments</i>		
Operating leases	300	366
Total lease commitments	300	366
<i>Other Commitments</i>		
RESOLVE Maintenance	26	39
Total other commitments	26	39
By maturity		
<i>Capital commitments</i>		
One year or less	-	53
Total capital commitments	-	53
<i>Operating lease commitments</i>		
One year or less	215	161
From one to five years	85	205
Total operating lease commitments	300	366
<i>Other commitments (Maintenance)</i>		
One year or less	13	13
From one to five years	13	26
Total operating lease commitments	26	39

Note: The Operating Lease commitments include buildings, motor vehicles and information technology equipment leases. The 10-year building lease expires in September 2010. The three tenants are in the process of discussing a renewal option for a further term of five years. If the renewal option is to be taken up, it cannot be operated under the terms of the lease until 1 April 2010, so there is no formal action under the lease which can be taken before that date therefore no future lease commitment beyond September 2010 has been disclosed.

Note 8 Equity and Movements in Equity**8.1 Reconciliation of Equity**

	Accumulated Funds		Total Equity	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
Balance at 1 July	103	-	103	-
Net surplus/deficit	(65)	(106)	(65)	(106)
Administrative Restructuring (see note 8.2)	-	209	-	209
Balance at 30 June	38	103	38	103

Note that accumulated funds include both contributed capital on formation of the Office and accumulated surpluses or deficits in subsequent years.

8.2 Administrative Restructuring

As a result of a restructuring of administrative arrangements, the Office assumed responsibility for its business activities, which were relinquished from the Department of Justice on 1 July 2007.

In respect of activities assumed, the net book values of assets and liabilities transferred to the Office from the Department of Justice in 2007/08 for no consideration and recognised as at the date of transfer were:

	2009 \$'000	2008 \$'000
Net assets assumed on restructure		
Cash and deposits	-	315
Receivables	-	106
Total assets recognised	-	421
Payables	-	10
Employee Entitlements	-	190
Other Liabilities	-	12
Total liabilities recognised	-	212
Net assets assumed on restructure	-	209

Note 9 Cash Flow Reconciliation**9.1 Cash and Cash Equivalents**

Cash and Deposits include the balance of the Special Deposits and Trust Fund Accounts held by the Office, and other cash held.

	2009 \$'000	2008 \$'000
Special Deposits and Trust Fund balance		
T516 Operating Account	208	266
Total cash and cash equivalents	208	266

9.2 Reconciliation of Operating Deficit to Net Cash used by Operating Activities

	2009 \$'000	2008 \$'000
Net operating deficit	(65)	(106)
Non-cash items		
Impairment losses	-	106
Amortisation	23	-
Movements in operating assets excluding those balances assumed during the year		
Increase in Receivables	(37)	(4)
Increase in Employee entitlements	60	(3)
Increase in Payables	37	39
Increase in Other liabilities	2	(1)
Net cash from/(used by) operating activities	20	31

9.3 Financing Facilities

	2009	2008
	\$'000	\$'000
Tas Government Card - Credit card facility		
Amount used	4	3
Amount unused	13	9
Total	17	12

Note 10 Financial Instruments

10.1 Risk exposures

(a) Risk management policies

The Office has exposure to the following risks from its use of financial instruments:

- credit risk;
- liquidity risk.

The Head of Agency has overall responsibility for the establishment and oversight of the Office's risk management framework. Risks faced by the Office are identified and analysed on a regular basis to monitor and control them where necessary. The Office currently has no material exposure to market risks.

(b) Credit risk exposures

Credit risk is the risk of financial loss to the Office if a customer or counterparty to a financial instrument fails to meet its contractual obligations.

Financial Instrument	Accounting and strategic policies (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)
Financial Assets		
Receivables	Receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.	It is Office policy to issue invoices with 30 day terms of trade.

The following table analyses financial assets that are past due but not impaired:

Analysis of financial assets that are past due at 30 June 2009 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	41	41

Analysis of financial assets that are past due at 30 June 2008 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	4	4

(c) Liquidity risk

Liquidity risk is the risk that the Office will not be able to meet its financial obligations as they fall due. The Office's approach to managing liquidity is to ensure that it will always have sufficient liquidity to meet its liabilities when they fall due by reviewing cash flow projections on a monthly basis.

Financial Instrument	Accounting and strategic policies (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)
Financial Liabilities		
Payables	Payables are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Office becomes obliged to make future payments as a result of a purchase of assets or services.	Payables, including goods received and services incurred but not yet invoiced arise when the Office becomes obliged to make future payments as a result of a purchase of assets or services. The Office's terms of trade are 30 days.

The following tables detail the undiscounted cash flows payable by the Office by remaining contractual maturity for its financial liabilities. It should be noted that as these are undiscounted, totals may not reconcile to the carrying amounts presented in the Balance Sheet:

2009

	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	86	86	86
Total	86	86	86

2008

	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	49	49	49
Total	49	49	49

10.2 Categories of Financial Assets and Liabilities

	2009 \$'000	2008 \$'000
Financial assets		
Cash and cash equivalents	208	266
Loans and Receivables	41	4
Total	249	270
Financial Liabilities		
Financial liabilities measured at amortised cost	86	49
Total	86	49

10.3 Net Fair Values of Financial Assets and Liabilities

	2009		2008	
	Total Carrying Amount \$'000	Net Fair Value \$'000	Total Carrying Amount \$'000	Net Fair Value \$'000
Financial assets				
Cash and cash equivalents	208	208	266	266
Receivables	41	41	4	4
Total financial assets	249	249	270	270
Financial liabilities				
Payables	86	86	49	49
Total financial liabilities	86	86	49	49

Financial Assets

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

The net fair value of receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.

Financial Liabilities

The net fair values for trade creditors are approximated by their carrying amounts.

Office of the Ombudsman and Health Complaints Commissioner

Statement by Head of Agency and Principal Accounting Officer

The accompanying Financial Statements of the Office of the Ombudsman and Health Complaints Commissioner are in agreement with the relevant accounts and records and have been prepared in compliance with Treasurer's Instructions issued under the provision of the *Financial Management and Audit Act 1990* to present fairly the financial transactions for the year ended 30 June 2009 and the financial position as at the end of the year.

At the date of signing, I am not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.


Simon Allston
HEAD OF AGENCY


Lianne Jager
ADMINISTRATION MANAGER



INDEPENDENT AUDIT REPORT

To Members of the Parliament of Tasmania

OFFICE OF THE OMBUDSMAN AND HEALTH COMPLAINTS COMMISSIONER

Financial Statements for the Year Ended 30 June 2009

Report on the Financial Statements

I have audited the accompanying financial statements of the Office of the Ombudsman and Health Complaints Commissioner (the Office), which comprise the balance sheet as at 30 June 2009, the income statement, statement of changes in equity and cash flow statement for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the statement by the Head of Agency.

The Responsibility of the Ombudsman for the Financial Statements

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including Australian Accounting Interpretations) and Section 27 (1) of the *Financial Management and Section 17(1) of the Audit Act 2008* (Audit Act). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based upon my audit. My audit was conducted in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers

internal control relevant to the Office's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate to the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Ombudsman, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting this audit, I have complied with the independence requirements of Australian Auditing Standards and other relevant ethical requirements. The *Audit Act 2008* further promotes independence by:

- Providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- Mandating the Auditor-General as auditor of State Entities but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Tasmanian Audit Office are not compromised in their role by the possibility of losing clients or income.

Auditor's Opinion

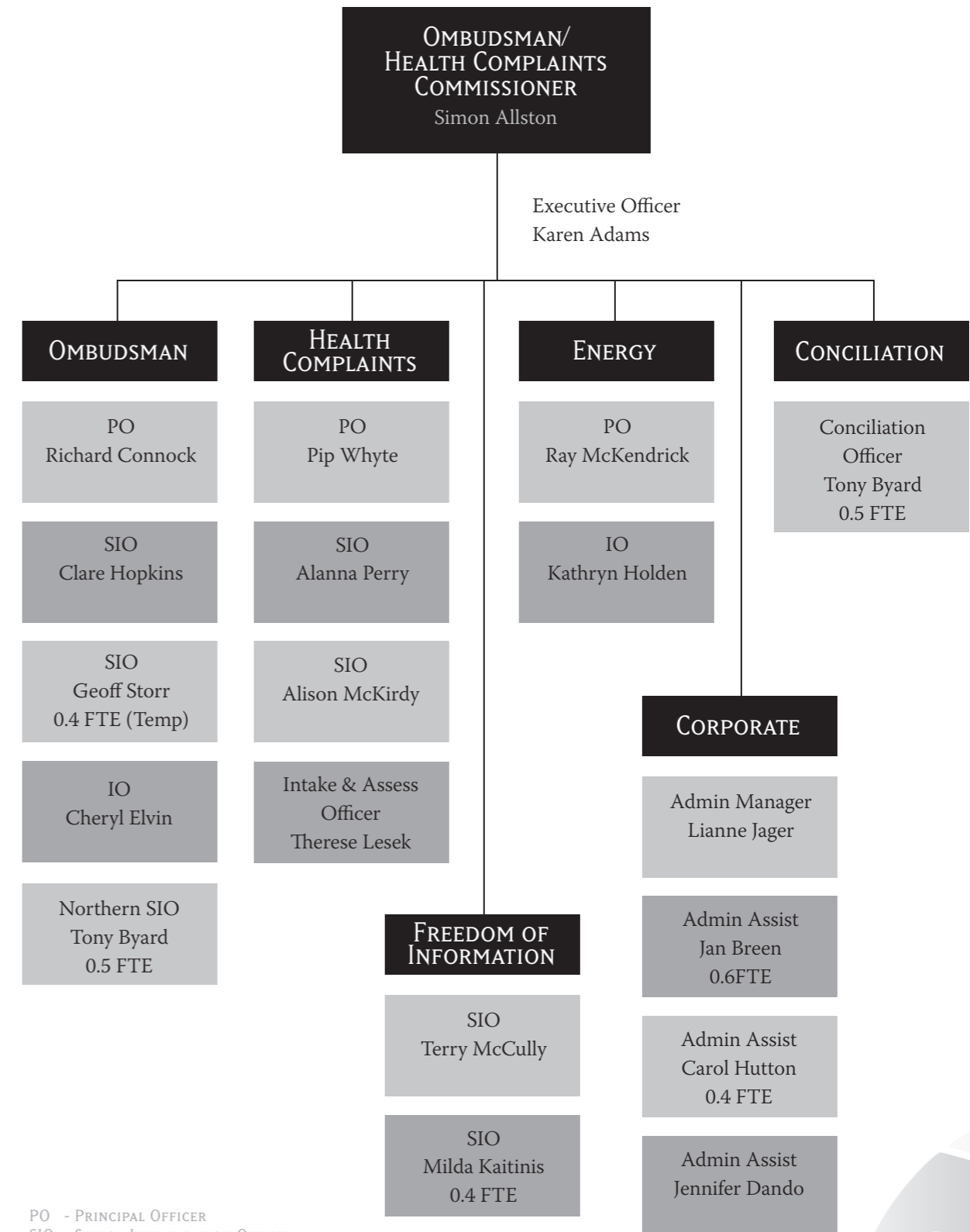
In my opinion the financial statements of the Office of the Ombudsman and Health Complaints Commissioner:

- present fairly, in all material respects, the financial position of the Ombudsman and Health Complaints Commissioner as at 30 June 2009, and of its financial performance, cash flows and changes in equity for the year then ended; and
- is in accordance with the *Financial Management and Audit Act 1990*, the *Audit Act 2008* and Australian Accounting Standards (including Australian Accounting Interpretations).

TASMANIAN AUDIT OFFICE


A V Barren
DIRECTOR – FINANCIAL AUDIT
Delegate of the Auditor-General

HOBART
10 September 2009



PO - PRINCIPAL OFFICER
SIO - SENIOR INVESTIGATION OFFICER
IO - INVESTIGATION OFFICER
FTE - FULL TIME EQUIVALENT