



35
years

...ation...commitment...good conduct...resolution...progress...awareness...protection...development...independence...oversight...education...fair decision...
...nt...helping...impartially...service...scrutiny...leadership...accountability...investigation...organisation...administ

ANNUAL | 2009
REPORT | 2010

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Highlights

This year we **visited 62** regional and remote communities in NSW

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Five Special Reports were tabled in Parliament

SEE PAGE 169

To be more responsive, in October we **restructured our office**

SEE PAGE 4

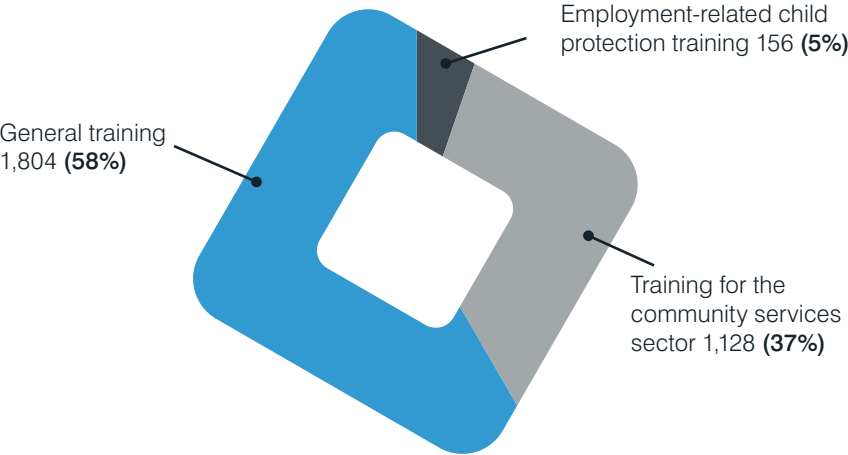
Formal complaints and notifications **received = 8,712**

SEE PAGE 7

To support agencies improve their service provision, we **increased our training program**

SEE PAGE 41

Training workshop participants



Our vision

We want to see fair, accountable and responsive administrative practice and service delivery in NSW.

Our mission

In our own organisation and those we oversight, we work to promote:

- › good conduct
- › fair decision-making
- › protection of rights
- › provision of quality services.

Our purpose

We aim to:

1. help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery
2. deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems
3. be a leading watchdog agency
4. be an effective organisation.

Our values

We will:

- › provide the same high quality service that we encourage other organisations to offer
- › be fair, impartial and independent, and act with integrity and consistency
- › be accessible and responsive to all who approach us, and seek solutions and improvements that will benefit the broader NSW community
- › be a catalyst for change and a promoter of individuals' rights.

Our guarantee of service

We will:

- › consider each matter promptly and fairly, and provide clear reasons for our decisions
- › where we are unable to deal with a matter ourselves, explain why, and identify any other appropriate organisation where we can
- › help those people who need assistance to make a complaint to the Ombudsman
- › add value through our work.

Recognising
35 years of
service

Complaints about
local government
**increased
by 20%**

[SEE PAGE 100](#)

7,250
police records
audited

[SEE PAGE 10](#)

Letter to the Legislative Assembly and Council

22 October 2010

The Hon. Amanda Fazio MLC
President Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

The Hon. Richard Torbay MP
Speaker Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Madam President and Mr Speaker

I am pleased to present our 35th annual report to the NSW Parliament.

This report contains an account of our work for the 12 months ending 30 June 2010 and is made pursuant to ss.30 and 31 of the *Ombudsman Act 1974*.

The report also provides information about my office's functions under the *Police Act 1990* and information that is required pursuant to the *Annual Reports (Departments) Act 1985*, *Annual Reports (Departments) Regulation 2005*, *Freedom of Information Act 1989*, *Law Enforcement (Powers and Responsibilities) Act 2002* and *Disability Services Act 1993*.

The report includes updated material on developments and issues current at the time of writing (July–September 2010).

Yours sincerely



Bruce Barbour
Ombudsman

Total number complaints
informally handled

= 23,797

[SEE PAGE 7](#)

We **continued to be a leader** in
setting standards for complaint handling
through our work with managing
unreasonable complainant conduct [SEE PAGE 41](#)

Complaints increased about child and family services by **13%**, child protection services by **10%** and out-of-home care by **33%**

SEE PAGE 50

For the third consecutive year we **finalised more complaints** than we received

SEE PAGE 6

Consulted 1,839 people during systemic investigations and reviews

SEE PAGE 10

Our inquiries and resolution team received **500 calls and visits** each week

SEE PAGE 24

Who we are and what we do

The NSW Ombudsman is an independent and impartial watchdog established by the *Ombudsman Act 1974*. We are independent of the government of the day and accountable to the public through Parliament itself. Our central goal is to keep government agencies and some non-government organisations accountable, by promoting good administrative conduct, fair decision-making and high standards of service delivery, and protect the rights of people in NSW. We are responsible for keeping the following types of organisations under scrutiny:

- › agencies delivering public services – including police, correctional centres and state-owned corporations
- › organisations delivering services to children – including schools and child care centres
- › organisations delivering community services – including services for people with disabilities, people who are homeless and elderly people
- › agencies conducting covert operations – including the Crime Commission and the Independent Commission Against Corruption.

We have other specific functions that relate to:

- › the causes and patterns of deaths of certain children and people with disabilities
- › decisions made by public sector agencies
- › the administration of the witness protection program
- › the implementation of new pieces of legislation conferring additional powers on people such as police and correctional officers.

We investigate and resolve complaints from members of the public and from people who work for the organisations we scrutinise. Our work is aimed at exposing and eliminating conduct that is illegal, unreasonable, unjust or oppressive, improperly discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong.

We aim for outcomes that are in the public interest. We investigate some of the more serious complaints, but in many cases we encourage the organisation being complained about to handle the matter themselves. We monitor the progress of these matters and provide advice where necessary. Our focus is on helping organisations to satisfactorily resolve any problems identified.

We help organisations to prevent or reduce the level of complaints made about them by reviewing their systems. Our proactive work also allows us to address problems if members of the public have legitimate grievances but, for whatever reason, do not or cannot take up the complaint themselves. We aim to reduce the volume of complaints to our office by providing training and advice to the organisations we scrutinise about how to effectively resolve and manage complaints. We also provide assistance, guidance and training to other watchdog agencies.

To **strengthen our governance systems** we established an audit and risk committee

SEE PAGE 13

We achieved a **4 star energy rating** recognising our commitment to the environment.



SEE PAGE 11

Operating revenue = **\$21,968m**

SEE PAGE 10



Managing our organisation

Highlights

- › Implemented a new structure that better reflects structural changes to the public sector. [SEE PAGE 4](#)
- › Dealt with 32,509 complaints and notifications, finalising more formal complaints and notifications than we received. [SEE PAGE 6](#)
- › Improved our environmental performance, receiving a 4 star NABERS rating for our tenancy. [SEE PAGE 11](#)
- › Reviewed our governance and business planning processes, ensuring that we are flexible and responsive to emerging needs. [SEE PAGE 11](#)
- › Established an audit and risk committee with independent members, complying with the NSW Treasury policy on this topic. [SEE PAGE 13](#)
- › Fully or part achieved all but one of the goals we set for 2009–2010. The goals only part achieved were for projects or other work that span more than one financial year. [SEE PAGE 16](#)
- › Reviewed our access and equity strategies. [SEE PAGE 19](#)
- › Reviewed and developed a number of personnel policies, to better support our staff. [SEE PAGE 19](#)
- › Committed resources to the ongoing development of staff, with a focus this year on developing our leadership group. [SEE PAGE 22](#)

2009–2010 saw significant change for the office as we implemented a new structure to better reflect how public services are delivered. This change will help us be more responsive to the emerging needs of the community.

We also took the opportunity to review our governance structures and our business planning to ensure that they are better aligned to our Statement of Corporate Purpose. We looked at ways to improve our work practices as well as our performance monitoring and reporting.

We aim to be an employer of choice and are committed to the ongoing support and development of our staff. Our success is the result of their hard work and commitment.

As our work is about promoting good administration and effective accountability, we believe that we must work to the same standards that we promote. Our structure, governance systems, performance monitoring and development of our staff all contribute to making us an effective organisation. These matters are outlined in this chapter.

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A year in review

This year marks the 35th anniversary of our office. While this is not a landmark date, it does present an opportunity to take stock – to look back at the last 35 years to see what has changed for our office, for the agencies we deal with, and for the community. There are a number of highlights throughout this year's report comparing where we started out to where we are now. These comparisons make it clear how far we have come.

Our work and the way we do it will continue to change – with new issues, new responsibilities and new challenges. One constant however has been our commitment to good quality service and ensuring the best outcomes for the people of NSW.

Another hallmark of our office over 35 years has been the professional, skilled and committed staff who have worked here. This year has been a challenging year and I would particularly like to thank all of them for their hard work, as well as their ability to adapt to change and thrive within our new structure. We are extremely lucky to have such a highly skilled and dedicated team.

Our new structure

In our last annual report, I noted we were in the middle of a substantial strategic planning process. One of the major developments to come out of this has been a change to the way our office is structured. This was partly driven by the financial pressure placed on us, as well as the departure of a number of senior staff. We also saw this as an opportunity to bring our structure more in line with recent changes to the public sector. Our office is now made up of four branches – the human services branch, the public administration and strategic projects branch, the police and compliance branch, and the corporate branch. More information about this structural change is included at page 4.



One of the foundations of our office is our independence. We are not answerable to the government, and we are not an advocate for the community. We are independent and impartial and we work to achieve the best outcome for all involved

Achieving results

To be effective, our office has always looked for ways to improve the way we do our work. One of the most important changes we have made is developing stronger relationships with those we deal with. This year's report reflects this focus, with a new chapter dedicated to our work around stakeholder engagement.

Some of our best results have come from taking a more consultative, informal approach to our work. We have conducted a number of targeted forums and focus groups. These are aimed at bringing various parties together, discussing relevant issues, and working to find some form of practical resolution and future direction.

This has been very effective in areas such as responding to domestic violence, decision-making around housing for those with a disability, and the processes used to assess the integrity, character and honesty of prospective employees and volunteers providing community services.

We have also increased the amount of training we offer to agencies and the community. Providing clear, relevant and targeted training in areas such as complaint-handling and good administrative practice can help to change the culture of organisations. The community education and training section of this year's report reflects our strong commitment to training (see pages 41–44 for further information).

New responsibilities and new challenges

Our roles and responsibilities have increased a great deal over 35 years, and this has continued in the last year. As part of the government plan for child protection reform, *Keeping Them Safe*, my office has been given the responsibility of auditing the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

This is one of the largest single pieces of work we have ever taken on, and we are working hard to ensure we collect all relevant information. We will report on our findings at the end of 2012. There is more detail about the audit on page 33 in *Working with Aboriginal communities*.

Keeping Them Safe is the government's response to the recommendations of Justice James Wood's Special Commission of Inquiry into Child Protection Services in NSW. He also recommended we coordinate and support the NSW Child Death Review Team. The government initially rejected this recommendation, choosing to leave the role with the Commission for Children and Young People, but the implementing Act was eventually amended to comply with Justice Wood's original recommendation.

We were recently given the requisite funding for this role, but we are still waiting for the necessary legislative changes to be made to allow us to do the work properly. We anticipate the role will be transferred to our office later this year.

The widespread change to child protection in NSW brings with it a range of challenges and risks for all involved. We will be monitoring its implementation carefully, particularly in assessing the capacity of the new system to respond to serious child protection reports and the planning and rollouts of services to support vulnerable families.

We have also seen the end of an era. We have had a complaint-handling and external review role under the *Freedom of Information Act 1989* (FOI Act) since it was first introduced. This came to an end on 1 July this year with the introduction of the *Government Information (Public Access) Act 2009* (GIPA Act).

We will continue to deal with complaints and review requests made before 1 July 2010, but the new Office of the Information Commissioner (OIC) will take up our former role in relation to GIPA Act decisions. I am pleased that Ms Deirdre O'Donnell has been appointed as the inaugural Information Commissioner. We will provide her with any assistance we can, and hope our hard work of the last twenty years will contribute to a more open and transparent government in the future.

Financial pressures

In our last annual report, I outlined the ongoing pressure being placed on our office by unfunded pay increases and efficiency dividends. These have continued to affect us this year.

I recognise the importance of ensuring that public sector agencies are as efficient as possible, but I do not believe applying blanket efficiency dividends to the entire public service is an effective way of doing this. Unlike larger agencies, my office does not have a great deal of discretionary income. Over 80% of our budget goes to paying our staff.

Put very simply, reductions in our budget mean reductions in staff numbers. It also means we simply cannot do the same amount of work as we have in the past. This is not just an issue facing NSW.

A recent review of the Commonwealth public service heard evidence from agencies that the efficiency dividend was a 'blunt instrument with which to pursue efficiency gains and has harsh impacts on smaller agencies.' This has meant that in some areas of our work we have not been able to conduct as many investigations as we have in the past.

Protecting our independence

One of the foundations of our office is our independence. We are not answerable to the government, and we are not an advocate for the community. We are independent and impartial and we work to achieve the best outcome for all involved. An important aspect of maintaining our independence is community perception. We not only have to be independent, we have to be seen to be so.

Following the creation of 12 super agencies in NSW, my office has contacted the Department of Premier and Cabinet on a number of occasions to request various changes to properly reflect our independence. Watchdog bodies are not the same as other agencies and should not be treated as such. We have jurisdiction over all government departments, including the Department of Premier and Cabinet, and community confidence can quickly be eroded if there is a perception that we are answerable to a government department.

In June, Commissioner David Ipp of the Independent Commission Against Corruption (ICAC) and I wrote to the Premier about our rental arrangements. We expressed our concern about plans for the State Property Authority (SPA) to take responsibility for the contractual relationship with our respective landlords. This decision was made without any consultation with either of our offices. The SPA falls within both ICAC and our jurisdiction, creating a potential conflict. We also stressed the extremely sensitive nature of much of the information held by both our offices and the security issues this raises.

We have since been contacted by the SPA and told they will not be taking over responsibility for our rental contract at this stage, but that our situation will be considered again in the future.

Changes to our Act

Sometimes, seeking amendments to help us do our work is a very challenging process. I have been trying to get a simple but important amendment made to the Ombudsman Act for a number of years. We are the only parliamentary Ombudsman in Australia that cannot require agencies to produce information over which they claim legal professional privilege. This can prevent us from accessing essential information during an investigation. For several years I have tried to get nine words, repeated twice, removed from our Act. This amendment would bring us into line with other Ombudsmen, as well as other watchdog bodies in NSW – such as the ICAC and the Police Integrity Commission (PIC).

At the beginning of this year, I decided to prepare a special report to Parliament outlining the need for change as well as our unsuccessful attempts to have the Act amended. Soon after the report was released, the independent Member for Port Macquarie, Mr Peter Besseling, introduced a private members Bill into Parliament to make the necessary amendment to our Act. The Bill passed the Legislative Assembly on 2 September, with support from both sides of Parliament. At the time of writing, it was yet to be considered by the Legislative Council.

This is my tenth year as Ombudsman. In that time, there has been a great deal of change within the office. These changes have helped to ensure the work we do continues to make a real difference to the people of NSW, and I am looking forward to the challenges of the year ahead.



Bruce Barbour
Ombudsman

Our structure

Pressures placed on our budget and the departure of several senior staff presented an opportunity to assess how we do our work, and in October 2009 we implemented a major restructure. Our restructure was also an opportunity to reflect changes to the public service, following the creation of the 12 super agencies in July 2009.

Our office is now divided into four branches:

- police and compliance
- human services
- public administration and strategic projects
- corporate.

Police and Compliance Branch

This branch combined our police division and our secure monitoring unit (SMU).

The police division is responsible for ensuring the NSW Police Force handles complaints about police fairly and correctly. They also review new police powers as requested by the NSW Parliament.

The SMU handles appeals and complaints under the Witness Protection Act. They also inspect the records of eligible authorities and law enforcement agencies to assess and report on their compliance with certain legislation providing them with exceptional powers.

See pages 74–86 for more information about the work of the police and compliance branch.

Human Services Branch

In creating our human services branch, we brought together the community services and the employment-related child protection divisions. This was a logical merger as these two divisions regularly deal with the same agencies and service providers.

The community services division handles complaints about, and monitors and reviews the delivery of, community services as well as reviewing their complaint-handling systems. They deal with a number of human services agencies, including Community Services, Ageing, Disability and Home Care, and non-government community service providers. As part of the restructure, this division also took on responsibility for our work with Juvenile Justice, NSW Housing and NSW Health.

The employment-related child protection division oversees the investigation of certain agencies into allegations against their employees that involve inappropriate or abusive behaviours towards children. The heads of all government and some non-government agencies – including non-government schools, children's services and out-of-home care agencies – are required to notify us of any reportable allegations or convictions involving their employees within 30 days of becoming aware of them. The division also looks at the systems agencies have in place to prevent these types of reportable conduct occurring in the workplace and to respond to any allegations against their employees.

See pages 46–72 for more information about the work of the human services branch.

Public Administration and Strategic Projects Branch

This branch combines our former general division, now the public administration division, and our former cross agency team which is now the strategic projects division.

The public administration division deals with complaints about public authorities, local councils and correctional centres. It also includes our inquiries and resolution team – often the first point of contact for people who complain or inquire about government agencies.

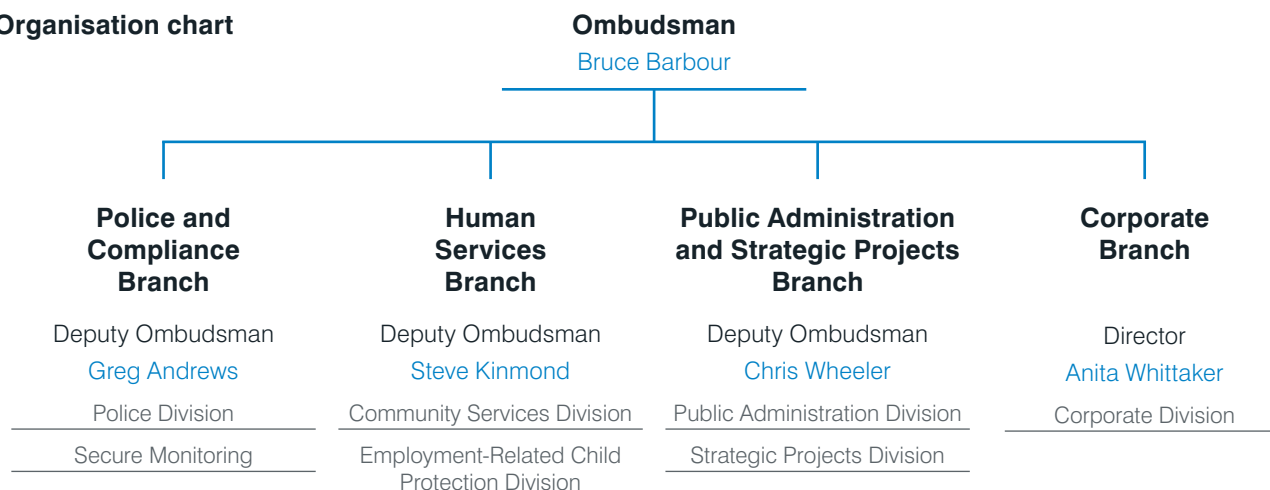
The strategic projects division (SPD) is responsible for leading major projects and investigations, particularly those that cross the jurisdictions of the Ombudsman's various operational areas. It also has a focus on Aboriginal and youth issues, so includes our youth liaison officer and Aboriginal Unit. Since the office restructure, the SPD is also responsible for our community education and training unit. This is the first time all of our external training activities have been brought together in one part of the office.

See pages 88–112 for more information about the work of the public administration division and pages 24–44 and 90 for information about the work done by the strategic projects division.

Corporate Branch

The corporate branch has remained unchanged and continues to provide support to the whole of our office. They provide strategic planning, personnel, staffing, payroll, internal training, accounting, records, information technology, publications, media and public relations services.

Organisation chart



Executive team



Bruce Barbour

LLB

Ombudsman

Bruce has been the NSW Ombudsman since June 2000. He has 25 years experience in administrative law, investigations and management. Bruce has led the office through significant change and growth, including a merger with the former Community Services Commission in 2002. Bruce was regional vice president of the International Ombudsman Institute for seven years, representing the Australasian and Pacific Region Ombudsman. He played an active role in reforming that institute and has been involved in projects aimed at strengthening the capacity of existing Ombudsman in the South Pacific. Bruce is currently a member of the Board of the Pacific Ombudsman Alliance. Before his appointment as Ombudsman, Bruce was a senior member of the Commonwealth Administrative Appeals Tribunal and a member of the Casino Control Authority. He was also a former Director of the Australian Broadcasting Authority.



Chris Wheeler

BTRP MTCP LLB (Hons)

Deputy Ombudsman

Chris Wheeler has been the Deputy NSW Ombudsman since 1994. He has over 25 years experience in complaint-handling and investigations, as well as extensive experience in management and public administration. Chris has responsibility for the public administration and special projects branch of the NSW Ombudsman. He has particular responsibility for protected disclosures and Ombudsman publications and is the sponsor of the Unreasonable Complainant Conduct project and a member of the national research team for the Whistling While They Work project.



Greg Andrews

*BA (Hons) M Env Loc Gov Law,
Graduate Cert Public Sector
Management*

Deputy Ombudsman

Greg was appointed Deputy Ombudsman in 2009. In his previous roles as Assistant Ombudsman he managed the police related functions of the Ombudsman and, for many years, the investigation of complaints about most state and local government agencies currently performed by our public administration division. He has extensive experience in management, investigations, dispute resolution, and education and training. Prior to joining the office, he worked in educational change management, university research and teaching, and legal publishing.

Recognising
35 years of
administration



Steve Kinmond

BA LLB Dip Ed Dip Crim

Deputy Ombudsman and Community and Disability Services Commissioner

Steve has held this position since February 2004. Before that, he was the Assistant Ombudsman (Police) for more than eight years. Steve has had over 14 years involvement in community services, and extensive investigation and management experience. He has also worked as a solicitor and run his own consultancy practice.



Anita Whittaker

PSM BCom

Director

Anita has worked in the NSW public sector for over 30 years and has been the head of corporate since 1997. Anita has extensive experience in public sector administration and in financial and human resource management. Anita was awarded the Public Service Medal in 2000 in recognition of her outstanding service and her ongoing contribution to the Ombudsman's office.



Julianna Demetrius

Dip Law (LPAB)

Director

Julianna has been with the Ombudsman's office for ten years. She managed the Ombudsman's police division for five years and established the cross agency team in 2007. She has extensive experience in conducting systemic investigations aimed at improving service delivery in the justice and human services sectors. Since late 2009, Julianna has been the director of the newly established strategic projects division. Prior to joining the Ombudsman's office, Julianna worked as a solicitor, and in the fields of social research and urban design.

How we keep organisations accountable

Agencies delivering public services

Who we scrutinise

- › several hundred NSW public sector agencies including departments, statutory authorities, boards, correctional centres, universities and area health services
- › the NSW Police Force
- › over 160 local and county councils
- › certain private sector organisations and individuals providing privatised public services.

How we keep them accountable

We investigate and resolve:

- › complaints about the work of public sector agencies
- › complaints about the merits of agency decisions
- › protected disclosures from public sector staff and complaints about the way agencies have handled these disclosures.

We oversee the NSW Police Force's investigations into complaints about police officers and check their complaint-handling systems. We visit juvenile justice centres and correctional centres to observe their operations and resolve concerns of inmates. We also:

- › scrutinise legislation giving new powers to police and correctional officers
- › hear appeals against decisions by the Commissioner of Police about the witness protection program
- › provide training and guidance in investigations, complaint management and good administrative conduct.

Organisations delivering services to children

Who we scrutinise

- › over 7,000 organisations providing services to children – including schools, child care centres, family day care, juvenile justice centres and organisations providing substitute residential care and health programs
- › the conduct of paid staff, contractors and thousands of volunteers working for these organisations.

How we keep them accountable

Organisations are required to notify us of any reportable allegations about, or convictions for, conduct that could be abusive to children. We oversee (and sometimes investigate) how organisations investigate these allegations about their staff, and keep under scrutiny their systems for handling such matters. We also:

- › deal with complaints from parents and other interested parties about how organisations have investigated allegations
- › keep under scrutiny the systems organisations have to prevent employees from behaving in ways that could be abusive to children
- › provide training and guidance about how to handle these kinds of allegations and convictions.

Organisations delivering community services

Who we scrutinise

- › licensed boarding houses and fee-for-service organisations
- › child protection and family support services
- › out-of-home care services for children and young people
- › home and community care services
- › services for people with disabilities
- › supported accommodation and assistance program services.

Community Services and Ageing, Disability and Home Care provide many of these services. Non-government organisations providing these services also fall within our jurisdiction if they are funded, licensed or authorised by the Minister for Community Services or the Minister for Ageing and Disability Services.

How we keep them accountable

We investigate and resolve complaints about the provision, failure to provide, withdrawal, variation or administration of community services. We review:

- › standards for the delivery of community services
- › the systems organisations have to handle complaints about their services
- › the situation of children, young people and people with disabilities who are in out-of-home care
- › the deaths of certain children, young people and people with disabilities in care.

We also:

- › visit certain services where children, young people and people with disabilities live
- › coordinate the official community visitors scheme
- › provide information and training to consumers of community services and organisations about complaint-handling and consumer rights
- › promote improvements to community service systems and access to advocacy support for people who are receiving, or are eligible to receive, community services.

Agencies conducting covert search warrants

Who we scrutinise

Law enforcement agencies such as the NSW Police Force, the Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission.

How we keep them accountable

We review agency compliance with accountability requirements for undercover operations, the use of telephone intercepts and surveillance devices, and covert and criminal organisation search warrants.

Facts and figures

This year we received a total of 32,509 complaints and notifications from a variety of people – including members of the public, families of people who are receiving community services, Members of Parliament and staff who work in the public sector. They brought wide-ranging concerns to our attention via 8,712 formal complaints and notifications and 23,797 informal complaints and inquiries to our office.

Responding to complaints and notifications

This is the third consecutive year we have finalised more formal complaints and notifications than we received (see figure 3). As our jurisdiction covers a range of agencies and specific functions under a number of pieces of legislation, we categorise matters to ensure that we provide the most appropriate response.

We sometimes receive written complaints about public sector agencies that are within our jurisdiction, but then we find that the conduct complained about is outside our jurisdiction. We initially classify these as 'formal' complaints received about public sector agencies. Written complaints received about agencies outside our jurisdiction, and oral complaints about both agencies and issues outside our jurisdiction, are dealt with informally by referring the complainant elsewhere. They are classified as 'outside our jurisdiction' from the start. Figure 1 shows a breakdown of the formal and informal complaints and notifications we received this year.

From year to year the number of complaints and notifications we receive fluctuates. This year there were small decreases in some areas of our work, but no discernable pattern. However several of the complaints we received warranted close scrutiny and, in some cases, complex investigations. These investigations are outlined in the 'business activities' section of this report. There were increases in other areas of our work – such as complaints received about local government, corrections, and agencies providing child and family services.

Figure 1: Complaints and notifications we received in 2009–2010

| Subject area | Formal | Informal | Total |
|--|--------------|---------------|---------------|
| Departments and authorities | 1,438 | 3,777 | 5,215 |
| Local government | 843 | 1,720 | 2,563 |
| Correctional centres and Justice Health | 724 | 3,399 | 4,123 |
| Juvenile justice | 72 | 212 | 284 |
| FOI | 145 | 263 | 408 |
| Child and family services | 552 | 941 | 1,493 |
| Disability services | 168 | 187 | 355 |
| Other community services ¹ | 55 | 126 | 181 |
| Employment-related child protection ² | 1,406 | 636 | 2,042 |
| Police | 3,032 | 2,498 | 5,530 |
| Outside our jurisdiction | 277 | 6,245 | 6,522 |
| Requests for information | 0 | 3,793 | 3,793 |
| Total | 8,712 | 23,797 | 32,509 |

¹ Includes complaints about Community Services, ADHC and non-government agencies.

² Formal includes 1,366 notifications and 40 complaints received.

How we handle different types of matters

We divide the complaints we receive into formal and informal matters. This determines the process we use to handle them. Generally, we define formal matters as written complaints and notifications and informal matters as complaints that are made over the telephone or in person. If a complainant is a vulnerable member of the community and it may be difficult for them to make a written complaint, we will take their complaint verbally and treat it as a formal complaint.

People who may be considered vulnerable include inmates of correctional centres, people with disabilities and young people. We may also arrange Telephone Typewriter (TTY) services and interpreting and translation services for people from culturally and linguistically diverse (CALD) communities.

Figure 2: Formal complaints and notifications finalised

| Subject | 07/08 | 08/09 | 09/10 |
|-------------------------------------|--------------|--------------|--------------|
| Departments and authorities | 1,354 | 1,310 | 1,414 |
| Local government | 788 | 672 | 875 |
| Corrections and Justice Health | 918 | 714 | 722 |
| Juvenile justice | 11 | 73 | 62 |
| FOI | 197 | 224 | 136 |
| Community services ³ | 737 | 704 | 720 |
| Employment-related child protection | 1,921 | 1,715 | 1,483 |
| Police | 3,254 | 3,094 | 3,093 |
| Agency outside our jurisdiction | 364 | 397 | 276 |
| Total | 9,544 | 8,903 | 8,781 |

³ Includes formal matters finalised in relation to child and family services, disability services and community services.

Informal matters

We categorise most telephone calls, visits to our office and inquiries made to our staff when they are working out in the field as informal. In these situations, we are usually able to help people by giving them information or an explanation, referring them to another agency or the agency they are inquiring about, or advising them to make a complaint to us in writing.

Formal matters

This year we finalised 8,781 formal matters (see figure 2). This can take anywhere from a few days to several months. Our response may range from a clarifying phone call to the agency concerned to conducting a full-scale investigation.

Figure 3: Formal complaints and notifications received and finalised

| Year | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-----------|--------|-------|-------|-------|-------|
| Received | 10,304 | 9,692 | 9,320 | 8,742 | 8,712 |
| Finalised | 10,096 | 9,576 | 9,544 | 8,903 | 8,781 |

The main pieces of legislation that govern this aspect of our work are the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Although we have coercive powers to require agencies to provide us with documents or answer our questions, we generally try to resolve individual complaints without using them. Most agencies that we contact are cooperative and understand that resolving a person's dissatisfaction with their organisation is usually beneficial for all concerned.

If we do use our coercive powers, we classify the complaint as being 'formally investigated'. The actions that we take to finalise complaints include:

- persuading the agency concerned to take some action
- providing detailed information or advice to the complainant

- making inquiries and finding no wrong conduct
- undertaking a formal investigation and making findings and recommendations (this year we finalised 26 matters this way, see figure 4).

Although we have the option to undertake formal investigations, our current strategy is to focus on major investigations and reviews (see figure 9).

Figure 4: Number of formal investigations finalised

| Branch | Total |
|--|-----------|
| Human Services | 6 |
| Police and Compliance | 2 |
| Public Administration and Strategic projects | 18 |
| Total | 26 |

Reviews of our decisions

When we finalise a complaint that we have been dealing with directly, we write to the complainant and give reasons for our decision. If they are not happy with the decision and ask us to reconsider, we:

- explain our decision-making process in more detail – including the evidence and factors we took into account in making the decision
- respond to any requests for a further review of our decision by having a senior officer – who was not involved with the original decision – review the file and provide advice to the Ombudsman.

The Ombudsman will then consider the matter and write to the complainant explaining the outcome.

Figure 5 shows the number of requests for reviews received in the reporting year, and also shows that, compared with the number of formal complaints we finalised during the year, the percentage of cases where we were asked to review our decision was very low.

The majority of our work in the child protection area is overseeing how agencies handle allegations of conduct by employees that could be abusive to children.

Only a small part of that work is handling complaints made directly to our office about how those allegations have been handled or about agencies' child protection systems.

We deal with those complaints in much the same way as with complaints about NSW public sector agencies – we may decide to decline the complaint, make preliminary inquiries or investigate.

Figure 5 shows that, of the 41 complaints made directly to our office about employment-related child protection, five complainants asked us to review the decision we made on how to handle the complaint.

Although the system of handling complaints about police requires the NSW Police Force to directly investigate each complaint and we play an oversight role, the police division considers all requests to review the way a notifiable complaint about a police officer was handled as a request to review our decision in relation to the NSW Police Force outcome. Of the 3,093 complaints about police officers that we oversighted this year, 42 complainants asked for the outcome to be reviewed.

Figure 5: Requests for a review of our decision as a percentage of formal complaints finalised

| Subject | Number of: | | Percentage breakdown | | | | |
|--|---------------------|-----------------------------|----------------------|------------|------------|------------|------------|
| | requests for review | formal complaints finalised | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
| Employment-related child protection ⁴ | 5 | 41 | 6.3 | 2.5 | 7.1 | 8.3 | 12.2 |
| Community services/Juvenile justice ⁵ | 5 | 782 | 1.9 | 1.4 | 0.4 | 0.9 | 0.6 |
| Corrections/Justice Health | 12 | 722 | 1.0 | 3.0 | 1.5 | 1.1 | 1.7 |
| Freedom of information | 6 | 136 | 7.6 | 3.4 | 3.0 | 4.5 | 4.4 |
| Local government | 70 | 875 | 9.6 | 10.2 | 11.8 | 7.7 | 8.0 |
| Other public sector agencies | 74 | 1,414 | 6.5 | 7.0 | 6.5 | 6.9 | 5.2 |
| Police | 42 | 3,093 | 1.6 | 1.7 | 1.7 | 2.0 | 1.4 |
| Outside our jurisdiction | 1 | 276 | 0.5 | 1.0 | 0.8 | 1.8 | 0.4 |
| Total | 215 | 7,339 | 3.2 | 3.6 | 3.5 | 3.3 | 2.9 |

⁴ The total in this figure excludes the 1,442 child protection notifications we finalised this year. See text for an explanation.

⁵ Includes requests for a review of our decision in relation to child and family services, disability services and community services. Juvenile justice was previously reported with corrections and Justice Health.

Figure 6 shows that in 73% of cases the Ombudsman considered that the original decision made by the delegated officer was correct. As each review may take days or weeks to complete, some reviews may not be finalised the same year the request is received. This makes the total review finalised figure different from the total review request figure.

Figure 6: Outcome of reviews conducted in 2009–2010

| Area | Original outcome affirmed after: | | Resolved | Reopened | Total |
|-------------------------------------|----------------------------------|-------------------|----------|-----------|------------|
| | reviewing the file | further inquiries | | | |
| Employment-related child protection | 4 | 1 | 0 | 0 | 5 |
| Community services | 3 | 0 | 0 | 2 | 5 |
| Corrections | 9 | 1 | 0 | 2 | 12 |
| Freedom of information | 5 | 1 | 0 | 0 | 6 |
| Local government | 43 | 18 | 3 | 5 | 69 |
| Other public sector agencies | 47 | 13 | 3 | 6 | 69 |
| Outside our jurisdiction | 1 | 0 | 0 | 0 | 1 |
| Police | 35 | 0 | 0 | 0 | 35 |
| Total | 147 | 34 | 6 | 15 | 202 |
| Percentage of total | 73 | 17 | 3 | 7 | 100 |

I would like to take the opportunity to thank you for all that you have done in regard to my matter. The office of the NSW Ombudsman has restored my belief that there is an opportunity for citizens to have their complaints heard by your office.

Thank you for your swift action ... I have never used the Ombudsman service before but thank goodness there is an organisation that can get a result for the ordinary person.

Compliments and complaints

Compliments and complaints help us to identify the aspects of our work that we do well, the areas of our service that need improvement, and expectations that exceed what we can reasonably deliver. We have an internal compliments and complaints policy, and we inform people who use our services about how to make a complaint about us.

This year we recorded 129 compliments by letter, fax, email or phone about the quality of our advice, the assistance we gave to customers, and the information provided to agencies within our jurisdiction. While we do receive formal compliment letters from members of the public and agency representatives about how our work has benefited them, we also often receive informal feedback during our consultative work or after a training, information or briefing session.

Against the 32,578 formal and informal complaints and notifications we finalised this year, we received 28 complaints about our work (see figure 7). If a complaint is justified, we will generally take some form of action to resolve it. During 2009–2010, our responses included apologising, providing an explanation, and giving greater priority to identified files (see figure 8).

Figure 7: Complaints about our office

| Issue | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|--|-----------|-----------|-----------|-----------|-----------|
| Bias/unfair treatment/tone | 4 | 6 | 6 | 5 | 8 |
| Confidentiality/privacy related | 4 | 2 | 1 | 1 | 3 |
| Delays | 7 | 6 | 5 | 3 | 6 |
| Denial of natural justice | 0 | 1 | 1 | 1 | 1 |
| Failure to deal appropriately with complaint | 14 | 13 | 11 | 9 | 8 |
| Lack of feedback/response | 2 | 4 | 5 | 3 | 5 |
| Limits to jurisdiction | 2 | 0 | 0 | 0 | 0 |
| Faulty procedures | 7 | 4 | 2 | 3 | 1 |
| Inaccurate information/wrong decision | 4 | 8 | 2 | 8 | 7 |
| Poor customer service | 16 | 17 | 5 | 5 | 7 |
| Corruption/conflict of interest | 3 | 2 | 2 | 0 | 3 |
| Other | 2 | 6 | 3 | 2 | 1 |
| Total issues | 65 | 69 | 43 | 40 | 50 |
| Total complaints | 46 | 44 | 27 | 26 | 28 |
| Percent of all matters finalised (formal and informal) | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |

Figure 8: Outcome of complaints about our office in 2009–2010

| Outcome | Total |
|--|-----------|
| Unjustified | 14 |
| Justified or partly justified | 3 |
| Some substance and resolved by remedial action | 11 |
| Total | 28 |

Systemic and proactive work

In addition to handling complaints and notifications, we undertake systemic and proactive work such as conducting audits and reviews – including child and disability death reviews and legislative reviews – and visiting communities and regional centres throughout NSW. Figure 9 outlines some of the systemic and proactive work we have done during 2009–2010. This work is also detailed in other chapters throughout report.

Figure 9: Systemic and proactive work

| Category | Type of work | 08/09 | 09/10 |
|----------------------------|---|--------|-------|
| Audits | Police records audited | 10,400 | 7,250 |
| | Controlled operation records audited | 433 | 342 |
| | Surveillance device warrants audited | 374 | 449 |
| | Covert search warrants audited | n/a | 48 |
| | Witness protection appeals | 3 | 0 |
| | Child protection 'agency' audits conducted | 18 | 11 |
| Police powers under review | Reviews of legislation conferring new police powers completed | 2 | 1 |
| | Reviews of legislation conferring new police powers in progress | 4 | 3 |
| Visits | Hours spent on visiting services (OCV program) | 8,867 | 5,941 |
| | Visits to residential services (OCV program) | 3,239 | 3,335 |
| | Correctional and juvenile justice centre visits | 60 | 65 |
| | Regional and remote communities visited | 73 | 61 |
| Reviews ⁶ | Complaint-handling systems | 20 | 34 |
| | Individual reviews (section 13) of the circumstances of children and other people in care | 35 | 50 |
| | Reviews (section 11(c)) of the delivery of community services | 7 | 0 |
| Consultations | People consulted during systemic investigations and reviews | 1,328 | 1,839 |

⁶ During 2009–2010 the deaths of 108 people with disabilities in care and 45 children were reviewable.

Balancing our books

Most of our revenue comes from the government in the form of a consolidated fund appropriation. Our final consolidated fund appropriation for 2009–2010 was \$19.833 million. The government also provided \$948,000 for certain employee entitlements such as long service leave. We received \$751,000 for our capital program – this was spent on replacing our desktops and laptops, upgrading hardware, purchasing new office equipment, and updating and improving our fit-out.

We generated \$436,000 through sales of our publications, bank interest and fee-for-service training courses.

Most of our revenue is spent on employee-related expenses including salaries, superannuation entitlements, long service leave and payroll tax. We spent just under \$17 million on these items in 2009–2010. The day-to-day running of our office costs us over \$3.8 million a year.

The cumulative effect of ongoing efficiency dividends – cuts to public sector agency budgets of 1% each year – as well as a further round of public sector pay increases, of which 1.5% per year for three years is unfunded, is having a significant impact on us.

During the year we implemented a comprehensive structural change, with the major imperative being to cut costs. As over 80% of our expenses are employee-related, our cost cutting will inevitably mean a reduction in staffing levels – and this will have an impact on the services we can provide to the community.

Figure 10: Financial summary

| | 08/09 \$'000 | 09/10 \$'000 | Change % |
|---|-----------------|-----------------|-------------|
| Operating revenue inc. government contributions | 22,096 | 21,968 | -0.58 |
| Operating expenses | 22,605 | 21,135 | -6.5 |
| Total assets | 1,862 | 3,363 | 80.61 |
| Total liabilities | 2,006 | 2,675 | 33.35 |
| Surplus/(deficit) | (509) | 832 | 263.46 |
| Total equity | (144) | 688 | 577.78 |

The Ombudsman has raised this ongoing funding issue with the government, Members of Parliament, the Parliamentary Joint Committee on the Ombudsman and Police Integrity Commission and with NSW Treasury.

As mentioned last year, we had reviewed our internal budgeting and reporting to make sure that the information we provided to our managers was comprehensive, relevant and timely. Our review looked at staffing projections, leave management and capturing commitments as well as the format of our expenditure reports.

We also considered training and other ongoing professional development for managers on interpreting financial information, acknowledging the importance of our senior staff being able to use financial information in their business planning and decision-making. During the year we refined these changes and included financial management training in our executive leadership training program.

During the year we established an audit and risk committee, as required under the NSW Treasury policy for internal audit and risk management in the public sector. This committee, through our internal audit program, will strengthen our governance program and provide some further assurance to the Ombudsman that our financial processes comply with legislative and office requirements. See page 13 in Corporate governance for more details on our audit and risk committee.

As indicated in the financial summary table (figure 10), our operating revenue decreased by 0.58% in 2009–2010 and our operating expenses by 6.5%. The major area of change in our revenue base was the \$385,000 reduction in the acceptance by the crown of employee benefits and other liabilities. We had estimated that there would be a reduction in this revenue item in 2009–2010. We had also budgeted for lower expenses after, among other things, a reduction in the funding provided for our legislative review program.

We had an increase in our asset base, with our cash and cash equivalents increasing substantially. However our liabilities have also increased more than anticipated, mainly because we drew down more funds than required – as detailed in our statement of compliance with financial directives. These funds will be returned to the consolidated fund in 2010–2011. Our employee-related liabilities, such as recreation (annual) leave and related on-costs, decreased slightly.

For more details about our financial position, see the 'Financial management' section of the report (see page 114).

Environmental program

The NSW Government Sustainability policy, which was released in December 2008, commits NSW public sector agencies to sustainable water and energy use, reducing greenhouse gas emissions and waste, improving fleet management and sustainable purchasing. Our environmental program this year focused on implementing this policy. In addition, we actively worked with the building owners to improve the environmental performance of the building.

In 2009–2010 our environment strategies included:

- monitoring our energy usage through auditing, preventive maintenance, staff education programs and purchasing energy efficient equipment
- purchasing 6% Green Power
- improving our National Australian Built Environment Rating System (NABERS) rating – after an independent audit of our energy program we were awarded a 4 star rating, an improvement of ½ a star
- monitoring the type of waste generated in our office and implementing strategies to reduce contamination of the waste stream
- improving our fleet performance through reduced petrol consumption, using fuel efficient vehicles, and achieving or exceeding the government fleet performance target for passenger vehicles
- using environmentally friendly paper and environmentally friendly printers
- recycling 100% of our toner cartridges

- negotiating improved environmental commitments as part of our lease renegotiations
- supporting the building environmental programs.

We are committed to continuously improving our environmental performance. Next year, we will consolidate our achievements and work towards improving our NABERS star rating to obtain the required government target of a 4.5 star rating by July 2011.

For more information about our environmental program, see Appendix P.

Corporate governance

Developing, implementing and maintaining a robust system of corporate governance helps us to be an effective organisation – one of our key aims. This governance system has to keep pace with our responsibilities, as well as the resources available to us. In 2009–2010 our Statement of Corporate Purpose continued to provide high level direction for our work.

In our last annual report, we discussed why we were reviewing our strategic planning processes, our organisational structure, our work processes and priorities, our business support systems, our engagement with our stakeholders and our leadership capabilities. This work continued in 2009–2010 and has led to a number of significant changes to our structure and the way we do our work.

Strategic planning

This year we developed a new strategic planning framework to better support our Statement of Corporate Purpose and strategic direction. Our senior staff agreed that our business planning needed to be better coordinated and undertaken as a whole of office exercise, so they developed and endorsed a new planning framework.

This new framework will guide our future planning activities and will ensure a whole of office focus in addressing the challenges and critical issues we face. We are also moving away from plans that were often long and complex to a more strategic, outcome focused approach with stronger links to our other planning activities.

Responding to a changing environment

We operate in a complex and changing environment, so we need to be able to effectively respond to a range of challenges. Our strategic planning activities, which include assessing our operating environment, highlighted the need for us to have:

- a flexible structure capable of responding to emerging whole of government, multi-agency or across office issues
- a seamless approach to both the public and the agencies that we deal with – ensuring that there is no duplication or inconsistency in how we perform our work
- skilled and competent staff who can adapt to a changing environment
- strong and effective leadership
- sound business processes that support our work and help us to achieve our Statement of Corporate Purpose.

Business improvement

A small business improvement unit was created as part of our strategic planning. This unit is looking closely at our systems, reviewing our critical processes, identifying any possible areas for improvement, and working closely with the divisions to help them get the most out of our resources.

Managing our office

The management of our office is overseen and driven by the senior officers group (SOG), the division managers group (DMG) and the strategic leadership group (SLG).

The SOG is made up of the Ombudsman, three Deputy Ombudsmen, and the Directors of the corporate branch and strategic projects division. The SOG meets weekly to update each other on their work and discuss any significant issues within their branch.

The DMG is made up of the managers of each division. They meet at least once a month to discuss operational issues and any changes to office policy and procedure.

The SLG is made up of our senior officers, managers and senior staff. Their initial responsibilities have centred on the strategic planning process, identifying areas where we have achieved our goals and where we can do more. This group will also have a broader ongoing role as part of our corporate governance system, helping to keep us accountable against our business plans.

Leadership capabilities

We are implementing a leadership development program to ensure our senior staff are able to effectively meet a range of future challenges. This will give the group any additional training and skills they need, as well as provide opportunities for them to draw on the experiences of leaders from other organisations.

Strong policies and procedures

Any effective system of corporate governance has to be built around clear, effective and up-to-date policy documents. Our policies, which are a statement or instruction from the Ombudsman that sets the way particular issues are to be addressed or particular decisions are to be made, ensure consistency of work practices throughout the office. We aim to review all our office policies every two years.

This year we have reviewed or created 22 policies – including our Statement of Corporate Purpose, our internal audit and audit and risk committee charters, and our access and equity policies and supporting programs.

Staff are made aware of any new or changed policy, and it is a requirement of our code of conduct that staff comply with all office policies.

How we are held to account

We expect public sector agencies to be accountable for their actions and decisions. Our office is no different, and there are a number of different ways in which we are held to account.

Reviews of decisions

We always provide complainants with reasons for the decisions we make. Some people will be unhappy with these reasons. If they believe our decision is wrong, they can ask for a review. Each matter will only be reviewed once.

When we receive a request for a review, we call the complainant first and try to resolve the matter quickly and informally. If this is not successful, the review is allocated to a member of staff who has had no previous involvement in the complaint. This staff member assesses the original complaint as well as any issues raised in the review request. When they have completed the review, they give the file to the Ombudsman along with their recommendation. The complainant will receive a letter from the Ombudsman outlining the outcome of the review. In some cases, this letter will also outline any restrictions on the complainant's future contact with our office.

This process provides members of the public with an avenue of review, but it also gives us an opportunity to improve the way we handle matters – particularly the way we communicate our decisions. Information about review requests from this year is included at page 8.

Our Parliamentary Committee

Our work is overseen by the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (the PJC). This ensures our independence as it means we are accountable to the Parliament, rather than to the government of the day.

If someone is unhappy with the way we have dealt with them, they can take their complaint to the PJC. The PJC can consider the way in which we have handled their matter, and will often contact us for additional information. However, the PJC cannot:

- reconsider a decision we have made to investigate, not to investigate or to stop investigating a particular complaint matter or conduct
- investigate a matter relating to particular conduct
- reconsider findings, recommendations or determinations the Ombudsman has made about a particular investigation or complaint.

The PJC is made up of representatives of both major parties, as well as independents and members of smaller parties.

Our 16th general meeting with the PJC was held on 30 November 2009. The Ombudsman and senior staff appeared before the committee to answer questions about our work. The committee asked a range of questions – following up issues from our last annual report and seeking further information on budgetary pressures, the use of legal professional privilege by agencies to refuse to provide us with information, our contact with Corrective Services official visitors, and the use of Tasar weapons by the NSW Police Force. The PJC's final report from this meeting can be downloaded from the NSW Parliamentary website.

The PJC is now responsible for overseeing the work of the newly created Office of the Information Commissioner. A Bill before Parliament recommends that the PJC should also be responsible for overseeing the work of Privacy NSW.

Other oversight bodies

The PJC is not the only external body that oversees our office. Like other public sector agencies, we come under the scrutiny of the Auditor-General, the Independent Commission Against Corruption, the Information Commissioner, the Privacy Commissioner, the Anti-Discrimination Board, State Records and the NSW Treasury.

We also produce a number of annual reports about our work and make a large amount of information about what we do available on our website. This information has increased since the introduction of the GIPA Act on 1 July 2010.

Managing risk

Like any organisation, it is important that we identify and effectively manage any risks relating to our work. As our key asset is the information we hold, our focus is on protecting that information. Agencies and members of the public have to be confident that the information they give us will be handled appropriately.

Using an information security management system model, we identify any potential risk factors relating to our work and put in place the necessary controls to either eradicate or reduce those risks.

This relates to our paper based systems as well as our computer network and databases.

Our information security management processes work alongside programs to manage risk in other areas such as occupational health and safety, business continuity planning, accounting, leave management and payroll.

Several years ago, we identified and assessed all of the risks we face. We grouped these risks under the following six areas:

- › unauthorised or inappropriate disclosure of information held by our office
- › unauthorised or inappropriate access to information in agency databases to which we have access
- › significantly inaccurate or incomplete information used in reports, correspondence or as the basis for findings, recommendations, suggestions or decisions
- › inadequate documentation or unintended destruction of business information or corporate knowledge
- › software and hardware problems resulting in major operating systems being out of action for significant periods
- › an inability to comply with statutory obligations.

Our security and information management steering committee meets every month and is made up of representatives from each division. They are responsible for ensuring we have appropriate systems in place to identify and effectively manage any risks that may arise. This is particularly important when we make changes to our processes or start work in a new area. The committee works closely with each division to identify these changes and plan our response to any potential risks.

The new requirement to have an audit and risk committee gives us another level of assurance about our risk management practices. Although both of these committees have different responsibilities, they will need to work closely to ensure that our risk management framework meets our ongoing requirements.

We are currently reviewing our risk management policy and promoting it to a standalone document, rather than an annexure to our information security policy as it is now.

The revised policy and our risk management framework will comply with the new standard for risk management – AS/NZ ISO 31000: 2009.

To make sure we have the best possible information security systems in place, we have accreditation against an international standard. This accreditation and our compliance with the standard is monitored through yearly audits. We have received positive reports after our accreditation audits, and we have used these reports to improve our systems and practices. We were audited in 2010.

Internal audit and the risk management committee

The NSW Treasury released its new policy on internal audit and risk management in August 2009. This policy requires public sector agencies to establish an internal audit and risk management program that has six core requirements. These requirements are to:

- › establish and maintain an internal audit function
- › establish and maintain an audit and risk committee
- › appoint an independent chair and a majority of independent members for the committee
- › maintain governance arrangements that ensure both the real and perceived independence of the committee and the strength and quality of its oversight and monitoring role
- › implement a risk management process that is appropriate to the needs of the department and consistent with the current risk standard
- › ensure that operation of the internal audit function is consistent with the relevant standard – that is, IIA International Standards for the Professional Practice of Internal Auditing and any additional practice requirements set by the policy.

Under the policy, the Ombudsman – following advice from the audit and risk committee – has to attest to compliance with these six core requirements.

We are well on our way to implementing the policy. We have already established our audit and risk committee, appointed independent members, reviewed our current internal audit and risk management activities, and started a review of our risk management policy to ensure alignment to the new risk management standard.

Our audit and risk committee has three members. Mr Jason Masters is the independent chair, Ms Carolyn Burlew is the independent member, and the Deputy Ombudsman Chris Wheeler is our office representative. The committee has met twice during 2009–2010, including a briefing by the heads of each branch on their work and challenges.

Although complying with the policy is a requirement under the *Public Finance and Audit Act 1983*, it also presents an opportunity. The committee will form an important part of our corporate governance framework and we look forward to drawing on their experience and expertise to improve our systems.

Internal Audit and Risk Management Statement for the 2009–2010 Financial Year for NSW Ombudsman

I am of the opinion that the NSW Ombudsman's Office has internal audit and risk management processes in place that are, in all material respects, compliant with the core requirements set out in Treasury Circular NSW TC 09/08 *Internal Audit and Risk Management Policy*. These processes provide a level of assurance that enables the senior management of the NSW Ombudsman's Office to understand, manage and satisfactorily control risk exposures.

I am of the opinion that the Audit and Risk Committee for the NSW Ombudsman is constituted and operates in accordance with the independence and governance requirements of Treasury Circular NSW TC 09/08. The Chair and Members of the Audit and Risk Committee are:

- › Chair – Mr Jason Masters (three year appointment)
- › Independent member – Ms Carolyn Burlew (one year appointment)
- › Non-independent member – Mr Chris Wheeler, Deputy Ombudsman (Public Administration and Strategic Projects Branch).

Yours sincerely



Bruce Barbour
Ombudsman

Our performance statement

| Purpose and goals | Performance for 2009–2010 |
|---|---|
| <p>1. Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery:</p> <ul style="list-style-type: none"> › review and report on the service, systems and conduct of agencies › monitor and report on compliance with legislative obligations and responsibilities › make recommendations and suggestions for agency improvements and/or for improving the circumstances of individuals › promote best practice standards for agency service delivery and good conduct › provide training in delivery of service, good conduct and the rights of consumers to quality services. | <ul style="list-style-type: none"> › Tabled reports in Parliament about legal professional privilege, critical challenges for reforms to the child protection system, the need for an effective interagency response to children at risk, and helping people with a mental illness access and sustain social housing. SEE PAGE 169 › Finalised a provisional report on our inquiry into the delivery of community services to the Bourke and Brewarrina communities. SEE PAGES 34–35 › Made recommendations to the NSWPF about the use of in-car video and tasers, and their practices for destroying fingerprints and classifying and notifying complaints. SEE PAGES 78–80 |
| <p>2. Deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems:</p> <ul style="list-style-type: none"> › implement and promote best practice investigation and complaint-handling methodologies within the office › use client feedback to improve our work › implement and promote best practice investigation and complaint-handling methodologies in agencies we oversight › help achieve redress for justified complaints › identify systemic causes of complaints and propose solutions. | <ul style="list-style-type: none"> › Changed our complaint assessment processes and realigned work into assessment and resolution and investigation streams in our public administration division. SEE PAGE 105 › Completed our audit of the police handling of over 400 complaints relating to domestic and family violence, and held meetings with the Professional Standards Command to discuss strategies for improving police complaint-handling systems. SEE PAGES 80–81 |
| <p>3. Be a leading watchdog agency:</p> <ul style="list-style-type: none"> › create positive relationships and work collaboratively with other Ombudsman and watchdog organisations › promote professional work practices with other Ombudsman and watchdog institutions › continuously improve our work practices. | <ul style="list-style-type: none"> › Discussed the operation of the working with children background check and contributed to the statutory review of the Commission for Children and Young People Act. SEE PAGES 61, 80 › Worked with the Commonwealth Ombudsman to assess the training needs of Ombudsman offices in Papua New Guinea and Vanuatu. SEE PAGE 31 › Continued working with Pacific region Ombudsman. SEE PAGES 31–32 |
| <p>4. Be an effective organisation:</p> <ul style="list-style-type: none"> › have appropriate structures, policies and systems to support and enhance our service delivery › attract, develop, support and encourage skilled and committed staff › capture, use and share information and knowledge to support and enhance our service delivery › be an effective public sector agency that complies with applicable laws and policies and is accountable or transparent for our actions and decisions. | <ul style="list-style-type: none"> › Implemented our new organisational structure. SEE PAGE 4 › Piloted desktop virtualisation, upgraded our telecommunications systems and replaced our PABX and voicemail system. SEE PAGE 115 › Developed a leadership program to discuss and enhance the skill of our leadership group and provided diversity training for staff. SEE PAGE 12 |

| | Future goals |
|---|---|
| <ul style="list-style-type: none"> › Promoted good public administration by making suggestions and recommendations ranging from waiving fees, providing disability training for front-line staff, and improving liaison between agencies about fine enforcement systems to setting up a co-regulators asbestos working group. SEE PAGES 89–92 › Undertook more than 271 information, community education and training activities reaching over 10,237 people, including providing 144 training workshops. SEE PAGE 41 | <ul style="list-style-type: none"> › Review police practice about the way complaints are informally resolved and how they measure complainant satisfaction. › Work with the Commission for Children and Young People to review existing arrangements with agencies that exclude the notification of reportable allegations and relevant employment proceedings. › Provide NSW Health with a report summarising the recommendations from our two-year audit project. › Complete our analysis of causes of death for people with disabilities in care, and report on our consultations with families of children with disabilities who live at home. › Deliver complaint-handling and employment-related child protection training to Aboriginal out-of-home care services. › Work with the NSWPF to draft standard operating procedures for use by LACs to prevent excessive delays in assessing matters referred to them that involve a person engaged in child-related employment. |
| <ul style="list-style-type: none"> › Negotiated a new MOU with the Division of Local Government to better manage a range of complaints able to be dealt with by both our agencies, and encouraged councils to provide training for their staff to improve their investigation work. SEE PAGE 31 › Suggested changes to legislation on internal reporting policies to provide protection for disclosures about access to government information under the GIPA Act. SEE PAGE 104 | <ul style="list-style-type: none"> › Review our procedures manual and our compliments and complaints policy. Review the way complaints have been assessed under the NSWPF's Complaint Handling Guidelines, which were rolled out in 2008 to streamline the resolution and investigation of complaints about police. › Collect information from the substitute residential care and independent school sectors to help us target our auditing and education projects. › Incorporate the findings from our research into our investigation procedures to enhance agency engagement, particularly in developing recommendations. › Develop a complaint-handling training program, in consultation with National Disability Services NSW, to meet the needs of the disability services sector. |
| <ul style="list-style-type: none"> › Hosted three successful forums on domestic violence, probity and the devolution of large institutions. SEE PAGES 28–29 › Provide agencies with current information on best practice and other relevant employment-related child protection issues, we introduced a 'practice update' fact sheet. SEE PAGE 56 | <ul style="list-style-type: none"> › Co-host the 8th National Investigation Symposium in November 2010. › Continued our work with other Ombudsman offices across Australia on phase 2 of the managing unreasonable complainant conduct project. |
| <ul style="list-style-type: none"> › Finalised new data classification and reporting system (OCV online) used by official community visitors. SEE PAGE 71 › Established an independent audit and risk committee and reviewed our governance structures. SEE PAGE 13 | <ul style="list-style-type: none"> › Review our chart of accounts to improve expenditure classification, monitoring and reporting. › Implement our disability and multicultural action plans and upgrade our HR system. › Enhance Resolve, our case management system. › Finalise improvements to our website. › Implement desktop virtualisation to streamline IT processes and reduce IT costs. |

Progress report

Each year we identify priorities or future goals for the next reporting period. The following table identifies the goals that we set for 2009-2010 and provides a short statement on our achievements, with references, where appropriate, to some more detailed information in our report about this goal.

| Purpose | Goals for 2009–2010 | Result | |
|--|--|--|---|
| Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery | <ul style="list-style-type: none"> › Audit the ongoing implementation of the <i>NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities</i>. | Audits progressing (three-year review). SEE PAGE 33 | ✓ |
| | <ul style="list-style-type: none"> › Finalise our review of planning and support for 65 young people leaving statutory care. | Undertaken a review and extended to include 124 young people in 2009. SEE PAGE 51 | ✓ |
| | <ul style="list-style-type: none"> › Complete our investigation into CS handling of victims' compensation claims for children under the parental responsibility of the Minister for Community Services. | Special report to Parliament tabled. SEE PAGE 51 | ✓ |
| | <ul style="list-style-type: none"> › Finalise our program of agency audits examining the handling of employment-related child protection allegations. | Annual audits conducted. SEE PAGE 57 | ✓ |
| | <ul style="list-style-type: none"> › Complete our review of the implementation by ADHC of policies to improve the access of Aboriginal people to disability and aged care services. | Review completed. Special report to Parliament tabled 21 September 2010. SEE PAGE 36 | ✓ |
| Deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems | <ul style="list-style-type: none"> › Finalise our audit of the police handling of complaints relating to domestic and family violence. | Audit conducted and preliminary report provided to NSWPF. SEE PAGE 81 | ✓ |
| | <ul style="list-style-type: none"> › Review the implementation of the 'streamlined' system for handling police complaints. | Reviewed and monitoring progress. SEE PAGE 75 | ✓ |
| | <ul style="list-style-type: none"> › Monitor the implementation of the recommendations resulting from our review of complaint-handling by agencies providing services under ADHC's Community Participation program. | Monitored the progress of services implementing the recommendations. SEE PAGE 64 | ✓ |
| | <ul style="list-style-type: none"> › Release our revised Complaint Handler's Toolkit. | We decided not to release a revised toolkit at this time, however we have reviewed some of the component guidelines in the toolkit, which are available on our website. | — |
| Be a leading watchdog agency | <ul style="list-style-type: none"> › Through the Pacific Ombudsman Alliance, support the three-month secondment of one of our officers to the Vanuatu Ombudsman. | One of our staff members was seconded to the Vanuatu Ombudsman's office. SEE PAGE 32 | ✓ |
| | <ul style="list-style-type: none"> › Provide advice to the Office of Police Integrity about developing a strategy for auditing police work with Aboriginal communities in Victoria. | Met with Police Indigenous Relations Staff from the Office of Police Integrity Victoria. SEE PAGE 31 | ✓ |
| | <ul style="list-style-type: none"> › Conduct another four workshops across Canada on managing unreasonable complainant conduct. | Workshops conducted and more workshops are planned for 2010-2011. SEE PAGE 32 | ✓ |
| Be an effective organisation | <ul style="list-style-type: none"> › Complete the implementation of structural changes and business improvement processes to enable us to enhance our service delivery. | Our new structure was implemented. SEE PAGE 4 | ✓ |
| | <ul style="list-style-type: none"> › Upgrade our case management system, redesign our intranet and make further improvements to our website. | Our case management system was upgraded and our project to enhance functionality commenced; our intranet was upgraded and made more user friendly; we continued our website design, which should be finalised in 2010-2011. SEE PAGE 115 | ✓ |
| | <ul style="list-style-type: none"> › Finalise OCV online, the new data classification system that will be used by official community visitors. | OCV online finalised. SEE PAGE 71 | ✓ |

Measuring our performance

To retain the independence of the Ombudsman, the position is not responsible to an individual minister. Instead the Ombudsman appears before the Parliamentary Joint Committee to answer questions about the performance of our office.

Information about the quantity, quality, timeliness and impact of our work is essential to achieving our corporate goals. Performance benchmarks measuring these factors are established at the corporate, team and individual staff level and workflow statistics are used to inform procedural changes.

Our performance statement (see pages 14–15) is a summary of our achievements during the year against the purposes outlined in our corporate plan.

Tracking our performance

We track our performance at two levels – in relation to individual matters including complaints and projects and in relation to our systems and structures for completing work.

Data from our case management system is used to monitor turnaround times and identify where there may be backlogs, delays or inefficiencies. For example, we periodically review all files that have been open for more than six months and develop strategies to address any issues that may be causing unnecessary delay.

The integrity and accuracy of the data we keep is crucial to the effectiveness of our work and our ability to monitor our performance. We periodically conduct internal audits of the recording of information on our case management system to check that it is accurate.

Informing decision-making

Our assessment of complaints and notifications also needs to be sound and consistent. We have systems for consultation and discussion to ensure that the appropriate decision is made at the outset. We also make sure that if a complainant asks for a review of our decision, a more senior member of staff conducts the review.

We use close supervision and periodic file audits to review the quality and consistency of our work. This helps ensure that the decisions we make are sound and files are managed efficiently and effectively.

It is also important that any correspondence and reports we send out are factually accurate and properly reasoned. We have rigorous procedures for supervising, checking and authorising these documents.

Our people

We have 197 people working for our office on either a full or part-time basis. These people are an energetic and diverse mix of experience and skill and come from a range of backgrounds – including investigative, law enforcement, community and social work, legal, planning, child protection and teaching. Our collective experience gives us insight into the agencies we keep accountable and helps us to be persuasive advocates for change.

Human resources

Any exceptional movement in wages, salaries or allowances

In September 2008, the Industrial Commission endorsed a memorandum of understanding (MOU) between the NSW Government and the Public Service Association (PSA) to change award conditions and implement workforce reforms in a number of areas – including sick leave, excess staff and annual leave liability reduction. This agreement approved wage increases of 4% per annum over a three year period starting in July 2008, including a 4% increase effective July 2009. This decision affected all our non-senior executive staff.

Although increases of 4% were approved, funding of only 2.5% was provided in the annual budget allocations of agencies, including the Ombudsman. It was expected that the MOU would result in savings to fund the unfunded component of the pay increases. If the MOU changes did not find sufficient savings, agencies had to identify other strategies to meet their ongoing obligations to pay the awarded pay increases. The only strategy available to the Ombudsman was to reduce staff numbers.

The Ombudsman has no role in negotiating pay increases for his staff, as the Director General of the Department of Premier and Cabinet (DPC) is the employer for industrial purposes. From October 2009, a 3% increase was paid to our statutory officers including the Ombudsman.

Personnel policies and practices

Our staff are employed under the provisions of the *Public Sector Management and Employment Act 2002*. This Act, associated regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 set the working conditions of all public sector staff. We therefore have little scope to set working conditions and entitlements for our staff. The Director General of the DPC negotiates conditions and entitlements with the relevant unions.

As mentioned in our 2008–2009 annual report, there were significant changes to award conditions and entitlements after the signing of the MOU. Implementing these changes – particularly to sick leave and family and community services (FACS) leave – provided challenges for us as there were inconsistencies in the award that made these provisions difficult to apply. To address these inconsistencies the Ombudsman approved a number of new policies this year, including a FACS leave policy. We are still negotiating a policy for sick leave through our Joint Consultative Committee (JCC).

We continued to systematically review our personnel-related policies and systems to ensure that they help achieve purpose 4 of our Statement of Corporate Purpose – to be an effective organisation.

We updated or reviewed our good working relationship policy, reasonable adjustment policy, child protection policy, study assistance policy, breastfeeding policy and our Aboriginal employment strategy. All policies created or reviewed were negotiated through our JCC.

We mentioned last year that we would be implementing 'KIOSK', a self-service facility enabling staff to directly access and change their personal information in our personnel database. KIOSK also allows staff to monitor and apply for leave online.

This project was delayed due to staffing changes in our personnel section, the need to reprioritise our work after the Ombudsman's decision to restructure in October 2009, and the impact of the introduction of e-recruitment in the public sector.

Priority projects for 2010–2011 will include implementing KIOSK and finalising the rollout of e-recruitment.

Working with our JCC

The MOU between the NSW Government and the PSA resulted in changed award conditions and workforce reforms affecting all staff covered by the public sector salaries award. Interpreting and implementing these changes was the subject of significant discussion with staff, mostly through our formal consultative arrangement – the JCC.

The JCC continued to work cooperatively during the year particularly when discussing the office restructure, the impact of the unfunded portion of the pay increases, and award and entitlement changes. For example, they:

- › considered broader policy changes agreed to in the MOU and how best to implement these for our office
- › monitored our job evaluation outcomes, after we adopted a new process of having evaluations done by a designated staff member rather than a committee
- › discussed changing our flexible working hours scheme, changes to sick and FACS leave, and the introduction of purchased leave
- › took an active interest in the review of our structure and the Ombudsman's decision to have a formal restructure in October 2009
- › discussed the impact of the restructure on staff, and how work processes, priorities and outcomes were affected, and whether there would be any increase in workloads.

The involvement of the JCC, and the staff representatives in particular, enabled the restructure to be implemented without undue anxiety among staff.

Priority areas for the JCC in 2010–2011 will be finalising their review of our collateral flexible working hours agreement. This was delayed due to the discussion between DPC and the PSA about sector wide changes.

Figure 11: Staff levels

| Position | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|----------------------------------|---------------|---------------|---------------|---------------|---------------|
| Statutory officers | 6.00 | 6.00 | 5.00 | 6.00 | 4.00 |
| Investigative | 69.60 | 66.17 | 65.90 | 74.13 | 70.18 |
| Investigative support | 30.44 | 34.00 | 35.65 | 25.60 | 23.40 |
| Project and research | 15.60 | 16.60 | 15.60 | 14.10 | 20.66 |
| Training and community education | 3.20 | 3.58 | 3.50 | 3.30 | 2.30 |
| Inquiries | 8.00 | 9.00 | 10.00 | 7.00 | 9.94 |
| Community visitor support | 2.80 | 3.00 | 2.80 | 2.80 | 2.80 |
| Systemic review | 11.70 | 12.10 | 13.40 | 12.81 | 10.10 |
| Corporate | 25.86 | 29.43 | 23.97 | 24.74 | 27.17 |
| Total* | 173.20 | 179.88 | 175.82 | 170.48 | 170.55 |

* full-time equivalent

Chief and senior executive service

Our office has four senior positions – the Ombudsman and three Deputy Ombudsmen. The number of senior positions was reduced by two following the office restructure in October 2009.

As at 30 June 2010, all senior staff were males. Please see figures 12–14 for details of the levels of our senior positions and their remuneration. In addition to chief and senior executive service (SES) staff, we employ a number of senior officers, which is a public sector classification with equivalent pay scales to the SES. Details of all our executive officers, both SES and senior officers, can be found in figure 12. As at 30 June only 2 or 29% of our executive were women. This is a reduction from the previous year.

Figure 12: Chief and senior executive service

| Position | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|--------------|----------|----------|----------|----------|----------|
| SES Level 4 | 2 | 2 | 2 | 2 | 3 |
| SES Level 2 | 3 | 3 | 2 | 3 | 0 |
| CEO* | 1 | 1 | 1 | 1 | 1 |
| Total | 6 | 6 | 5 | 6 | 4 |

* CEO position listed under section 11A of the *Statutory and Other Offices Remuneration Act 1975*, not included in Schedule 2 for the *Public Sector Employment and Management Act 2002*.

Figure 13: Senior officers with remuneration equal to or exceeding SES level 1

| | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------|-------|-------|-------|-------|-------|
| Total number | 7 | 9 | 8 | 9 | 7 |
| Number of women | 2 | 4 | 4 | 4 | 2 |
| Percentage of women | 29 | 44 | 50 | 44 | 29 |

Figure 14: Executive remuneration

| Position | Ombudsman |
|---|---------------|
| Occupant | Bruce Barbour |
| Total remuneration package | \$427,356 |
| \$ Value of remuneration paid as a performance payment | Nil |
| Criteria used for determining total performance payment | n/a |

Equal employment opportunity

Our EEO program aims to achieve fair practices and behaviour in our workplace. These include:

- recruitment, selection and promotion practices that are open, competitive and based on merit
- access for all staff to training and development
- flexible work arrangements that meet the needs of all staff and create a productive work environment
- grievance handling procedures that are accessible to all staff and deal with workplace complaints promptly, confidentially and fairly
- sound communication channels that give staff access to information and allow their views to be heard
- management decisions made without bias
- no unlawful discrimination or harassment in the workplace
- respect for the social and cultural backgrounds of all our staff.

The NSW Government has set targets for the employment of people from various EEO groups. Measurement against these targets is a good indication of how effective our EEO program has been. The following performance indicators compare our performance against these government targets.

Performance indicator: Trends in the distribution of EEO groups

| 2009–2010 EEO Group | Target | Result | | | | |
|---|--------|--------|-------|-------|-------|-------|
| | | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
| Women | 100 | 89 | 90 | 88 | 90 | 87 |
| Aboriginal and Torres Strait Islander people | 100 | n/a | n/a | n/a | n/a | n/a |
| People whose language first spoken as a child was not English | 100 | 88 | 89 | 86 | 85 | 83 |
| People with disabilities | 100 | n/a | n/a | n/a | n/a | 106 |
| People with disabilities requiring work-related adjustment | 100 | n/a | n/a | n/a | n/a | n/a |

Interpretation: A distribution index of 100 indicates that the centre of the distribution of the EEO group across salary levels is equivalent to that of other staff. Values less than 100 mean that the EEO group tends to be more concentrated at lower salary levels than is the case for other staff. The more pronounced this tendency is, the lower the index will be. In some cases the index may be more than 100, indicating that the EEO group is less concentrated at the lower levels. Where n/a appears, the sample was not sufficient to draw a conclusion. The distribution index is automatically calculated by the Department of Premier and Cabinet from information provided by the Ombudsman.

Performance indicator: Trends in the representation of EEO groups

| 2009–2010 EEO Group (%) | Target | Result | | | | |
|---|--------|--------|-------|-------|-------|-------|
| | | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
| Women | 50 | 72 | 71 | 73 | 71 | 72 |
| Aboriginal and Torres Strait Islander people* | 2.6 | 2 | 2 | 2.5 | 3.6 | 3.1 |
| People whose language first spoken as a child was not English | 20 | 18 | 17 | 20 | 21 | 19 |
| People with disabilities | 12 | 7 | 7 | 6 | 7 | 12 |
| People with disabilities requiring work-related adjustment | 7 | 1.5 | 2 | 2 | 2.6 | 3.7 |

* Target was changed from 2% to 2.6% during the 2009–2010 reporting year.

Promoting good working relationships

In December 2009, the Ombudsman approved a good working relationship policy. It was negotiated through our JCC and reinforces the obligations of all staff to ensure that our workplace is free from harassment. We are also currently reviewing our grievance handling policy.

To promote respect for the social and cultural backgrounds of our staff, we continued our in-house training on Aboriginal cultural appreciation. Our aim is for all staff to attend this course. We also continued our disability awareness training, using attitudinal and practical sessions to illustrate issues facing people with disabilities. This training also focused on improving our work practices when dealing with people with disabilities.

This year, we also conducted cultural awareness training to promote respect and understanding for people from diverse backgrounds.

Access and equity programs

This year, we undertook a comprehensive review of our access and equity programs as it is essential that our office is accessible to anyone who needs us. This review and the strategies we developed support our EEO outcomes.

Multicultural policies and services program (MPSP)

Under MPSP, all NSW Government agencies must implement and report on their strategies to enhance and promote multiculturalism. Our MPSP outlines our strategies to:

- deliver services that are appropriate to a culturally diverse client group
- put in place flexible and inclusive consultation processes that are integrated into our planning processes
- provide training for staff on cultural diversity issues
- provide language services and information in ways that will reach all areas.

For more details about our MPSP, see Appendix Q.

Aboriginal policy

This policy outlines our commitment to improving our services to Aboriginal people as well as working with key agencies to improve the delivery of their services. (See page 32 in Working with Aboriginal communities for more details of our work in this area). The policy details strategies we have or will have in place to comply with our legislative obligations or policy responsibilities and identifies the following priority areas:

- improved services and outcomes
- accountability
- improved accessibility
- employment opportunities
- cultural appreciation training
- welcome/acknowledgement of country
- monitoring and reporting
- supporting plans.

To improve employment opportunities within our office, we have also developed an Aboriginal employment strategy action plan.

Disability action plan (DAP)

This plan outlines our commitment to achieving the outcomes for people with disabilities set out in the NSW state plan and guidelines for disability action planning by NSW government agencies. Our DAP, which complies with Section 9 of the *NSW Disability Services Act 1993*, outlines our strategies to:

- identify and remove barriers
- provide information about our services in a range of accessible formats
- make our facilities and services accessible
- assist participation in public consultations, government advisory boards and committees
- increase employment participation of people with disabilities in the NSW public sector
- use government decision-making programs and operations to influence other agencies and sectors to improve community participation and quality of life.

Our DAP will guide the delivery of programs and services to people with disabilities until the end of 2014. For more details about our DAP, see Appendix Q.

Flexible work arrangements

We promote flexible work options to enable staff to balance their work and personal commitments. We offer part-time work, flexible working hours, working at home arrangements and a range of leave options. We have 58 staff who work on a part-time basis.

We began discussions through our JCC on renegotiating our flexible working hours agreement, but this was delayed due to sector wide discussions on this issue in the Industrial Relations Commission.

We also started negotiations on a purchased leave scheme and this should be finalised in early 2010–2011.

EEO and personnel policies and practices

Our personnel policies support EEO by ensuring a diverse and skilled workforce, fair work practices and behaviours, and employment access and participation by EEO groups. Figures 15 and 16 show the gender and EEO target groups of staff by salary level and employment basis – permanent, temporary, full-time or part-time.

This year, we maintained our strong commitment to training – providing a range of professional development opportunities for staff, programs to improve the skills of supervisors, as well as our in-house programs on Aboriginal cultural appreciation and disability awareness.

Figure 15: Staff numbers by employment basis

| Employment basis | Total staff (no.) | Breakdown by EEO group | | | | | | |
|---------------------|-------------------|------------------------|------------|--|---|---|--------------------------|--|
| | | Men | Women | Aboriginal and Torres Strait Islander people | People from racial, ethnic, ethno-religious minority groups | People whose language first spoken as a child was not English | People with disabilities | People with disabilities requiring work-related adjustment |
| Permanent Full-time | 112 | 34 | 78 | 4 | 32 | 23 | 14 | 5 |
| Permanent Part-time | 48 | 8 | 40 | 2 | 11 | 9 | 4 | 2 |
| Temporary Full-time | 21 | 7 | 14 | 0 | 7 | 5 | 1 | 0 |
| Temporary Part-time | 6 | 1 | 5 | 0 | 1 | 0 | 1 | 0 |
| Contract – SES | 3 | 3 | 0 | 0 | 0 | 0 | 2 | 0 |
| Contract – Non SES | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Training Positions | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Retained Staff | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Casual | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 191 | 54 | 137 | 6 | 51 | 37 | 23 | 7 |

Figure 16: Staff numbers by level

| Level | Total staff (no.) | Breakdown by EEO group | | | | | | |
|-----------------------|-------------------|------------------------|------------|--|---|---|--------------------------|--|
| | | Men | Women | Aboriginal and Torres Strait Islander people | People from racial, ethnic, ethno-religious minority groups | People whose language first spoken as a child was not English | People with disabilities | People with disabilities requiring work-related adjustment |
| < \$38,144 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$38,144–50,099 | 9 | 1 | 8 | 1 | 6 | 5 | 2 | 1 |
| \$50,100–56,008 | 11 | 0 | 11 | 0 | 5 | 4 | 0 | 0 |
| \$56,009–70,873 | 36 | 6 | 30 | 1 | 16 | 13 | 3 | 0 |
| \$70,874–91,652 | 85 | 24 | 61 | 3 | 19 | 10 | 9 | 5 |
| \$91,653–114,566 | 42 | 18 | 24 | 1 | 5 | 5 | 6 | 1 |
| > \$114,566 (non SES) | 5 | 2 | 3 | 0 | 0 | 0 | 1 | 0 |
| > \$114,566 (SES) | 3 | 3 | 0 | 0 | 0 | 0 | 2 | 0 |
| Total | 191 | 54 | 137 | 6 | 51 | 37 | 23 | 7 |

The year ahead

2010–2011 will see the introduction of a public sector e-recruitment system. This will require us to review our recruitment processes and, where possible, align them to the new sector wide system.

Recent changes to the conditions of service award commits agencies to implementing a capability framework, changing the way positions are described. Position descriptions using capabilities are also required for the new e-recruitment system. We have begun a review of our position descriptions in light of these new requirements which will be finalised next year.

Occupational health and safety

As an employer, we are required to provide a safe work environment for our staff. We are subject to the provisions and responsibilities outlined in legislation such as the *Occupational Health and Safety Act 2000* as well as public sector occupational health and safety (OH&S) policies. We use a risk management approach to our OH&S activities and have approved policies and supporting programs in place that provide guidance to both managers and staff in a range of areas including:

- occupational health and safety strategies and procedures
- a return to work program
- a first aid plan
- workplace inspections.

New OH&S representative

During the year, staff elected a new OH&S representative whose role is to keep under review the measures taken to ensure the health, safety and welfare of staff at work. This representative has the power to investigate OH&S matters and help to resolve issues. A number of matters were raised by the representative and action was taken to resolve them.

Reasonable adjustments

During the year, we modified a number of work areas or work processes to help staff who have either ongoing medical conditions or other specific needs. Adjustments were made to workstations, changing the placement of lights and installing special software. Some of these modifications were made after medical or other external professional assessments. We also reviewed our reasonable adjustment policy.

Emergency evacuation procedures

We continued to participate in the building's emergency evacuation training program with all wardens attending training at least twice a year. All staff participated in the building's emergency evacuation drill.

Promoting staff wellbeing

We provide an employee assistance program (EAP) including a free 24-hour counselling service for staff and their families. Also, to support our staff in a high volume work environment that is undergoing change, we engaged IPS – our EAP provider – to conduct lunchtime briefings on topics such as stress management, conflict resolution and increasing motivation.

Other programs to support OH&S

We have a number of other programs that help us to meet our health and safety obligations. These include:

- Hepatitis vaccinations – staff who visit correctional centres are vaccinated against hepatitis A and B.
- Flu shots – we organise flu shots for staff to prevent high levels of absenteeism during the flu season.
- Basic first aid – we have appointed a number of staff as first aid officers who are able to respond to minor workplace injuries. We cover the costs of any initial and any ongoing training and pay these staff a yearly allowance for undertaking this role.

Workers compensation

We participate in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. Although we actively manage our workers compensation claims, there was an increase in the number of claims reported to our insurer this year compared with the previous year (see figure 17). This year nine workers compensation claims were reported.

Figure 17: Workers compensation

| Claims entered in the year | 06/07 | 07/08 | 08/09 | 09/10 |
|----------------------------|-------|-------|-------|-------|
| Claims brought forward | 9 | 9 | 6 | 2 |
| New claims | 9 | 6 | 5 | 9 |
| Claims closed | 9 | 9 | 9 | 7 |
| Open claims 30 June 2010 | 9 | 6 | 2 | 4 |

Figure 18: Workers compensation incidence rate

| Number of | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|----------------------------------|-------|--------|--------|--------|--------|
| Injuries reported | 11 | 5 | 6 | 5 | 9 |
| Employees (full-time equivalent) | 172.3 | 179.88 | 175.82 | 170.48 | 170.55 |
| Incidence rate (%) | 6.38 | 2.79 | 3.41 | 2.93 | 5.28 |

Another indicator of the success of our strategies to reduce injuries at work is to calculate the incidence of claims as a percentage of our equivalent staff numbers. Figure 18, shows that our incidence rate increased from just under 3% to 5.28% in 2009–2010. Four of the new claims received were from injuries that occurred outside our office, either on the journey to or from work or during lunchtime. These types of claims are covered under the workers compensation scheme. The public sector incidence rate target is 2.2%.

Working together: public sector workplace health and safety and injury management strategy

In June 2010, the NSW Government released its new strategy to reduce the incidence and severity of injury and illness to public sector employees. The ultimate aim is to decrease the duration and cost of workers compensation claims and improve return to work outcomes.

During 2010–2011, we will be reviewing our OH&S program to ensure that our activities support the working together strategy.

Learning and development

One of the goals of our Statement of Corporate Purpose is to attract, develop and encourage skilled and committed staff. One way of achieving this is to provide learning and development opportunities that enable staff to more effectively perform their current role and gain skills to assist them progress their careers.

This year we continued our multifaceted training schedule which included coordinated induction sessions, job specific training, and in-house workshops held by external training providers. Staff also attended a range of external courses to gain job specific skills.

With ongoing financial pressures, the resources allocated to training in 2009–2010 were less than the previous year. We took a more strategic approach to staff training to ensure that, even with a reducing budget, we continue to provide ongoing development opportunities for our staff.

Figure 19: Training expenditure

| Year | Value \$'000 |
|-------|-----------------|
| 05/06 | 117 |
| 06/07 | 220 |
| 07/08 | 180 |
| 08/09 | 125 |
| 09/10 | 101 |

Developing professional skills

We encourage staff to attend training courses and conferences to enhance their professional skills and to support the work of the office.

This year, our staff attended a range of conferences – including the National Juvenile Justice Seminar, the National Disability Summit and the Indigenous Young People, Crime and Justice Conference. These conferences gave staff the opportunity to learn from industry experts, to improve their understanding of contemporary issues impacting on our work, and to network with people with similar roles, experiences and skills.

Staff also attended a range of external training including courses on presentation skills, fringe benefits tax, speed reading, communication skills and project management.

A number of staff also attended our public focused training sessions run by our own training staff, such as Managing Unreasonable Complainant Conduct.

We also arranged for external presenters to hold training sessions on a range of issues specific to our complaint-handling and other activities.

Leadership development

At our executive planning day, we agreed that we needed to invest more in developing our senior staff. As a group, they are less likely to attend training or other professional development activities and this can mean that their skills to address contemporary management and strategic issues may be outdated.

The leadership program we are developing will initially focus on strategic planning and thinking, managing change, and financial and human resource management.

This year a number of our senior staff attended 'Expanding your leadership capabilities' training.

Raising awareness

We continued our training on improving how we deal with the public. During the year, we ran our disability awareness and Aboriginal cultural awareness training sessions for staff. Both courses were developed in-house and attendance is compulsory as all our staff need to fully understand the needs and issues affecting these groups.

This year, we also engaged the Baulkham Hills Holroyd Parramatta Migrant Resource Centre to conduct cultural awareness training.

Spotlight on supervisors

We continued our program of equipping supervisors with necessary skills and knowledge to effectively carry out their responsibilities – including providing training on supervisory skills, EEO and performance management.

Figure 20: Time spent on training

| Number of | Total |
|--------------------------------|---------|
| Courses attended | 73 |
| Full-time equivalent staff | 170.55 |
| Total time spent – hours | 2,178.6 |
| Total time spent – days | 311.28 |
| Days training per staff member | 1.83 |

Better equipping new staff

Our formal induction program ensures that all new staff receive consistent information about our office and our policies, processes and obligations. Within the first three months of joining the Ombudsman, new staff attend training on our electronic document management and case management systems, security awareness training, and an information session where representatives from across the office provide a brief overview of the role and structure of their area. To inform all new staff about our functions, jurisdiction and responsibilities we hold Ombudsman What, When, Why and How training sessions – this is the first module from our investigation training program.

Supporting other programs

Staff development also means encouraging staff to undertake further study to enhance their skills. During 2009–2010, two staff members participated in the Public Sector Executive Development Programs sponsored by the DPC and four staff used study leave provisions to undertake tertiary education courses.

The year ahead

Our office is organising the National Investigation Symposium to be held in November 2010, and this is a unique opportunity for our staff to maintain and increase their investigative knowledge, skills and techniques. We are also updating our in-house investigation training course and will offer this to staff in 2010–2011.

We have begun to capture training details in our centralised human resources database and next year will be able to report office wide on our training activities. Figure 20 shows the time spent on training in 2009–2010.



Business activities

Highlights

- › Resolved individual and systemic issues through inquiries made to the office. [SEE PAGE 24](#)
- › Hosted three successful specialist forums – a domestic violence community stakeholders forum, a forum convened in partnership with the Disability Council of NSW and a roundtable forum made up of lead human services agencies and peak representative bodies to look for ways to strengthen probity standards in organisations funded to deliver services. [SEE PAGES 28–29](#)
- › Finalised a provisional report on our inquiry into the delivery of community services to the Bourke and Brewarrina communities. [SEE PAGES 34–35](#)
- › Brought together the heads of health, police and other agencies to work on ways to give victims of sexual assault in remote areas easier access to medical practitioners to undertake forensic examinations. [SEE PAGE 37](#)
- › Initiated research into the availability and effectiveness of interventions used to identify and manage young people. [SEE PAGE 38](#)
- › Undertook more than 271 information, education and training activities reaching an estimated 10,237 people. [SEE PAGES 41–44](#)

| | |
|---------------------------------------|----|
| › Inquiries | 24 |
| › Stakeholder engagement | 25 |
| › Working with Aboriginal communities | 32 |
| › Community education and training | 41 |

1 Cross jurisdiction

An important part of our role is to help members of the public and agencies to deal with complaints and related issues. We also actively reach out to various stakeholders to increase awareness of our role, identify critical issues and look for ways to improve our service, and we work hard to bring about positive changes in relation to significant issues.

This section reports on the work of our strategic projects division, which leads major projects and investigations that cross the jurisdictions of the Ombudsman's various operational areas, including much of our work with Aboriginal communities and young people. The division also has responsibility for our community education and training work.

Inquiries

Our inquiries and resolution team receive nearly 500 calls and visits each week from members of the community wanting to make contact with us or complain about a range of public sector agencies in NSW.

We listen carefully to their complaints and advise them on their options and what action they should take. Our good working knowledge of the functions and policies of most NSW agencies enables us to help complainants clarify the issues they have and what a reasonable outcome might be, as well as explain the process they should follow for making a complaint to the agency concerned.

Resolving individual and systemic issues

The frontline contact we have with the public enables us to resolve individual conduct or service issues as well as identify systemic failures – such as lack of information, delays in decision-making, or problems in the application of a law, policy or procedure – that we may be alerted to after receiving a number of calls about the same issue. We encourage agencies to address these systemic issues so that future service users do not have similar difficulties.

For example, we are often contacted by Housing NSW tenants, applicants and neighbours about issues such as eviction and homelessness, maintenance and refused housing applications. We may provide advice to the complainant about Housing NSW's policies and procedures to explain that they have acted appropriately, or suggest options for taking the matter further – either on appeal or through Housing NSW's Client Feedback unit. Alternatively, we may contact Housing NSW to ensure appropriate action is being taken in response to an individual's specific case or to alert them to the need to review a particular policy or procedure.

For further details about our work in the housing area, see page 89 in Departments and authorities.

Helping vulnerable people

Many vulnerable people contact us each year – their lives are often complex, and they frequently have contact with a number of government agencies and non-government services. Often, clients with complex needs require assistance in making what would otherwise be considered straightforward inquiries. This is usually because they lack confidence, or because they may have had difficulty understanding the reasons provided by a government agency for a decision or a process.

For example, an inmate contacted us after she had been transferred from one correctional centre to another. She was anxious to speak with her family as she had just found out she was pregnant. However, centre staff had not fully set up her phone account. She called us two days after her arrival about this, so we called the centre. Centre management immediately rectified the situation and the inmate was able to speak with her family.

CS 1: Elderly couple confused about move

An elderly non-English speaking couple called us about Housing NSW wanting to relocate them. They felt they were under threat of eviction. The move was a result of building work funded by the Commonwealth government's stimulus package. Housing NSW decided to repair or rebuild many public houses across NSW with this funding. However, the couple did not understand this process. We clarified the couple's concerns via an interpreter, spoke with Housing NSW who then contacted the couple through an interpreter, and the matter was resolved. Housing NSW also informed us about how they were implementing the stimulus program and managing affected tenants, including appeal options. We then used this information in our daily work to ensure other callers understood the process.

CS 2: Better contact between the NSW TG and the SDRO

A client of the NSW Trustee and Guardian (NSWTG) had a large State Debt Recovery Office (SDRO) debt after being fined for travelling without a ticket a number of times. His father complained to us that as his son has a mental illness – and the fines were issued when his son was unwell – they should be waived. Although the NSWTG made an arrangement for the fines to be paid, the ongoing repayment arrangement was causing hardship for his son. His father wanted the NSWTG to be more proactive in asking the SDRO to cancel the debt.

When we first made contact with the NSWTG they maintained that there was no basis for asking the SDRO to waive the fines. In addition, fines may be sent directly to the client so the NSWTG may not know that they exist. We did not think this was satisfactory and contacted the SDRO to find out what could be done. As a result of our involvement, it was agreed the client's debt would be cancelled in full and a formal contact arrangement was established between the SDRO and NSWTG. The NSWTG agreed to review their client data to get a better understanding of what fines were outstanding and whether they could ask the SDRO to consider waiving them.

Handling unreasonable expectations

We pride ourselves on the professional and respectful way we handle unreasonable complainant conduct. Our approach is based on our *Managing Unreasonable Complainant Conduct Practice Manual*. This practice manual is available to all agencies on our website.

A small minority of complainants have unreasonable expectations about what they want to see happen or find it hard to control their anger about what has, or what they perceive has, happened to them. Some will never give up on the outcome they believe is right and fair. Our staff have to manage these expectations and help complainants understand what a reasonable outcome in their case might be. Not all complainants of course accept this.

CS 3: Finding out both sides of the story

An inmate from a correctional centre contacted us complaining about his lack of medical assessments and access to medication. We acknowledged how he felt, explained we would make inquiries, and what – based on our understanding of the correctional system – he could realistically expect to happen. Our focus was on his access to the clinic and the information he was given, as medical assessments are clearly outside our general expertise. We contacted the centre's Justice Health staff about the inmate's concerns.

The centre's Justice Health staff told a different story to the one the inmate gave us. They confirmed he was accessing the clinic for assessment and outlined the treatment they could provide. They also appeared to be communicating satisfactorily with him. We discussed this outcome with the inmate, but he clearly did not want to hear this. His focus was solely on receiving the particular medication he wanted. Unfortunately, he remained frustrated and agitated and felt no one was listening to him. However, our staff were able to make it clear that if he wished to raise concerns about decisions relating to his medication, he would need to raise them with the Health Care Complaints Commission.

Improving access to our services

We select our inquiry and resolution staff for their ability to communicate well with many different people. We also use Telephone Typewriter (TTY) services and interpreting and translation services to ensure all members of the community have access to our services and can understand our discussions.

Often, we need to refer complainants to another agency as their complaint is outside our jurisdiction. This year we reviewed our online complaint form to help complainants access the relevant agency more quickly and easily. Complainants can now learn at the very outset if their complaint is outside our jurisdiction and be given the contact details for the relevant agency. For example, a complainant selecting 'banking' on our initial drop down list is given the contact details for the Financial Ombudsman Service and a brief explanation why they should be contacted. This saves everyone involved both time and effort and helps to promote a more speedy resolution of a complainant's concerns.

Our website also has tips for making a complaint – including information about what to include in your letter, who to send it to, and what to do if you are unsuccessful.

In the past, we have explored the possibility of implementing a 'one-stop-shop' for all complaints about NSW public sector agencies. The basic concept is that anyone who had a complaint about any aspect of public administration in NSW could contact us for relevant advice and the appropriate referral. We envisaged this to include an online complaints system (single electronic portal and postal address) where complainants would not need to understand the complexities of the integrity/watchdog environment to know which agency was the most appropriate to deal with their complaint. Unfortunately, the necessary funding was not available at the time to implement this.

However, we are now revisiting the idea and plan to start discussions with the other complaint-handling organisations within NSW about developing a Complaints NSW website. This website would provide direct access and information to each individual agency, and broad information about complaint-handling – including tips and other useful advice. We will report on developments in our annual report next year.

Stakeholder engagement

Engaging with key agencies, groups and individuals is an essential part of our business. By reaching out to our stakeholders we aim to identify critical issues of concern for members of the public and significant agency developments, lower the barriers to accessing our services, and increase awareness of the role of our office.

Who are our stakeholders?

Our stakeholders include consumers of our services, local agency staff, community workers, peak bodies and advocacy groups, the public and other agencies. We try to reach as many members of the public as we can, including those living in regional and remote areas.

The consultations we do as part of our audit and investigation activities are particularly valuable. They enable us to work with a range of groups on priority issues, report key concerns to agencies, and work closely with all parties to deliver practical improvements. We also actively seek the views of other agencies and stakeholders by convening specialist or targeted forums for information about specific issues. These consultations provide us with valuable feedback about our business processes and the scope for further improvements.

As well as educating agencies within our jurisdiction about our role and their responsibilities, we work with other oversight bodies both within Australia and overseas. We support new and developing Ombudsman offices in our region and internationally by sharing our knowledge and experience to promote accountable public administration.

Figure 21: Informal inquiries

| | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-----------|--------|--------|--------|--------|--------|
| Inquiries | 21,855 | 21,419 | 24,561 | 24,215 | 23,797 |

Reaching out to a diverse community

The largest group of people we have contact with are complainants. This year we handled more than 23,000 complaints informally and more than 8,000 formally. The informal complaints are mostly dealt with by our inquiries staff over the telephone or in person at our office.

The feedback we receive from complainants helps us to identify areas where we can improve our services. Our policy on complaints and compliments provides a framework for adopting this customer feedback. See page 9 in Facts and figures for more details.

Our website provides useful information about the role of our office, how to resolve matters without our help and, where necessary, how to make a complaint. Members of the public, agency staff and community service providers can access a range of publications from our website – including guidelines, fact sheets and brochures in other languages. Our online complaints form also makes it easier for people to lodge a complaint with our office.

Our Aboriginal Unit, youth liaison officer, community education and training unit and other specialist staff work hard to extend the reach and impact of our office, opening doors to those who might have difficulty accessing our services. Their work includes educating stakeholders about the role of our office, attending community and cultural events, delivering workshops and training sessions, and assisting complainants to resolve issues.

A number of our senior officers also regularly take part in these events and the resulting discussions play an important part in informing our systemic and investigative work.

Visiting regional and remote communities

Providing services to smaller, more geographically dispersed communities can be resource-intensive. As establishing regional or remote offices is neither practicable nor cost-effective for a small agency like ours, we use other strategies to service these areas.

Our toll-free number allows anyone living in NSW's regional and remote communities to contact for the cost of a local call for advice and assistance. Our phone links to prisons and juvenile justice centres provide similar access to detainees.

We also regularly visit regional and remote centres in response to community requests or to assist with critical issues. This year we visited at least 62 regional and remote communities in NSW to:

- › conduct consultations for investigations and audits of agencies and services
- › deliver presentations, training sessions and forums
- › visit correctional and juvenile justice centres
- › attend community festivals and events.

During these visits, our staff members try to address other concerns raised with our office – by meeting with local agencies or service providers to resolve any issues and provide feedback to the office.

We conducted 48 correctional centre visits and 17 juvenile justice centre visits across the state this year, and 26 of the correctional centre visits and nine of the juvenile justice centre visits were to regional and remote areas.

Although inmates of correctional centres and detainees in juvenile justice centres have telephone and postal access to lodge complaints with our office, our visits to these facilities are an important part of our work.

They enable us to monitor the conditions in the centres and to give detainees the opportunity to raise concerns directly with us. Where possible, our Aboriginal Unit staff take part in these visits, ensuring that Aboriginal detainees have an opportunity to speak with another Aboriginal person about any concerns.

We also give training, presentations and information sessions about our work across NSW. This year, 78 of these sessions were delivered in regional locations. For more details, see page 41 in Community education and training. For more information about our work in regional and remote communities, see page 32 in Working with Aboriginal communities.

Our community engagement activities

We work in partnership with a range of government agencies and service providers to ensure community members have access to our services and to increase access and awareness of our role. For example, this year:

- › Together with the Energy & Water Ombudsman, we participated in the International Women's Day celebrations and distributed joint information packages to women who attended the event.
 - › With the Commonwealth Ombudsman, Energy & Water Ombudsman, Financial Services Ombudsman and the Aged Rights Service, we staffed an information stall for two days of the Sydney Royal Easter Show and distributed information about our roles to thousands of attendees.
 - › We are working with the National Disability Services (NDS) to develop a complaint-handling training program specifically designed to suit the needs of the disability services sector. This program will be delivered in metropolitan and regional centres across NSW in 2011.
 - › We participated in Good Service forums across the state with the Commonwealth Ombudsman, Energy & Water Ombudsman, Banking Ombudsman, Legal Aid NSW, the NSW Anti-Discrimination Board, the NSW Office of Fair Trading and the Health Care Complaints Commission – visiting various Aboriginal communities to explain how to access services and make complaints.
- We also actively participated in community events and activities reaching a wide range of people, including:
- › The 2010 Youth Harmony Festival organised by the Community Relations Commission, distributing information to community members and networking with migrant resource centre and community service workers.
 - › A number of multicultural events around the Sydney metropolitan area to raise awareness about our office among culturally and linguistically diverse communities.
 - › The Tamworth Disability Expo.

- A community legal education video project targeted at the Fairfield Local Government area to increase awareness about the role of our office among culturally and linguistically diverse communities.
- Co-sponsoring the *Don't Dis my Ability* campaign to celebrate International Day for People with Disabilities. We held an information stall in our building foyer to promote the event, followed by an afternoon tea. Krystel Keller, a 25 year old professional recording artist, musician and public speaker told her story and performed.

Our Deputy Ombudsman also delivered an information session to 70 community workers who work with non-English speaking clients in Bankstown as part of the Deputy Ombudsman Outreach Forum program.

We arranged a cultural awareness workshop for our staff focusing on issues affecting new and emerging communities from Karen, Sri Lankan and Tamil communities. The workshop was presented by staff from the Hills Holroyd Parramatta Migrant Resource Centre and refugees from these communities.

We also provided briefings and information sessions to a range of services and community groups throughout the year including Gilgai Aboriginal Service clients, Illawarra community members and police, Illawarra Law and Justice Cluster, Men's Health Information and Resource Centre, Wollongong JIRT and out-of-home care service providers. For more details on our engagement activities, see pages 39–40 in Working with Aboriginal communities.

Places visited 2009–2010

| | | | | |
|-------------|------------|--------------|-------------|------------|
| Albury | Dubbo | Merimbula | Port | Walgett |
| Armidale | Glen Innes | Menindee | Macquarie | Wallaga |
| Batemans | Gosford | Mildura | Port | Lakes |
| Bay | Goulburn | Moree | Stephens | Wallsend |
| Bathurst | Grafton | Moruya | Queanbeyan | Wellington |
| Bega | Hay | Mudgee | Richmond | Wilcannia |
| Berrima | Junee | Muswellbrook | Tamworth | Wollongong |
| Bingara | Kariong | Newcastle | Taree | Wyong |
| Bourke | Kempsey | Nowra | Tenterfield | Yamba |
| Brewarrina | Kiama | Oberon | Tumbarumba | Yanco |
| Broken Hill | Lake | Orange | Wagga | Yass |
| Canobolas | Macquarie | Peak Hill | Wagga | |
| Cessnock | Leeton | | | |
| Cooma | Lightning | | | |
| Dapto | Ridge | | | |
| Dareton | Lismore | | | |
| Deniliquin | Lithgow | | | |



Now that I understand your role a bit better, I am very impressed by the work you do and your commitment to making a difference through your role with the Ombudsman's office ... I hope that similar opportunities to visit communities across NSW would arise again.

Working with agencies and key stakeholders

Regular liaison meetings with different groups, convening forums on specific issues and our participation in committees and advisory boards help us keep informed of issues. Our audit, investigation and review work also enables us to work with a large number of agencies and service providers.

This year we reviewed the complaint-handling systems of service providers, conducted child protection audits, and consulted with families of children with disabilities living at home for information about their experiences in obtaining services and support. We also consulted broadly as part of our audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. These consultations inform our audits, but also form an important part of our ongoing responsibility to educate our stakeholders about the work we do.

Convening forums

This year we hosted specialist forums to seek the input of stakeholders from a range of agencies and services about particular issues or aspects of our work, including some of our investigation and review work. The three main forums were:

- a domestic violence community stakeholders forum made up mostly of community workers involved in supporting victims of domestic violence
- a forum on devolution, in partnership with the Disability Council of NSW, about the closure of institutions housing people with disabilities.
- a forum of NSW Government agencies with responsibilities for health and human services, peak bodies and oversight and regulatory bodies to discuss probity issues in funded services.

Devolution forum

In 1998, the NSW Government announced its intention to close all large residential centres for people with disabilities by 2010. Although a significant amount of devolution activity has taken place since 1998, there is still much to be done in relation to the closure of large residential centres in both the government and non-government sectors. Against this background, and in partnership with the Disability Council of NSW, we decided to host a forum to provide the opportunity for people with disabilities and other stakeholders to engage in open discussions about the progress of this initiative so far, the lessons learned and the challenges ahead.

Our forum in June was facilitated by Julie McCrossin. Close to 300 people attended – including people with disabilities, family representatives, service providers, advocates and government agency representatives.

Some of the key issues raised were the need for greater involvement by people with disabilities and their families in future planning, a greater focus on individuals, increased diversity in accommodation and support options, community-based support in regional and rural NSW, and maintaining relationships between people with disabilities and the community.

Our report on this issue was tabled in Parliament in August this year and is available on our website.

For more details about this forum, see page 66 in *People with disabilities*.

Many thanks for your organisation and calm persona. And thank you to you, Steve [Deputy Ombudsman and Community and Disability Services Commissioner] and Bruce [NSW Ombudsman] for allowing us to share yesterday's discussion. It was an enlightening exposure to past and future challenges. The discussion was frank, as we had hoped ... ably assisted by the skill, warmth and talent of Julie as facilitator. And a success!

Domestic violence community stakeholders forum

In December 2009, we hosted our inaugural Domestic Violence Community Stakeholders Forum that attracted 60 participants from the domestic violence sector. The forum was well received and provided participants with the opportunity to speak with us directly about any issues and concerns they had about the response by police and other agencies to domestic violence. We provided an update about our ongoing work and progress made since our 2006 investigation, our current audit of domestic and family violence complaints, and the impact of the key changes flowing from the Wood Inquiry on the domestic violence sector.

The outcomes from the forum have helped inform our current domestic violence audit and ongoing monitoring of significant domestic violence issues with the NSW Police Force (NSWPF). Some of the key issues raised at the forum by participants included:

- An alleged failure by police to identify the 'primary aggressor' issue. Participants expressed concern about the number of women being charged with domestic violence-related offences and having an apprehended domestic violence order (ADVO) taken out against them. We undertook to ask the NSWPF to review where there is evidence that an ADVO has been made in inappropriate circumstances. The NSWPF Corporate Spokesperson has since agreed to support research conducted by the Domestic Violence Coalition which will track incidents involving women charged with domestic violence-related offences and/or where an ADVO is taken out against them.
- Increased domestic violence training for police. The forum identified a need for local domestic violence services to be involved in the delivery of police training at a local level and for there to be a consistent requirement across all police commands. Our 2006 report, *Domestic Violence: improving police practice*, stressed the importance of the NSWPF developing and implementing a good practice framework for policing domestic violence. We also asked the NSWPF Aboriginal Coordination Unit to work with Aboriginal Legal Services on proposed changes to ensure Aboriginal women endorse the content of training relating to Aboriginal family violence.
- Domestic violence advocacy training. Participants welcomed the opportunity to receive this type of training. As a result, this year we helped the Women's Legal Services (WLS) NSW provide advocacy training to a range of community service providers as part of *Reaching out for Rights*, a project developed by WLS. The primary aim of this project is to help women from various backgrounds such as Aboriginal women, women from culturally and linguistically diverse communities, refugee women and women living with disabilities who experience barriers negotiating the justice system. We visited 12 regional locations across the state and reached 180 workers as part of this program of training. See page 81 in *Policing* for more details about our work in the area of domestic violence.

Thank you for holding the Ombudsman's inaugural Domestic Violence Community Stakeholders Forum.

I found the occasion extremely worthwhile and I very much appreciated the respect and recognition you and your colleagues gave to the workers who are in the community sector working specifically with domestic violence issues. Thank you for making yourselves available and approachable.

Strategies to prevent child sexual assault

The strategic projects division, which includes our Aboriginal Unit, is leading our three-year audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*, arguably the broadest and most challenging audit role the Ombudsman has ever undertaken.

The decision for us to audit the interagency plan followed the NSW Government's March 2009 release of *Keep Them Safe*, a five-year action plan detailing the government's response to the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). When Justice James Wood assessed what the interagency plan had achieved in its early years, he found that it had generated significant levels of activity – but it was 'difficult to assess' the actual impact on Aboriginal people or communities, or on those children and young people who are experiencing or are at risk of sexual assault. Last year, *Keep Them Safe* then endorsed the Wood Inquiry's recommendation that we audit the implementation of the interagency plan.

It is a detailed plan with 88 actions in three broad categories. These categories are:

- items for immediate statewide implementation
- measures to be tailored to key locations where communities require intensive assistance
- proposals for further consideration and possible implementation in the longer term.

The 'partners' responsible for implementing these actions include eleven NSW Government agencies, a diverse range of organisations such as the Aboriginal Housing Office, the NSW Aboriginal Land Council, Police and Community Youth Clubs and the Office of the Director of Public Prosecutions, and non-government peak bodies and organisations with educational responsibilities such as the Education Centre Against Violence and the Commission for Children and Young People. We will regularly report back to these partners to enable them to progressively make changes and improvements to the work they are doing.

One challenge is to take account of major initiatives introduced since the plan started in January 2007, particularly significant and ongoing reforms of the child protection system in NSW – such as child wellbeing units, family referral services, and changes to the mandatory reporting system and exchange of information. A range of key programs and initiatives such as Safe Families, Aboriginal Intensive Family Based Service and Brighter Futures – as well as the Federal Government's Remote Service Delivery Strategy and Indigenous Child and Family Centres have also been, or are being, implemented since the plan's release in January 2007.

Our audit framework will take account of these recent changes, particularly those designed to improve service delivery to Aboriginal communities. We have grouped the various directions and outcomes under three broad areas:

- law enforcement and justice
- early intervention and prevention
- strengthening Aboriginal communities.

By mid-2011 we plan to publish an interim report detailing agency progress in implementing initiatives linked to these three broad areas and significant themes to emerge from our consultations so far. A related challenge will be to develop meaningful measures that can show which programs and initiatives are achieving real progress.

Our consultations with communities across NSW will be crucial to assessing agency efforts to improve service availability and service delivery. Most of our consultations so far have focused on communities that have been earmarked for priority assistance under the Safe Families program. This is an early intervention and community engagement program which will operate in far west NSW. To-date we have conducted detailed consultations in Broken Hill, Menindee, Lightning Ridge, Walgett, Wilcannia, Brewarrina, Bourke, Narooma and Wallaga Lake.

The consultations also provide us with valuable information about how agencies are working with communities to make decisions about child protection, the potential for child protection groups in communities, establishing safe places for children and families, and the take-up and success of key programs such as Brighter Futures and the Intensive Family Based Services. We are also closely examining the gradual implementation of Safe Families and how the program can be integrated into the existing service system.

We will also continue consultations in Mt Druitt, Taree/Purfleet, Toomelah/Boggabilla and Shoalhaven – the four locations where Aboriginal Affairs NSW is implementing a combination of location-specific actions and statewide plans and initiatives.

Our examination of agency responses to child sexual assault is also being informed by our statutory function to monitor the delivery of community services as well as our general complaint oversight role of government agencies within our jurisdiction. This includes a major inquiry into how well Community Services and other agencies provide services to rural and remote communities with a focus on Brewarrina and Bourke. We have also started an interagency review of the array of procedures used by non-government service providers when checking the probity of prospective employees, management committee members or other volunteers involved in planning or delivering services.

Our initial consultations have sought to get a 'snapshot' of critical information about individual communities that are being targeted for priority attention through various government initiatives. Our follow-up visits and consultations will look for progress in key areas. This is a crucial step in examining progress against meaningful, measurable outcomes.

We are also considering the impact of relevant Commonwealth initiatives in these areas. We recently met with the Commonwealth Coordinator General for Remote Indigenous Services and the NSW Coordinator General – who is also the CEO of Aboriginal Affairs NSW. We have agreed that, where appropriate, we will continue to raise significant issues as they unfold during the course of our review with both coordinators general, particularly in relation to state and federal funding and coordination of programs, aspects of service design and delivery, and appropriate governance structures.

A critical factor in the high implementation rate of our recommendations in these types of investigations and reviews is due to the consultative approach we take with agencies at not only a corporate level but through our ongoing engagement of frontline agency staff and managers in the investigative process, including 'road-testing' the practicality of our recommendations with them. However, these types of techniques have generally been confined to our work in connection with reviewing agency service delivery and have been used less frequently in connection with more formal investigations where our 'evidence-base' is largely drawn from documentation and/or where we use our coercive powers to obtain information. One important project completed this year involved reviewing how we engage with public sector agencies when conducting formal investigations.

Our review included:

- › interviews with staff from the seven other parliamentary Ombudsman across Australia and staff from the NSW Audit Office to review their strategies for engaging with agencies during investigations
- › interviews with staff from a range of agencies that have been the subject of an Ombudsman investigation in the past few years
- › an examination of our practices to identify innovative ideas.

We asked agency staff about their experience of being investigated and explored how their agency managed being the subject of investigation, their understanding of our processes, and how they responded to our invitation to comment on provisional findings and recommendations.

While many agency interviewees reported a positive experience in terms of their understanding of our investigation process, appreciation of the methodology used and ability to contribute to the development of recommendations, we also identified areas for improvement.

Key issues were increased communication and more detailed information about the investigation process under the Ombudsman Act. In addition to formal communication by letter, agencies said they would find more informal contact by email, telephone and meetings during an investigation beneficial.

This would help them better understand our requests for information and give them an opportunity to ask questions about our processes and likely timeframes and discuss provisional recommendations in very practical terms. They also said that while our correspondence provided useful information about our investigation process, some terms in the Ombudsman Act were confusing and more information about what to expect would allow managers to better manage staff expectations and concerns.

We are incorporating these findings into our plans for formal investigations. Each investigation is unique. How we engage and communicate with an agency must depend to some extent on the nature of the conduct being investigated. However, our research has confirmed that many of the techniques used in our consultation-based investigations can be applied to a range of contexts. Our planning for all investigations will now include specific consideration of how we will communicate with the particular agency throughout the investigation. We are also producing a fact sheet for agencies about the key stages of our investigation process and reviewing our correspondence to make sure that Ombudsman Act terms and requirements are explained in plain English.

Maintaining good working relationships

Maintaining good working relationships with peak bodies, government agencies, unions, interest groups and other key stakeholders is important to us. These links mean that people are likely to be more forthcoming with information and receptive to our recommendations, and complaints will be more promptly resolved. We regularly meet with, give presentations to and convene discussions with a range of organisations that advocate on behalf of members of the public and advise government on policy issues.

We have regular agency liaison meetings with government agencies – including Community Services, Housing NSW, NSW Health, Juvenile Justice, Ageing, Disability and Home Care, the NSW Police Force (NSWPF) and the Department of Education and Training (DET) – as well as with a range of non-government stakeholders. For example, this year we:

- › Met with representatives from Housing NSW, the Office of Community Housing and the Registrar for Community Housing to discuss the impact of the expansion of the community housing sector and creation of the Registrar's function on our jurisdiction.
- › Held quarterly meetings with senior officers from the NSWPF Professional Standards Command to discuss strategies for improving police complaint-handling systems, and shared information about current projects and initiatives.
- › Met representatives of the newly incorporated Women's Domestic Violence Court Advocacy Service (WDVCAS) Network to learn about their role and discuss how we might work together to improve service delivery to victims of domestic violence. The network represents the 28 services that operate in local courts throughout NSW.
- › Participated in a focus group run by the Education Centre Against Violence about domestic violence training needs, and a focus group organised by People with Disabilities to inform a project examining the domestic violence experiences of people with disabilities living in boarding houses.
- › Continued to regularly liaise with the Domestic Violence Coalition (the peak body in NSW advocating for women who experience domestic violence). These consultations led to us progressing several areas of concern with the NSWPF Corporate Spokesperson for Domestic Violence.
- › Met with the Commission for Children and Young People (CCYP) on a number of occasions to discuss a range of operational issues. We also provided input into the statutory review of the CCYP's legislation and the Audit Office's review of the system. For more details, see page 61 in Children and young people.
- › Met with the NSW Board of Studies to discuss closer liaison between us about monitoring child protection systems in the education sector, and met with a number of independent school associations to improve their understanding and handling of reportable allegations.
- › Attended quarterly liaison meetings with the ICAC and the Division of Local Government to discuss local government issues and exchange information about complaints.

We help agencies to improve their preventative systems and investigative practice in a number of other ways – including regular liaison meetings with larger agencies and case conferences to discuss issues about individual investigations.

In addition to our liaison meetings, we participate in a range of forums and information sessions such as the Association of Children's Welfare Agencies (ACWA) Cross Sector Forum, *Keep Them Safe* Regional Forum, Community Services Key Government Stakeholder Workshop, the NSW Conversation Exchange Opportunities Networking function, the *Keep Them Safe* Aboriginal Stakeholders Forum, Child Protection Forum and the NSWPF Domestic Violence Stakeholder Forum.

This year we gave regular presentations about our role to various stakeholders and staff from a range of government departments and agencies, peak bodies and community organisations including groups of police officers – such as the NSWPF Professional Standards Command's internal investigations course, meetings of professional standards duty officers, and new recruits at the Police Academy in Goulburn.

We also work with other stakeholders in the community services sector to canvass views on issues identified through our monitoring activities and to promote improved service delivery. For example in July and November 2009, we held roundtable discussions with disability peak agencies.

Participating in committees and advisory groups

Our staff are also members of a number of advisory groups and committees. These groups help us keep informed of current issues and provide us with an opportunity to update agency staff on specialist areas of our work. See Appendix L.

Two expert advisory committees help us to perform our reviewable death functions. In 2009–2010 the Reviewable Disability Deaths Advisory Committee met twice and the Reviewable Child Deaths Advisory Committee met once. These committees provide the Ombudsman with valuable advice on complex child and disability death matters, policy issues and health practice issues.

In September 2009, we wrote to the current members of the Child Deaths Advisory Committee noting our office was undergoing significant change in relation to child death reviews, and planning for the pending transfer of the Child Death Review Team to this office. In the context of these changes, we advised members we would be reviewing the type and nature of external advice required to perform the revised function. In February this year, after an internal review, we formally disbanded the existing committee and then held a morning tea for members in March 2010. We have developed revised terms for an advisory structure and aim to have this in place by December 2010.

Working with other oversight agencies

As well as seeking feedback from the agencies we oversight, we also liaise with other oversight bodies to share good practice and exchange information. During 2009–2010 this included joint work with:

- › The Crime and Misconduct Commission, Queensland to discuss projects relating to our Aboriginal child sexual assault audit and to exchange information about our police improper associations policy.
- › The Office of Police Integrity in Victoria about developing a strategy for auditing police work with Aboriginal communities in Victoria.
- › The Commonwealth Ombudsman to discuss the potential of cooperation between our offices in working with Aboriginal communities.
- › Various agencies with an interest in and ability to contribute to our audit of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* – including the Commonwealth Ombudsman, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Australian Crime Commission.
- › ICAC in delivering five workshops on managing protected disclosures for 196 participants from a range of agencies.
- › A project reference group established to develop a proposal by the Office of Police Integrity, Victoria and the Crime and Misconduct Commission, Queensland to conduct a pilot study of community attitudes and perceptions about police misconduct.
- › The Division of Local Government to negotiate a new agreement on better ways to manage a range of complaints able to be dealt with by both our agencies, and encourage councils to provide training to their staff to improve their investigation work.
- › The Energy & Water Ombudsman, who engaged our Aboriginal Unit to deliver Aboriginal cultural appreciation training for their staff.
- › Other Ombudsman offices across Australia on the second stage of a managing unreasonable complainant conduct project to develop additional strategies for complaint-handlers and make the practice manual more relevant for those required to maintain links with the complainant or provide services to rural or remote locations.

Engaging with our international partners

We continue to support new and developing Ombudsman offices and other oversight bodies in our region by sharing our knowledge and experience on ways to promote accountable public administration.

A key priority is to strengthen the recently established Pacific Ombudsman Alliance (POA) and its member organisations. The POA is a multinational group of Ombudsman and allied institutions from countries that are part of the Pacific Islands Forum.

The Board of the POA has identified a need for training materials that could be adapted to suit the needs of all the Ombudsman organisations throughout the Pacific. Sheila O'Donovan, a training officer from our office, and Carolyn Langley, an International Program Officer from the Commonwealth Ombudsman's Office, assessed the training needs of Ombudsman offices in Papua New Guinea and Vanuatu, and looked for ways to support training and professional development in the Pacific region generally. This required them to identify common work requirements across a number of Ombudsman officers, identify what materials already exist and determine what, if any, modifications or alterations would be required to make the training packages useful throughout the Pacific.

In late 2009, one of our staff completed a three-month placement as legal officer for the Vanuatu Ombudsman's office in Port Vila. His work included helping to finalise a major report that recommended terminating a government copra subsidy scheme and criminally charging two individuals responsible for the collapse of the scheme. The secondment, arranged at the request of the Vanuatu Ombudsman and funded by the POA, provided legal and other specialist advice and support for a range of complaints investigation work while the Vanuatu Ombudsman's permanent legal officer was on maternity leave. With the support of the POA, we also helped arrange a one-day forum that brought together a number of Vanuatu government agencies and national leaders to consider proposed reforms to the role of their Ombudsman.

Following the success of this placement, we recommended that the POA work with the Vanuatu Ombudsman, Australian Volunteers International and other potential partners to find a suitably qualified volunteer for a longer term placement. The POA and the Australian Youth Ambassadors for Development (AYAD) program have recruited an AYAD volunteer from Melbourne. Together with International Program staff from the Commonwealth Ombudsman's office, we briefed the volunteer and provided basic training before her 12-month placement began in August. We continue to look for ways to support her work. If successful, we hope this will be the first of a number of volunteer placements supported by the POA and its Australian affiliates.

As part of our ongoing support for the Indonesian Australian Ombudsman Linkages and Strengthening Program, our Deputy Ombudsman (Police) travelled to Jakarta in late 2009 for a series of meetings and workshops with staff from the newly established Office of the Ombudsman of the Republic of Indonesia.

Following the success of earlier training with the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman, our Deputy Ombudsman was again asked to return to Canada to facilitate four more managing unreasonable complainant conduct workshops across Canada.

Throughout the year we provided training and other advice and support to visitors from other international oversight bodies. This included briefings on the role of our office and information exchanges with representatives from the National Police Commission and National Police Force Indonesia, the National Population and Family Planning Commission China, the High Commissioner of the Kingdom of Swaziland, the Compliance Review Panel of the Asian Development Bank and the Office of the Samoan Ombudsman.

The Ombudsman and Deputy Ombudsman also had meetings with senior representatives from the Public Sector Integrity Commission, Ottawa, the Consul General of Canada, the Consul General of Taiwan and the Independent Complaints Reviewer from the United Kingdom.

These visits provided valuable opportunities for our staff to learn about the work of our colleagues overseas. The Chief Ombudsman of Papua New Guinea (PNG), Mr Chronox Manek, who survived an apparent attempt on his life in late 2009, spoke with staff when he visited in early 2010 about the challenges facing his organisation and about strategies for reforming the public sector in PNG.

In 2009–2010 we also entered into an agreement with the Anti-corruption and Civil Rights Commission of Korea (ACRC) to facilitate closer contact between our two agencies and explore other approaches to complaint-handling and investigation. As part of this agreement, we hosted a four-month professional training placement for an officer from the ACRC to work with our investigators. Also in 2010, an officer from the Independent Police Complaints Commission in London spent three months working with our police division investigators and researchers as part of a sabbatical program.

Our publications – such as our *Effective Complaint Handling Guidelines* – are also regularly sought by other international Ombudsman offices to help them develop similar guidelines for their staff.

When the Government of Canada developed its Guide to Effective Complaint Management, it drew heavily on the New South Wales Ombudsman's Guide, which was considered by Canada to be public sector best practice. – [Senior Advisor Treasury Board of Canada]

Working with Aboriginal communities

Our Aboriginal Unit was established in 1996 to try to bring police and Aboriginal communities together to address entrenched problems, help break down distrust, and implement key reforms. The success of the unit's work in this area prompted us to look for ways to extend this approach to helping Aboriginal communities engage and build bridges with other government agencies and services.

The Aboriginal Unit is now part of our strategic projects division, a multidisciplinary team responsible for reviewing whole-of-government service delivery. This includes focusing on examining interagency programs and other measures aimed at improving service delivery for Aboriginal people across NSW.

Protecting children in Aboriginal communities

Much of our current work with Aboriginal communities focuses on the availability and effectiveness of child protection services and programs. This year we began a major three-year review of government programs and initiatives to implement the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

We are also monitoring the implementation of *Keep Them Safe*, a five-year action plan detailing the NSW Government's broader response to the Wood Inquiry. Although *Keep Them Safe* is intended to strengthen programs for children and young people generally, not just those in Aboriginal communities, the over-representation of Aboriginal children in NSW's child protection system means that our Aboriginal communities have a keen interest in this work.

A related initiative is our ongoing efforts to bring agencies, community groups and Aboriginal people together to address long-standing family violence and child protection issues, notably the need for better coordinated and more responsive services for vulnerable children and their families. Despite marked improvements in recent years, our ongoing work with Aboriginal communities and community-based services shows the need to give continued priority to these issues.

Strategies to prevent child sexual assault

The strategic projects division, which includes our Aboriginal Unit, is leading our three-year audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*, arguably the broadest and most challenging audit role the Ombudsman has ever undertaken.

The decision for us to audit the interagency plan followed the NSW Government's March 2009 release of *Keep Them Safe*, a five-year action plan detailing the government's response to the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). When Justice James Wood assessed what the interagency plan had achieved in its early years, he found that it had generated significant levels of activity – but it was 'difficult to assess' the actual impact on Aboriginal people or communities, or on those children and young people who are experiencing or are at risk of sexual assault. Last year, *Keep Them Safe* then endorsed the Wood Inquiry's recommendation that we audit the implementation of the interagency plan.

It is a detailed plan with 88 actions in three broad categories. These categories are:

- › items for immediate statewide implementation
- › measures to be tailored to key locations where communities require intensive assistance
- › proposals for further consideration and possible implementation in the longer term.

The 'partners' responsible for implementing these actions include eleven NSW Government agencies, a diverse range of organisations such as the Aboriginal Housing Office, the NSW Aboriginal Land Council, Police and Community Youth Clubs and the Office of the Director of Public Prosecutions, and non-government peak bodies and organisations with educational responsibilities such as the Education Centre Against Violence and the Commission for Children and Young People. We will regularly report back to these partners to enable them to progressively make changes and improvements to the work they are doing.

One challenge is to take account of major initiatives introduced since the plan started in January 2007, particularly significant and ongoing reforms of the child protection system in NSW – such as child wellbeing units, family referral services, and changes to the mandatory reporting system and exchange of information. A range of key programs and initiatives such as Safe Families, Aboriginal Intensive Family Based Service and Brighter Futures – as well as the Federal Government's Remote Service Delivery Strategy and Indigenous Child and Family Centres have also been, or are being, implemented since the plan's release in January 2007.

Our audit framework will take account of these recent changes, particularly those designed to improve service delivery to Aboriginal communities. We have grouped the various directions and outcomes under three broad areas:

- › law enforcement and justice
- › early intervention and prevention
- › strengthening Aboriginal communities.

By mid-2011 we plan to publish an interim report detailing agency progress in implementing initiatives linked to these three broad areas and significant themes to emerge from our consultations so far. A related challenge will be to develop meaningful measures that can show which programs and initiatives are achieving real progress.

Our consultations with communities across NSW will be crucial to assessing agency efforts to improve service availability and service delivery. Most of our consultations so far have focused on communities that have been earmarked for priority assistance under the Safe Families program. This is an early intervention and community engagement program which will operate in Lightning Ridge, Walgett, Wilcannia, Brewarrina and Bourke. We have also conducted detailed consultations in Broken Hill, Menindee, Narooma and Wallage Lake.

The consultations also provide us with valuable information about how agencies are working with communities to make decisions about child protection, the potential for child protection groups in communities, establishing safe places for children and families, and the take-up and success of key programs such as Brighter Futures and the Intensive Family Based Services. We are also closely examining the gradual implementation of Safe Families and how the program can be integrated into the existing service system.

We will also continue consultations in Mt Druitt, Taree/Purfleet, Toomelah/Boggabilla and Shoalhaven – the four locations where Aboriginal Affairs NSW is implementing a combination of location-specific actions and statewide plans and initiatives.

Our examination of agency responses to child sexual assault is also being informed by our statutory function to monitor the delivery of community services as well as our general complaint oversight role of government agencies within our jurisdiction. This includes a major inquiry into how well Community Services and other agencies provide services to rural and remote communities with a focus on Brewarrina and Bourke. We have also started an interagency review of the array of procedures used by non-government service providers when checking the probity of prospective employees, management committee members or other volunteers involved in planning or delivering services.

Our initial consultations have sought to get a 'snapshot' of critical information about individual communities that are being targeted for priority attention through various government initiatives. Our follow-up visits and consultations will look for progress in key areas. This is a crucial step in examining progress against meaningful, measurable outcomes.

We are also considering the impact of relevant Commonwealth initiatives in these areas. We recently met with the Commonwealth Coordinator General for Remote Indigenous Services and the NSW Coordinator General – who is also the CEO of Aboriginal Affairs NSW. We have agreed that, where appropriate, we will continue to raise significant issues as they unfold during the course of our review with both coordinators general, particularly in relation to state and federal funding and coordination of programs, aspects of service design and delivery, and appropriate governance structures.

Lessons learnt from WA prosecutions

As part of our review of the NSW *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, we wanted to learn more about some promising work by police in five remote towns in the West Kimberley region of Western Australia – a series of operations in 2007 had culminated in a number of arrests and prosecutions for child sexual assault offences.

The operations followed years of reform brought about by the 2002 Gordon Report, a major review of WA government agencies' handling of complaints of family violence and child abuse in Aboriginal communities. That report and its 197 findings and recommendations led to significant changes – including marked increases in the number of health workers, the establishment of multifunctional police centres in remote areas that provided a permanent police presence in many communities, and easier access to other essential services. In the Kimberley region we were told these reforms were a critical factor in the increased confidence in reporting sexual offences to police.

As the number of disclosures rose, there were concerns that the subsequent arrests and charges of alleged offenders would over-load the courts – creating considerable delays, impacting on victims and compromising prosecutions. For this reason the Chief Justice of the Children's Court formed an Indigenous Justice Taskforce in July 2007, bringing together the judiciary, criminal justice agencies and other services. The aim was to provide sufficient court, legal and support services to reduce the likely delays, ensure that those who were accused of adult and juvenile sex offences received a fair trial, and minimise the impact and disruption on alleged victims and witnesses travelling from remote communities.

In January 2010, we contacted a number of service providers in Western Australia asking for information about their experiences and what advice they might have for justice agencies, child protection services and Aboriginal communities confronting similar issues in NSW.

Although many were keen to share information, it soon became clear that we would need to meet with key stakeholders personally to get a clear understanding of the complex array of difficult and sensitive issues involved and whether there were mistakes that could be avoided in future operations. The director of our strategic projects division and our Aboriginal Unit manager therefore visited Western Australia in May to meet with a range of agency representatives involved in child protection.

Over a period of 14 days we had 20 separate meetings involving 63 participants at Perth, Kununurra, Halls Creek, Fitzroy Crossing, Broome and Kalumburu. We interviewed senior members from the 2007 *Indigenous Justice Taskforce* including the President of the Children's Court in Perth, the Director of Legal Services and Aboriginal Legal Services, senior police from the Child Sexual Assault Squad in Perth, the Registrar, victim support groups, and other staff involved in the protection of children – including the WA Minister for Child Protection, the Director General, women's groups, the Department of Child Protection and Aboriginal community members.

We were touched by the generosity of the many people who were so willing to meet with us to share their insights and experience, and appreciated their candour in explaining some difficult and sensitive issues. We came away with a clear understanding of the many difficulties faced by service providers and remote communities in these situations. In this regard, the most significant concern expressed related to the lack of support services for victims and their families, not only during the court process, but when offenders return to communities. There was also a strong call for support services, including culturally appropriate healing programs for men, to be made available in remote communities.

Despite the mistakes made – including issues that led to failed prosecutions and created divisions and community dissent – many of those affected said they believed that authorities had learned from these mistakes and that, on balance, they would have the confidence to bring issues forward again in the future.

We plan to include our analysis of these issues in our interim report on the efforts of agencies in NSW to implement the interagency plan.

Improving service delivery in Western NSW

Since receiving a complaint from the Brewarrina Aboriginal Community Working Party (ACWP) in August 2007 that alerted us to concerns about the adequacy of the response of Community Services to vulnerable children and their families in this community, we have worked closely with the Brewarrina ACWP, representatives of local service providers and Community Services staff from the Western region to explore how Community Services might improve their caseworker presence and service delivery in this region.

Despite attempts to increase caseworker numbers in high-need areas and provide staff in these locations with better infrastructure and support, these initiatives appear to have had little impact in towns such as Brewarrina or Bourke. Community leaders regularly talk to us about the need to improve the circumstances of vulnerable Aboriginal children and their families and their concerns about the unacceptable over-representation of Aboriginal children in the child protection system.

The current chair of the Murdi Paaki Regional Assembly (MPRA) and former Chair of the Bourke ACWP, Mr Alistair Ferguson, has frequently raised the need for government agencies to address the Bourke ACWP's long-standing concerns about inefficiencies in the Bourke area – including the urgent need to slash the number of reference groups and management committees for individual programs and services. He has called on agencies to help create a truly representative local governance structure to ensure that services are delivered in a more coordinated, flexible and effective way and service providers can be held to account by the communities they are funded to serve.

Community leaders in both Bourke and Brewarrina have repeatedly raised concerns with us and Community Services about the limited reach of the Intensive Family Based Service (IFBS) and Brighter Futures Program. They question the sustainability of these programs in their current form when they appear not to be providing 'good value for money'. This is against a background where the community was informed that the IFBS in Bourke was supporting just two families – despite the program's funding base of approximately \$800,000.

In light of these and a number of related concerns, we decided to formally inquire into and review the delivery of community services to the Bourke and Brewarrina communities.

Our inquiry also considers the circumstances of three 'at-risk' families who were brought to our attention by the Brewarrina ACWP to illustrate the 'systemic impact' of Community Service's diminished service capacity in the Western region. While we have not made Community Service's response to these families the subject of our inquiry, due to the serious and potentially ongoing nature of the risks involved for these children, we have sought specific advice from Community Services about their current circumstances.

Decisions involving the placement of Aboriginal children in out-of-home care

Our 2008 report, *Supporting the carers of Aboriginal children*, highlighted issues affecting Aboriginal children in out-of-home-care, the urgent need to improve the services and supports that enable their carers to provide quality care and the critical importance of Community Services applying the Aboriginal Child Placement Principle, a decision framework aimed at – where appropriate – keeping Aboriginal children close to their family and kin if circumstances require them to be removed from their parents' care. At the heart of the principle is a legislative requirement that Community Services involve Aboriginal communities in decisions about the care of their children.

At the request of the Wirringah Women's group in Lightning Ridge, we facilitated a community meeting with over 80 community members attending. As a result, we initiated an urgent review of a Community Services decision to place a family of six children, aged from 14 days to 14 years, with four separate carers at Walgett, Bourke, Cobar and Mudgee. The concerns around the decision to remove the children from their parents' care, was being dealt with by the Court. We pursued the complainant's concerns about the impact of placing the children so far apart and delays in allowing the courts to review the management of their cases.

We have finalised a provisional report and plan to publish details of this inquiry after receiving a response from Community Services. Although the report focuses on Community Services' response to concerns raised by the Brewarrina and Bourke ACWPs, we recognise that the NSW Government's commitment to providing better protection to Aboriginal children and support for their families through *Keep Them Safe* is not the responsibility of Community Services alone. For this reason, we have recommended that in preparing its response to our report, Community Services should consult the chief executives of each of the agencies within the Department of Human Services, as well as other agencies including the NSWPF, Department of Education and Training, NSW Health, the Aboriginal Child Family & Community Care State Secretariat (AbSec) and the Chairpersons of the MPRA and Brewarrina and Bourke ACWPs.

Our final report is likely to include recommendations aimed at giving effect to those immediate and longer-term goals outlined in *Keep Them Safe* that are designed to improve service delivery to Aboriginal communities, in particular, those that relate specifically to the current service delivery challenges being faced by the Brewarrina and Bourke communities. Our report also includes significant commentary about issues which have relevance for the broader human services and justice sector in terms of improving service delivery to rural and remote communities.

The parents were granted twice weekly access to their children. However, as a round-trip from Lightning Ridge to Walgett, Bourke, Cobar, Mudgee and then back to Lightning Ridge is about 1400km, the parents needed to drive many hours to visit their children. Community Services correctly identified that it would be too difficult for the children to visit their parents because of the distances involved. And as the 14-day-old baby was being breastfed at the time of her removal, the logistics of providing breast milk to the baby restricted the mother's availability to travel.

The Deputy Ombudsman and other senior staff commenced urgent inquiries. Community Services initially advised that they had tried to place the children with a single set of foster carers closer to the parents in Walgett but could not find a suitable placement. However, an aunt from Moree had requested to take the children and seemed capable of doing so, but was waiting for Community Services to undertake an appropriate foster care assessment in order to confirm the suitability of this option.

The complaint to us concerned Community Services' apparent lack of urgency in assessing the aunt's suitability to care for the children, and delays in bringing the matter back to court so the care orders could be reviewed.

Community Services responded quickly. It began by co-locating some of the children and expedited its assessment of the aunt as a prospective relative carer. A short time later, the four youngest children were placed with the aunt in Moree and the older two were placed with a carer in Walgett, about 200km away. The parents moved to Walgett to further reduce the travel time.

We facilitated a follow-up meeting with community members and Community Services in November. As a result of our intervention, Community Services also began working with Wirringah and other groups to increase the availability of out-of-home-care care placements in Lightning Ridge. Together they did some excellent work, significantly increasing the number of carers in that area. Planning discussions also commenced with the community which led to the signing of a service level agreement between Community Services and the Lightning Ridge Aboriginal Community Working Party in May this year.

I feel now, since we've spoken to the Ombudsman and got him involved ... I wasn't in the first meeting but everyone else was. I've seen him a couple of weeks ago. Since then we've come forward with a new worker and they've done a lot for us. They've changed our perception of how we see the [Community Services] department. Before we didn't want nothing to do with them but now we're working with them because they're working with us. A local mother whose children were removed from her care

Strengthening Aboriginal out-of-home care services

For a number of years, we have worked closely with the Aboriginal community to improve service delivery to vulnerable children and young people. This year we started a comprehensive review of Aboriginal out-of-home care services, including foster care.

As at May 2009, there were approximately 4,500 Aboriginal children in foster care in NSW. These are some of the state's most vulnerable children, representing 31% of all children in substitute residential care in NSW.

The purpose of our review is to examine the systems Aboriginal out-of-home care agencies have for handling complaints and how well they are fulfilling their child protection responsibilities under Part 3A of the *Ombudsman Act 1974*. Our goal is to strengthen these agencies, by helping them to improve their systems and practices.

There are eight Aboriginal out-of-home care services located throughout the state. After consulting with AbSec, we have conducted comprehensive reviews of three of these services and will review the rest in the coming year.

Our initial reviews identified some excellent practice, but also identified the need for agencies to improve their understanding of their legislative child protection responsibilities under Part 3A of the Act and their complaint-handling systems. As a result we have developed a comprehensive and tailored program of training that we will provide in October 2010, together with AbSec, to each of the Aboriginal out-of-home care services.

Supporting Aboriginal people with disabilities

Last year we reported on our review of the implementation of Ageing, Disability and Home Care's (ADHC's) *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*. At both a corporate and regional level, ADHC has responded very positively to the review and implemented a number of significant changes to improve service delivery to Aboriginal people. During the review, an Aboriginal Service Development and Delivery Directorate was established, plus ADHC recently created an Aboriginal Strategy, Development and Evaluation Unit within the directorate. This unit will be responsible for supporting the delivery of responsive services to Aboriginal people through building capacity and monitoring, evaluating and reporting ADHC's efforts in this area.

ADHC has also made a commitment to revise their *Aboriginal Policy Framework*. The new framework will identify a range of key result areas and outline performance indicators, strategies and implementation tools. Each region will be required to have their own Aboriginal strategic plan consistent with the key result areas. ADHC is also going to establish a strategic advisory committee to which regions will be held accountable for implementing their Aboriginal strategic plans.

Our review has also informed ADHC's development of a new 'Aboriginal service model' to be trialled in the Southern region, followed by the Northern and Metro North regions. It will focus on better coordination of service delivery and will involve Aboriginal people having a greater say in how and from whom the services they need are sourced and delivered. This is an important development and one that has the potential to significantly enhance outcomes for Aboriginal people with disabilities and their families.

Individual regions have also taken steps to improve service delivery to Aboriginal people. During our review all regions established Aboriginal employee networks, some set up internal working groups, and several reviewed their approach to consulting with Aboriginal communities by forming advisory committees or tapping into existing mechanisms, and establishing or renewing links with key Aboriginal organisations. Regions also welcomed the opportunity to respond to the concerns of individual Aboriginal people that we identified during our review.

The findings and recommendations of our review were the subject of a special report to Parliament tabled in September this year.

Complaints and investigations

Land councils and housing

With the support of the Registrar of the Aboriginal Land Rights Act (ALRA), we have begun to review the systems for handling complaints about Local Aboriginal Land Councils in NSW.

Although we received just eight complaints about land councils in 2009–2010, ours is one of a number of agencies with responsibilities in this area. Depending on the issue, these complaints may be dealt with by us, the Registrar, the Independent Commission Against Corruption, the NSW Aboriginal Land Council (NSWALC), the Administrative Decisions Tribunal, Aboriginal Affairs NSW or the Aboriginal Housing Office.

With recent increases in federal funding assistance to land councils and Aboriginal housing organisations, there is also scope for an increase in grievances and disputes involving Commonwealth Government agencies.

To reduce duplication, we have agreed that our assessment of any complaints we receive about land councils will include checking with the Registrar and the NSWALC to see if they have also been advised of the matter. However much more needs to be done to streamline complaint-handling and improve outcomes, so we have agreed with a request by the Registrar to convene a meeting of all agencies with complaint-handling responsibilities in this area to develop a complaint-handling framework.

The review will also consider the procedures for handling complaints about the Aboriginal Housing Office, housing providers funded through the AHO and the Housing Aboriginal Communities Program. We understand the agencies responsible for monitoring these issues, including the NSWALC, have made some policy and procedural changes aimed at improving practices in this area. Bringing all parties together to discuss complaint-handling practices should provide an opportunity to assess whether any further changes are needed.

Although we had hoped to begin this process in early 2010, this project had to be deferred until early 2011 because of other commitments – including our review of child protection initiatives and an interagency review of the procedures used by non-government services when checking the probity of prospective employees and others with key responsibilities.

Probity concerns not addressed

A case study in last year's annual report highlighted concerns about a recently convicted serious drug offender being involved in managing an organisation funded by Community Services to assist vulnerable people, including people presenting with substance abuse problems. When Community Services referred our concerns to the chairperson of the organisation (who happened to be the man's brother), the chairperson made it clear that the board valued the man's experience, that he had been asked to temporarily stand down 'until this has been sorted out', and that the organisation required guidance on the standards expected by Community Services when managing these kinds of issues. In response, Community Services indicated that they were satisfied with the action taken and 'concluded' their involvement in the matter.

Our review found that many critical issues were yet to be addressed. In particular, it was unclear whether the organisation recognised any need to address the risks likely to be associated with the man's ongoing involvement in the operations of the service or had taken steps to mitigate those risks. Then, when they sought specific guidance on these issues, it was unclear what (if any) practical information and assistance Community Services provided. It was also unclear whether Community Services had any concerns about the organisation's actions or if steps had been taken to ensure that appropriate procedures and/or governance arrangements were in place to manage ongoing or future probity risks involving employees, board members or volunteers at this and other services.

As part of a further investigation, we asked Community Services to:

- › review their handling of this matter
- › have discussions with the organisation about assessing the risks posed by any ongoing involvement of this individual in the operation of the service
- › examine the adequacy of procedures for assessing and managing future risks relating to him and any existing or prospective employees, volunteers and elected members of the board of management.

In response, Community Services acknowledged our concerns and indicated that it had gone to some effort to convey these to the organisation's board, particularly in relation to the need to manage community perceptions about the probity of individuals involved in the planning and delivery of client services. However, it also noted that the board valued the man's skills and there was nothing in the current guidelines to stop him from volunteering for a board position in the future.

As to the adequacy of current procedures, Community Services acknowledged the lack of guidance on probity issues in key policy documents, including its *Good Practice Guidelines for Funded Services Manual* and its *Fraud Risk Assessment for Service Providers*. On the other hand, we were told that 'Community Services emphasises in its discussions with funded agencies that one benchmark of a well managed organisation would be that members of the board and the executive have undergone probity assessments'. Community Services said it had some concerns and will continue to monitor the agency. If requested, it will provide advice to assist it to manage probity risks.

As this case, and a number of others we have reviewed, raised broader questions about how best to strengthen and support appropriate probity standards in funded services generally, not just those funded by Community Services, we convened a probity forum with stakeholders from across the human services and health sectors. For information about the forum and about a discussion paper we issued following the forum, see page 29 in Stakeholder engagement.

Policing issues in Aboriginal communities

The principal forum for raising and addressing key policing policy issues in Aboriginal communities is the Police Aboriginal Strategic Advisory Committee (PASAC). This is a high level meeting convened by the Commissioner three times a year to address priority issues and oversee the implementation of the NSW Police Force's programs, especially those listed in their *Aboriginal Strategic Direction* policy.

PASAC enables the Commissioner to bring together, and seek advice from, Aboriginal leaders from peak representative groups and government bodies such as Aboriginal Affairs NSW and the Attorney-General's Aboriginal Justice Advisory Committee. We have been an active member of PASAC since the former Commissioner revitalised the group and made it central to the NSWPF's strategies for inviting input from other government agencies and Aboriginal leaders on issues and problems of mutual concern.

Through PASAC we have been able to monitor and observe some impressive changes in the NSWPF's work with Aboriginal people. Some current initiatives include:

- › strong progress in implementing Aboriginal recruitment, training and employment programs
- › police-led initiatives to work with communities to tackle entrenched substance abuse problems
- › impressive changes to the NSWPF's approach to Aboriginal cultural appreciation training – including joint training with other agencies.

Our involvement in PASAC has also enabled us to raise issues that require a policing response, but which also rely on input from other agencies. This includes at least two important initiatives in relation to our three-year review of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

The first relates to the limited availability of suitably qualified medical practitioners to undertake forensic examinations of sexual assault victims, especially in outlying regions and remote towns. This issue has long been recognised as a significant impediment to victims coming forward to report sexual assaults, and to the success of prosecutions when they do come forward. With the support of PASAC, we were able to bring together the heads of NSW Health, the NSW Police Force, Community Services and Aboriginal Affairs NSW to begin planning changes that should have a real impact.

The second relates to difficulties that police, other agencies and communities experience in dealing with young people who engage in high levels of risk-taking behaviour, and who also put themselves at considerable risk of harm. Through PASAC, we sought the support of police and other agencies for an intensive, interagency review of the availability and effectiveness of current interventions, starting with two towns in Western NSW. The aim is to assess and look for ways to improve early intervention and prevention work.

Our review of a cohort of children and young people at risk

Our review will consider, but not be limited to, examining information holdings relating to all children aged from 8 to 11 years from the two nominated locations in Western NSW who present with the following risk indicators:

- repeated contact with police (including diversionary options under the Young Offenders Act)
- habitual non-attendance at school, repeated or long suspension and expulsions
- risk of harm reports to Community Services, and
- any contact with Juvenile Justice, including a period of detention in a juvenile justice facility.

Our review will focus on all children in these locations who meet the criteria, not just Aboriginal children. It will also consider comparative data about an earlier cohort of young people from these locations.

The NSW Police Force agreed to provide the initial data sample for cross-matching purposes. This data will be analysed and compared with relevant records held by Community Services, Juvenile Justice and the Department of Education and Training, including education data on suspensions, expulsions and school attendance.

Any individual or family 'profiles' will be developed in conjunction with agencies. The agencies agreed to examine what work can realistically be done to assist these young people and their families. Our aim is to assist agencies to develop a clear picture of information holdings and the number of families and children involved – to determine the extent, and nature of, the existing need in these locations – but also to allow agencies to identify what can and cannot realistically be done to assist the children and families identified through our review.

Western region human services and justice agency managers undertook to take responsibility for case-managing the children and families identified as needing assistance.

Handling complaints

Handling complaints about policing remains an important part of our work with Aboriginal people, and enables Aboriginal communities and services to raise important local level concerns.

CS 4: Three arrests that shouldn't have happened

In March 2010 we received a complaint from the Aboriginal Legal Service in Kempsey about an Aboriginal young person who was arrested for breach of bail. Although the young person's mother informed police that her son was no longer subject to bail conditions that imposed a curfew, police records showed he was. He was eventually released from police custody after inquiries confirmed that the bail conditions had been removed by the court two weeks earlier.

Police investigated the matter and found that there was a delay in the local court in amending the bail details on the JusticeLink computer system and that police had acted in 'good faith'. A meeting was proposed between police and the Local Court Registrar to discuss changes needed to avoid similar problems from recurring.

A week later we received another complaint from the same legal service about another Aboriginal young person who had been arrested for breach of bail. Like the previous complaint, he was arrested despite his mother informing police that the bail conditions had changed. The young person was released from police custody after further inquiries confirmed that he was not in breach.

The officer investigating this complaint found that the young person's arrest was improper as the arresting officer made no attempt to verify the mother's advice about the change in bail conditions. The arresting officer was counselled and the investigating officer emailed all officers in the command reminding them about the need to check all relevant records or systems before arresting anyone for breach of bail. He also recommended that:

- all supervisors and officers acting as supervisors be given access to 'Court Process' records on the police COPS computer system
- all supervisors and acting supervisors be trained to update bail conditions on COPS immediately after bail hearings if the court processing officer is not working
- the procedures for bail compliance checks and arrests be amended.

A few days later, we received a third complaint from the same legal service raising similar issues. In this case police went to the home of an Aboriginal man and arrested him for an alleged breach of bail, despite him advising them of changes to his bail conditions. As he was unable to locate the associated paperwork, he was arrested and taken to the police station and detained until police confirmed that his bail conditions had in fact been removed. The investigation of this complaint concluded that police acted in 'good faith' as court staff had apparently failed to delete his previous reporting arrangements.

We asked the Local Area Command to review their handling of all three matters. Despite the complaints raising similar issues, only one of the investigations recommended action that was likely to address the cause of the problem and prevent it from recurring. Also, in all three cases, there were questions about the reasonableness of the arrests – but only one investigation appeared to concede that police perhaps could have acted differently.

We also asked the commander to consider apologising for the actions of police, and to provide us with feedback about the proposed meeting with the Local Court Registrar and other actions to remedy the problem. We will continue to monitor this issue closely.

Our work in relation to Aboriginal people in detention

Staff from our Aboriginal Unit accompanied staff from our corrections unit on 18 visits to juvenile justice and correctional centres this year. This helps to ensure that Aboriginal detainees have the opportunity to speak with another Aboriginal person about any concerns they may have.

This is particularly important in juvenile justice centres, where 53% of detainees are Aboriginal. According to some estimates, 86% of juvenile justice detainees in Western NSW are Aboriginal.

During our visits we also see if centres are making adequate efforts to meet the cultural needs of Aboriginal detainees and inmates.

CS 5: A good compromise

An Aboriginal inmate at Broken Hill Correctional Centre asked to attend his father's funeral in Wilcannia, 190km away. His application was supported conditionally by the centre, but later declined after head office determined that the travelling distance and other factors meant the centre could not accommodate the request.

As a result of our inquiries, the centre agreed to make the following arrangements. The Aboriginal priest who conducted the funeral service later attended the centre for a memorial service that included a DVD recording of the funeral. All inmates related to the deceased were invited to attend, given an extra 'friends and family' visit on the day of the funeral as well as additional phone access.

The centre also arranged for a wreath to be sent to Wilcannia for the funeral service on behalf of the son. Although disappointed that the son could not attend the funeral, the family understood the reasons and were very happy with the compromise arranged by the centre.

Reducing the number of Aboriginal people in detention

Our work on Aboriginal detention issues this year included preparing a detailed submission to a federal parliamentary inquiry into the high numbers of Aboriginal and Torres Strait Islander juveniles and young adults involved in the criminal justice system. This submission outlined some of the key issues and initiatives we have identified through our work with Aboriginal people, including:

- *Early identification of risk.* We highlighted the risks associated with chronic non-attendance at school, issues associated with risk of harm reports to Community Services, and problems linked with family violence, homelessness and offending behaviour. Early intervention is critical to reduce the likelihood of a young person being in contact with the criminal justice system.
- *Police strategies to divert young offenders from the criminal justice system.* Much of our past work in auditing the implementation of the NSW Police Force's *Aboriginal Strategic Direction* focused on local strategies to divert Aboriginal young people from crime and anti-social behaviour. We outlined some of the key issues that police need to address to improve outcomes through these schemes.
- *Alternative pathways.* Our consultations with Aboriginal communities have indicated that for some young people there can be significant benefits in taking them out of environments that contribute to and reinforce their risk-taking behaviours. Providing alternatives designed to strengthen their pride in their culture and bring them together with Aboriginal role models can help them to make more positive choices.

We also argued that addressing the high level of Aboriginal young people's involvement with the criminal justice system ultimately depends on improving agency strategies to identify and manage those young people and their families at greatest risk, and providing well-integrated services to them.

Engaging with other agencies, organisations and community groups

State and federal agencies

Our partnerships with other agencies and organisations are critically important. For example in November 2009, the Ombudsman and the Community and Disability Services Commissioner gave keynote addresses on the lessons learnt from our years of working with Aboriginal communities, and an overview of the Ombudsman's work in relation to child protection to 200 delegates at AbSec's Annual Conference. AbSec is the peak NSW Aboriginal body providing advice on child protection and out-of-home care policies to government and non-government sectors.

During 2009–2010, we also:

- Met regularly with Aboriginal representative organisations, Aboriginal service providers and Aboriginal staff in key agency roles to discuss service delivery issues and gather information to inform our audit work.
- Liaised with Aboriginal Affairs NSW, at both a corporate and local level, to discuss our audit programs, provide feedback and exchange information about service delivery in the regions we visit.
- Provided briefings to the Ministerial Advisory Panel (MAP), an expert advisory panel set up to advise the Minister for Aboriginal Affairs on implementing the interagency plan.
- Met with the Children's Guardian about our review of Aboriginal out-of-home care agencies, and the Department of Transport and Infrastructure about our review of the implementation of ADHC's Aboriginal Policy Framework and Aboriginal Consultation Strategy.

We share our knowledge about our work with Aboriginal communities with other Ombudsman offices and oversight bodies. This year we met with Police Indigenous Relations staff from the Victorian Office of Police Integrity to explain our audits of the NSW Police Force's Aboriginal Strategic Direction policy. We also met with the Crime and Misconduct Commission, Queensland to discuss projects relating to past and current audits.

Federal government agencies are increasingly taking an interest in our work with Aboriginal communities. For example, we have had discussions with the Commonwealth Ombudsman on the scope for collaborative work between our offices, and met with the Department of Families, Housing, Community Services and Indigenous Affairs and the Coordinator General for Remote Indigenous Services – who oversees the performance of Australian government agencies in meeting their commitments to implement the National Partnership Agreement on Remote Service Delivery (RSD).

In light of the highly sensitive information sometimes gathered through our audits and consultations, we have consulted the Australian Crime Commission (ACC) to discuss our role, the approach that we have adopted, and where our work might intersect ACC investigations into abuse and corruption.

Community groups

Much of our current work in Aboriginal communities is focused on practical ways to improve child protection and wellbeing. We also reach out to communities through a number of established programs, such as the Good Service forums. We run these forums – together with the Commonwealth Ombudsman, Energy & Water Ombudsman, Banking Ombudsman, Legal Aid NSW, the NSW Anti-Discrimination Board, the NSW Office of Fair Trading, the Health Care Complaints Commission and Law Access – in various parts of NSW. They provide an opportunity to inform Aboriginal communities about our role and their right to complain about difficulties with government or non-government agencies. This year, staff from our Aboriginal Unit attended Good Service forums in Nowra, Peak Hill, Penrith and Wellington.

During 2009–2010, we also:

- › Participated in four NAIDOC week events across Sydney, enabling us to meet with and discuss the concerns of hundreds of Aboriginal community members at each event.
- › Gave a presentation on Aboriginal issues, policing and the role of the Ombudsman to 64 criminology students from the University of NSW.
- › Participated in the Ideas Expo in Merimbula, presenting to 30 people including people with disabilities and their families, carers and supporters as well as health professionals, disability and aged care mainstream service providers, university students, schools and government agency staff.
- › Supported the Aboriginal Affairs NSW 'Everybody's Business' Aboriginal Child Sexual Assault Prevention Information Day in Nowra, enabling us to meet with a number of Aboriginal service providers including members of the Shoalhaven Safe Community Aboriginal Partnership and Shoalhaven Aboriginal Child Sexual Assault Steering Committee.
- › Attended the National Conference on Indigenous young people, crime and justice which aimed to identify and share research and practice on the over-representation of Indigenous young people in the criminal justice system. The conference had a major focus on Indigenous children and young people who interact with the criminal justice system early or repeatedly, have complex needs, and require targeted responses from the justice, education, child protection, family support and cultural services systems.
- › Attended the National Indigenous Service Delivery Conference in the Northern Territory.
- › Addressed delegates at the Aboriginal Education Consultative Group (AECG) State Conference, which was well received – the AECG President has since endorsed regular meetings between our office and the AECG in relation to our projects.
- › Gave a presentation to 150 people about our review of ADHC's implementation of their *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy* for Aboriginal people with disabilities at ADHC's Northern Region Conference. We also presented on our work in this area at ADHC's Aboriginal Service Development and Delivery Directorate Planning Day and to attendees of the Ministry of Transport Forum.
- › Gave a presentation to 70 community members at the Aboriginal Elder's Forum in Moree – the forum was a joint venture between NSW Aboriginal Affairs, Tamworth Indigenous Coordination Centre, Moree Plains Shire Council and our office. It gave community Elders the opportunity to have their say about important issues in their community.
- › Attended the official signing ceremony of the first formal Memorandum of Understanding (MOU) between Community Services and AbSec to help improve safety for Aboriginal children. The event underpinned two new projects as part of the government's *Keep Them Safe* plan – the Aboriginal consultation model and the establishment of four new Intensive Family Based Services.
- › Attended a barbecue lunch and met with 35 community members and service providers, including 26 Aboriginal Elders from the Bega, Eden and Wallaga Lakes area. Our presence allowed Aboriginal community members to discuss a number of issues that they wanted relevant service providers to consider and address. For example, residents at Wallaga Lakes raised their concerns about housing issues – including issues relevant to our inquiry into various agencies' responses to the problems associated with friable and bonded asbestos in the community. See page 92 in Departments and authorities for more information about this investigation.

Providing Aboriginal cultural appreciation training

Following the success of our internal Aboriginal cultural appreciation training for our staff, this year we were engaged by the Energy & Water Ombudsman to deliver a joint training package for their staff.

The training program is presented by staff from our Aboriginal Unit and is designed to help improve understanding of issues affecting Aboriginal people and their needs.

The training has been well received by participants, particularly the sharing of personal stories from our Aboriginal Unit staff members. We have delivered three sessions so far to EWON staff, with planned training to be delivered to new staff in the near future.

Thank you for organising the recent Aboriginal cultural appreciation training for EWON staff ... It is always difficult to pitch training to meet the needs of staff across different functional areas and with varying levels of knowledge and experience, but the feedback from participants was overwhelmingly positive. Staff were particularly appreciative to Laurel, Carla, Kylie [NSW Ombudsman staff] and Rose [Indigenous Project Officer, EWON] for sharing their personal stories and I think this session really contributed to its success.

[Manager Service Development, EWON]
Community education and training

Community education and training

Providing education and training to public sector agencies, non-government organisations and other bodies is an important part of our work.

Our training focuses on promoting good administrative conduct, fair decision-making and high standards of service delivery. Delivering training – about complaint-handling, responding to unreasonable complainant conduct and negotiation skills – is also a way for us to help the agencies we oversee maximise the efficient use of their resources. Our work in this area also provides us with a valuable opportunity to receive feedback from practitioners.

Overview

Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* we have a specific function to educate service providers, clients, carers and the community about standards for the delivery of community services in NSW.

We also provide training and support to other Ombudsman offices in Australia and overseas. Our training is offered on an 'open' basis via our public training calendar, and on an 'in-house' basis tailored to suit the needs of a variety of organisations.

In addition to training, we provide briefings and information sessions, give presentations, and develop resources and publications. The audits and reviews we conduct with agencies and services, such as our complaint-handling reviews, are also an important part of our ongoing responsibility to educate our stakeholders. See page 25 in Stakeholder engagement for more details of our work in this area.

In 2009–2010 we undertook more than 271 information, education and training activities reaching over 10,237 people. This included 144 training workshops with 3,088 participants. Of these training workshops, 67 were targeted at the NSW community services sector, 49 at NSW government agencies and another 30 at federal, other Australian state and international agencies.

General training

Our 'general' training program consists of three key workshops that help people to develop skills and strategies for effectively dealing with complaints – Complaint-handling for frontline staff, Managing unreasonable complainant conduct, and The art of negotiation. These workshops are open to all sectors, public agencies, community services and private organisations.

This year we also developed a new training package – Aboriginal cultural appreciation, and the Deputy Ombudsman delivered Better management of protected disclosures workshops in conjunction with the ICAC.

In 2009–2010, we ran 74 general training workshops reaching 1,804 people. Thirty four of these workshops were delivered in the Sydney Metropolitan region, 11 in regional centres across NSW, 25 in other states and four in Canada.

Best presentation I have been to. Well run – to time, clear and concise.

Managing unreasonable complainant conduct

› Stage 1

In June 2009, we published the first edition of our *Managing Unreasonable Complainant Conduct Practice Manual*. It is available on our website and was the end result of 'Stage 1' of a joint project involving all Australian parliamentary Ombudsman offices.

The manual is designed to help agencies and their staff take a systematic and consistent approach to managing challenging interactions with their complainants. It provides guidelines, suggestions and strategies to assist organisations address the safety concerns raised by unreasonable conduct and ensure adequate resources are available to enable staff to properly manage such cases. These guidelines and strategies aim to supplement an organisation's existing operational policies and procedures.

We have had a very positive response to the manual. As a result, we have delivered 54 training workshops on Managing unreasonable complainant conduct, reaching over 1,396 participants from public and private organisations across Australia. Forty one of these workshops were delivered as 'in-house' training sessions for organisations and 13 were delivered as part of our public training calendar. Four of these workshops were delivered by the Deputy Ombudsman in locations across Canada, following the success of earlier training with the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman.

› Stage 2

Although the various strategies in the current practice manual cover most circumstances that can arise, some strategies can only be implemented by organisations that have the discretion to end their relationship with the complainant. A further issue for some smaller non-government service providers and those involved in remote service delivery is that they have restricted resources and may have difficulties implementing some of the suggested strategies. We have now embarked on 'Stage 2' of this project to develop additional strategies for complaint handlers working in these specific situations.

Nine workshops involving 27 focus groups across Australia have been held so far with representatives from approximately 80 agencies participating. Our objective is to gain insights from a range of people with experience in dealing with unreasonable complainant conduct in these situations. We are also interested in exploring methods organisations may have used to help rebuild productive relationships between a complainant and the organisation when such relationships have broken down.

Handling protected disclosures

In conjunction with the ICAC, our Deputy Ombudsman conducted five Better management of protected disclosures workshops during 2009–2010, reaching 196 people from a range of agencies including local councils. This workshop provides information about protecting whistleblowers – people who report improper, corrupt or unlawful behaviour in the public sector and managing their disclosures. It includes definitions of what constitutes a protected disclosure, what types of wrongdoing are covered, and the protection from reprisals afforded to those making the disclosure.

One of the main concerns for public sector agencies is how to manage disclosures and ensure that they are properly investigated. The workshop also includes information on the legal protections available and answers practical questions about who disclosures should be made to and how they should be investigated. For more details of our work in this area see page 109 in Protected disclosures.

Aboriginal cultural appreciation training

Our Aboriginal Unit has developed a new *Aboriginal cultural appreciation* workshop, based on their experience in examining ways to improve service delivery for Aboriginal people in NSW. In addition to the Aboriginal Unit's complaint-handling role, our staff meet regularly with local service providers, government agencies and community members to explore ways to improve outcomes for Aboriginal people in their area.

The workshop is designed for frontline workers from the community and government sectors and is only delivered 'in-house', so we can tailor the training package to meet the specific needs of the organisation. The training aims to better equip organisations to provide a culturally responsive, flexible and consistent service to Aboriginal and Torres Strait Islander people.

We provide an overview of Aboriginal history and culture, as well as culturally appropriate communication protocols and strategies to help participants to more effectively assist Aboriginal and Torres Strait Islander people.

During 2010, our Aboriginal Unit delivered three of these in-house workshops. For more information about the Aboriginal Unit's work, see page 32 in *Working with Aboriginal communities*.

Employment-related child protection training

With over ten years experience in overseeing reportable conduct allegations, our employment-related child protection training is designed for those who undertake and review investigations of reportable conduct allegations involving employees.

In addition to the training workshops we offer, we also develop resources and give briefings and information sessions about our employment-related child protection function to schools, health services, child care centres, out-of-home care services and other public authorities, including interstate agencies. For more information about our work in this area, see page 62 in *Children and young people*.

A very knowledgeable presenter
– one of the best workshops
attended in a long while.

Responding to allegations against employees

Our Responding to allegations against employees workshop provides an overview of employers' obligations under the Ombudsman Act and examines the steps in the investigation process, risk assessment and management. We delivered six of these workshops during 2009–2010, reaching 136 people. This training package was also reviewed this year and initial feedback from the revamped workshop and materials has been positive. We have four 'open' workshops scheduled for 2010, with additional workshops scheduled to be delivered 'in-house'.

Handling serious allegations

In 2010 we expanded our training program to include a workshop on handling serious employment-related child protection allegations. This workshop is for investigators, heads of agencies, managers and supervisors who conduct and review investigations of allegations that may involve a criminal element.

Delivered by the Deputy Ombudsman who is also the Community and Disability Services Commissioner, this workshop provides participants with specialist and practical knowledge that will help them deal with some of the more complex challenges associated with handling serious allegations. The first workshop was held in June 2010, with another six 'open' workshops and four 'in-house' workshops scheduled for July to December 2010.

Training for the community services sector

We provide a range of training workshops, awareness activities and resources for the community services sector. In 2009–2010 we delivered 65 training workshops for service providers, consumers and advocates, reaching more than 1,128 people. Thirty seven of these workshops were held in rural or regional areas such as Batemans Bay, Bega, Cooma, Dapto, Deniliquin, Dubbo, Gosford, Grafton, Lake Macquarie, Lismore, Lithgow, Newcastle, Nowra, Port Macquarie, Taree, Tenterfield and Wollongong.

Just wanted to say thank you again, the feedback from the workshop was overwhelmingly great ... the managers expressed their appreciation at the fact that it was extremely practical, informative and relevant to their daily work.

Complaint-handling and management training

Forty three of the 65 workshops we delivered were complaint-handling training for service providers, reaching approximately 814 people working in the community services sector. These workshops help service providers to understand their responsibilities under CS-CRAMA and develop the knowledge and skills to handle complaints effectively. During 2009–2010, we delivered 32 workshops 'in-house' to services, and 11 as part of our public training calendar.

During 2010, we reviewed our complaint-handling training packages for the community services sector and tailored them into two complementary packages – Frontline skills for complaint-handling, and Effective complaint management. Together with The Rights Stuff training package, we now have a suite of training packages that target frontline staff, managers and consumers of community services.

Recognising
35 years of
commitment

Frontline skills for complaint-handling

This workshop helps community services staff who come into regular contact with clients to develop effective skills and appropriate strategies for complaint-handling. Participants are given a step by step model for dealing with complaints – examining different types of complainant behaviour and overcoming personal and organisational barriers to making and resolving complaints. Evaluations from this workshop continue to be very positive, with the majority of participants rating the workshop as excellent. Feedback from participants has included that they found the workshop ‘lively, interactive and practical’, ‘very helpful’ and, importantly, that it has helped them ‘feel more confident about dealing with complaints’.

Effective complaint management

This new workshop, tailored for managers and executives of community services, builds on our previous community services training modules to provide an overview of the essential elements of an effective complaint-handling system.

It uses Australian Standards as a reference and provides guidance about what good complaint policies should look like. It also looks at cultural and organisational issues relating to complaints and how they can be used to improve service delivery.

Of the four Effective complaint management workshops delivered in the first six months of 2010, the majority of participants evaluated this new workshop as good or excellent. Feedback from participants indicated that they found the workshop useful and interactive, and that it provided them with ‘really practical information’ and ‘very practical tools to implement an empowered complaints culture’ as well as ‘an opportunity to reflect on existing organisational systems’.

Training for consumers of community services and their advocates

The Rights Stuff is a workshop that has been specifically developed for consumers of community services, their families, carers and advocates. It provides practical information and tips to build confidence in raising issues with service providers and resolving complaints.

We delivered eight of these workshops during 2009–2010, including six in regional locations such as Bega, Lismore and Newcastle. The majority of participants rated this workshop as excellent or good, noting that the most useful aspects were learning ‘how to complain’, ‘how to contact the Ombudsman’, that it is ‘good to know there are other supports available’ and that they came away from the workshop with ‘more courage to speak up to others’.

Domestic violence advocacy training

This year, we partnered with Women’s Legal Services (WLS) NSW to provide advocacy training to workers in the community, health and legal sectors as part of *Reaching out for rights*. This is a project developed by WLS to give workers the skills they need to help women experiencing family violence to successfully navigate the justice system. One hundred and eighty workers attended workshops in 12 locations in the Mid North Coast, Far South Coast, Far South West and Goulburn/Yass as well as in metropolitan Sydney.

Our staff provided attendees with information about the role of the Ombudsman, police responsibilities in relation to domestic violence, and how to assist women to complain if they feel they have not received appropriate help from the NSWPF or other agencies. The project particularly aims to help women who experience barriers when negotiating the justice system – such as Aboriginal women, women from culturally and linguistically diverse (CALD) backgrounds, refugee women and women living with disabilities.

As a result of this training, several participants decided to establish a local domestic violence committee involving local police. The training also dispelled a range of myths about the police complaints system and gave participants useful guidance about advocating for their clients – including when to involve the Ombudsman. See page 81 in *Policing* for more details of our work in the area of domestic violence.

Training for disability services staff

This year we began delivering training to direct care staff in disability services on the key findings from our disability death reviews. The training provides a useful forum for improving staff awareness, resolving concerns, and discussing any practical challenges or regional differences in practice. During 2009–2010 we delivered three of these sessions to 25 participants. Next year, we will expand our training to a wider range of services. See page 67 in *People with disabilities* for more information about our disability death reviews.

Community education

Our community education activities are central to ensuring that people in the community are aware of our office and understand our role. We undertake a wide range of activities to ensure we remain accessible – such as giving presentations and information sessions, attending community events, conducting forums and roundtables, and visiting regional and remote communities to consult them about agency service delivery.

We produce a number of guidelines, fact sheets and resources used in our community education activities. Some of the publications we issued include assorted fact sheets, guidelines, brochures, two electronic newsletters, four reports and submissions, three annual reports and five special reports to Parliament. We also distributed subject-based summaries of our 2009–2010 annual report to a range of peak bodies and organisations in the child welfare, disability, justice and Aboriginal community sectors.

For more information about our community engagement activities, see page 25 in *Stakeholder engagement*.

Deputy Ombudsman Outreach Forums

Our Deputy Ombudsman Outreach Forums are aimed at community sector workers in regional and rural centres across NSW. As this State’s Community and Disability Services Commissioner, the Deputy Ombudsman provides an overview of our role and the specific work we do in the community services sector. We held three of these forums this year – two in Queanbeyan with 50 participants, and one forum in Bankstown reaching 70 community workers who work with non-English speaking clients.

For more information about other forums we hosted for our stakeholders during 2009–2010, see page 28 in *Stakeholder engagement*.

Presentations and information sessions

Some of the events we were involved in this year include:

- › Corrective Services Official Visitors Conference – presenting to 60 OCVs and Corrective Services NSW senior management staff.
- › Australian Public Sector Anti-Corruption Conference 2009 in Brisbane – presenting to 50 delegates.
- › Integrity Agency Forum for Police Researchers at the Crime and Misconduct Commission Queensland – on Ombudsman investigations into policing strategies to address domestic violence and police work with local Aboriginal communities.
- › NSW FOI Practitioners Network meeting – two sessions for 140 people.
- › Keep Them Safe Forum hosted by National Disability Services at Parliament House – to 150 people about the Wood report.
- › National Police Integrity Colloquium in Melbourne – to 20 people on current issues and the work of our police and compliance branch.
- › Illawarra Social Housing Forum – about our investigation into the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing.
- › Official Community Visitors Conference.
- › Joint Investigation Response Team Conference – to 200 delegates.
- › Regional Support Workers Forum hosted by National Disability Services – two sessions in regional locations about the role of the Ombudsman and tips on how to handle a complaint.

In addition to these presentations, the Deputy Ombudsman made a number of presentations about complaint management at conferences, symposiums and forums in Sydney, Brisbane, Canberra and Melbourne.

As part of the Child Wellbeing Unit (CWU) Development Program in 2009, we gave three presentations to 105 team leaders and assessment officers about issues such as risk assessment and cumulative risk.

We also gave presentations at key child protection forums on sexual offences by school employees against children and online grooming, and provided a briefing to PANOC and sexual assault services at their statewide meeting.

For further details about our presentation and information sessions to Aboriginal stakeholders see page 32 in Working with Aboriginal communities.

Ombo Info electronic newsletter

The first issue of our new-look electronic newsletter Ombo Info was released in 2010. It is published three times a year and aims to increase public awareness about the work that we do. The first issue covered topics ranging from reviewing the circumstances surrounding the tragic deaths of two young children and examining what is needed to improve service delivery to people with a mental illness, to monitoring the use of new laws giving additional powers to police and delivering training to a range of agencies and organisations.

Previous issues of Ombo Info focused mainly on our work in the area of community services. While we will continue to report on this work, Ombo Info now includes updates about a broader range of our functions and activities. To subscribe to our newsletter, please go to our website and click on 'Subscribe to e-newsletter' under Quick links on the right hand side of the page.

Our new community education and training unit

In 2009, we formed a new cross-office unit to better coordinate our community education and training functions. This has enabled us to improve the way we plan and deliver these activities, including tailoring packages to suit the needs of a more diverse audience and developing more training options. Several of our new courses have been developed by senior investigators and practitioners across several disciplines.

The unit is located within the strategic projects division (SPD), which is responsible for leading major projects and investigations, in particular those that cross the jurisdictions of the Ombudsman's various operational areas. The Ombudsman's Aboriginal Unit and youth liaison officer are located within this division, and for this reason, the division has a focus on Aboriginal and youth issues.

For example, the coordinated approach to planning our 2010 training calendar allowed us to match general training workshops up with community services training, providing more opportunities to access our training in regional areas. During 2010, three Managing unreasonable complainant conduct workshops were held in conjunction with our community services complaint-handling and management workshops in regional areas.

A large focus of this new unit during 2010 was the review of training materials to ensure currency and consistency, as well as the development of a number of new training packages – Aboriginal cultural appreciation, Handling serious allegations and Domestic violence advocacy. We also developed a new 'Introduction to the Ombudsman' publication and presentation that can be used by staff in their community education activities.

Our plans for the coming year include:

- › broadening the focus and participation of our staff in Ombudsman outreach forums
- › building on our engagement with young people and the youth sector
- › developing a practical complaint-handling framework
- › preparing a complaint-handling training program, with National Disability Services NSW, to meet the needs of the disability services sector
- › delivering complaint-handling and employment-related child protection training to Aboriginal out-of-home care services
- › rolling out Managing unreasonable complainant conduct stage 2.

In the last 35 years, we have developed strong ties with other Ombudsman offices both in Australia and overseas.

These connections allow us to provide training courses to organisations across the country and around the world.

Highlighting
35 years



Highlights

- › Tabled two special reports in Parliament about the deaths of 'Ebony' and Dean Shillingsworth, and the challenges these deaths pose for the new system for responding to children at risk of harm. [SEE PAGE 48](#)
- › Initiated four investigations into issues such as probity checking for carers, the accuracy of evidence submitted to the Children's Court, and the lack of support for young people in refuges. [SEE PAGE 48](#)
- › Prepared draft procedures to help the NSW Police Force provide better support to agencies dealing with reportable conduct involving criminal allegations. [SEE PAGE 59](#)
- › Began an investigation into the problems homeless people with physical disabilities have accessing SAAP services. [SEE PAGE 64](#)
- › Started consultations with families of children with disabilities who live at home about the adequacy of the services and support they receive. [SEE PAGE 65](#)
- › Held a successful community forum, in partnership with the Disability Council of NSW, on the closure of institutions housing people with disabilities – attended by close to 300 people. [SEE PAGE 66](#)
- › Supported 42 community visitors to make 3,335 visits to 6,422 people living in residential services in NSW. [SEE PAGE 69](#)

| | |
|-------------------------------|----|
| › Children and young people | 46 |
| › People with disabilities | 62 |
| › Official community visitors | 69 |

2 Human Services

We handle inquiries and complaints about a range of human service agencies, including Community Services; Ageing, Disability and Home Care, Juvenile Justice, and certain non-government service providers. Our work in relation to housing is discussed in Departments and authorities.

We review the delivery of community services and oversee investigations into allegations of reportable conduct or reportable convictions of some employees. We regularly visit juvenile justice centres in NSW to speak with detainees and staff, and to inspect the facilities.

Children and young people

In this chapter we outline our work in reviewing the deaths of children, handling complaints about, and reviewing systems for the provision of community services to children and reviewing the situation of children in care. We also discuss our role in overseeing investigations into reportable employment-related child protection allegations and our work with young people in detention.

Our responsibilities for protecting children are included in the *Community Services (Complaints, Reviews and Monitoring) Act 1993 (CS-CRAMA)* and Part 3A of the *Ombudsman Act 1974*.

Community services

Since 2002, we have had broad ranging responsibilities for children and young people and people with disabilities under the CS-CRAMA.

Our responsibilities for children and young people include reviewing the deaths of children whose deaths are, or may be, due to abuse or neglect or occur in suspicious circumstances as well as children who, at the time of their death, were in statutory care, a disability accommodation service or a detention centre. We also handle complaints about the provision of community services for children and review the complaint-handling systems of providers. Our jurisdiction includes Community Services and services licensed, funded or authorised by the Minister for Community Services.

Our work under CS-CRAMA in the disability area is discussed in People with disabilities on page 62. Our work in overseeing the official community visitors scheme is outlined on page 69.

Employment-related child protection

Under Part 3A of the Ombudsman Act, reportable conduct is conduct that involves abusive behaviours towards children. This can include physical assault, sexual offences, behaviour causing psychological harm, ill-treatment or neglect.

We receive notifications, assess and monitor investigations, directly investigate matters if we have serious concerns, and conduct audits and training activities to improve agencies' understanding of, and responses to, reportable allegations against their employees.

All public authorities are subject to the requirements of Part 3A if the reportable conduct arises in the course of a person's employment. Some public authorities – such as the Department of Education and Training (DET) and Community Services – are designated agencies and also need to notify reportable allegations if they arise from conduct that takes place outside of employment. Some non-government agencies are also subject to Part 3A requirements and must notify reportable allegations that arise both within and outside of employment. For more details on our work in this area see page 54 in this chapter.

Changes to child protection

In 2009–2010 the NSW Government began to implement changes to improve the child protection system. These changes arose from the Special Commission of Inquiry into Child Protection Services in NSW.

In January 2010, a new system for responding to children at risk of harm came into operation. It is part of the government's five-year reform plan known as *Keep Them Safe: A Shared Approach to Child Wellbeing*. The new system has the following three main elements.

- A child must now be assessed as being at risk of significant harm to warrant a response by Community Services. This higher threshold is intended to allow Community Services to concentrate their efforts on children and young people who are most at risk.
- New child wellbeing units (CWU) have been set up in public sector agencies to help identify and report children and young people at risk of significant harm, and help at-risk children who do not meet the new threshold.

- Additional service delivery for vulnerable children and families who fall below the statutory intervention threshold is being trialled through pilot family referral services. These began operating in May 2010 in Dubbo, Newcastle and Sydney and will test different methods for linking families with supports in their local area.

In addition, initiatives are underway to expand early intervention and prevention services, and build up the skills and capacity of the non-government sector. *Keep Them Safe* also includes commitments to strengthen child protection by expanding parts of the universal service system – for example, by making home visits available to every family with a newborn and providing access to preschool education for every four-year-old.

Over the next few years, Justice Wood's inquiry and the NSW Government's acceptance of the vast majority of the Inquiry's recommendations will see a vastly changed child protection system in this state.

We have previously noted that with any significant change there are always risks and challenges, and the proposed changes to the child protection system in NSW are no exception. We have urged government to consider some of the potential issues that may arise in the reform environment, in order for problems to be anticipated and managed.

A critical issue will be how the varied components of the new multifaceted system will be implemented. The recommended changes of the Special Commission of Inquiry presumed adequate provision of an array of universal and targeted services, working together to ensure the provision of timely and appropriate support to children and their families.

However, the introduction of new services is taking place differentially. As noted above, family referral services are being trialed on a pilot basis in a limited number of locations and early intervention services are being expanded in the first instance on a limited basis. The non-government sector does not have its own CWU and nor do the private or Catholic school sectors.

Implementing the new system in this way means that there are potential risks in the ability of agencies and services to respond to concerns about children wherever they may be and to either directly provide, or arrange for, adequate support to vulnerable families across all areas of the state.

Adequate identification of risk is also critical and we have questions about the ability of agencies to identify cumulative risk of harm to children. In order to do this, agencies need adequate access to information about previous child protection reports to help them make informed assessment, referral and support decisions.

This has been acknowledged in *Keep Them Safe*, and legislative changes promote improved and easier processes for exchanging information. However, how effectively these provisions are applied and supported in practice needs to be closely monitored. We have concerns, for example, that the CWUs have only limited access to information on KiDS, the Community Services database, and the non-government sector will have no access at all.

However, on a positive note, in response to suggestions from this office, Community Services staff are now seconded to CWUs.

The new system also provides for the gradual transition of most out-of-home care to the non-government sector. This represents a significant financial and planning challenge. Given the large number of children who are currently under the care of Community Services and do not have a caseworker, the shift to the non-government sector, where significant caseworker support for children is the norm, will come at a high cost.

However, the cost of these changes represents only one challenge. It will also be critical for Community Services to develop a blueprint that clearly details how, in a practical sense, the transition can take place in a way that matches the capacity of the sector to undergo what will be a massive expansion in services and workforce. These changes, either implemented or planned, represent a major restructuring of the child protection system.

They involve a significantly bigger role for the non-government sector and a much greater emphasis on collaboration and cooperation between all agencies and services in the system. They also come at a significant financial cost which at this stage does not appear to have been fully identified in publicly released planning documents.

Our role in monitoring the child protection system previously focused primarily on Community Services as the lead agency, although we also scrutinised the policies and work of other public and community sector agencies. However, in line with the systemic changes under *Keep Them Safe*, we will be taking on broader responsibilities in the public and community sectors.

It is vital that comprehensive evidence is collected to assess the effectiveness of the new system and identify and address problems in a timely way. This is all the more crucial given that only some of the changes are in force and others will be introduced over the longer term.

For these reasons, we have taken a keen interest this year in the development of an evaluation framework for *Keep Them Safe*. We have assessed the draft framework against the results of our monitoring of the child protection system since 2002, and provided advice and recommendations to the group responsible for developing it. We have also met and consulted with government agencies, non-government peak associations and CWU staff about policy and operational issues during the early stages of the new system. In terms of our monitoring role, we will also be keen to assess the capacity of the new system to respond to serious child protection reports, as well as examining the planning and rollout of new services to support vulnerable families.

Highlighting 35 years

How child-protection has changed

The fourth and fifth volumes of Justice James Wood's 1997 report following the Royal Commission into the NSW Police Service dealt with paedophilia in NSW. Justice Wood's recommendations around this issue stressed the need for better systems, including agencies adopting pre-employment screening checks, establishing closer interagency cooperation, reviewing their record management practices in relation to disciplinary processes and developing ongoing child protection training for employees.

Parliament accepted these recommendations, and our Act was amended in 1999 to require heads of agencies, and certain non-government agencies, to report all child abuse allegations and convictions against their employees to us. We monitor their investigations into such allegations carefully, making sure they are dealt with appropriately. We also have a broader role, keeping under scrutiny the systems for preventing child abuse by employees.

Special reports to Parliament

In October 2009 we tabled a special report in Parliament – *The Death of Ebony: The need for an effective interagency response to children at risk*. In December 2009, we tabled another special report – *The Death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system*.

The separate deaths of these two children in 2007 were the catalyst for the Special Commission of Inquiry into Child Protection Services in NSW. We investigated both matters and provided our findings to the Inquiry. However we did not table the special reports in Parliament until after the end of the criminal proceedings in each case. These reports are available on our website.

Child protection investigations

In 2009–2010 we initiated four child protection investigations, each concerning the actions of Community Services, and finalised three investigations.

One of the investigations we began in 2009–2010 was about how Community Services handled victims' compensation for children and young people in statutory care (see page 51).

Another was about the accuracy of affidavit evidence submitted by Community Services to the Children's Court (see case study 6). These matters highlight the importance of ensuring that Community Services staff have a sound understanding of children's entitlements, act in a timely way on behalf of the children and young people in statutory care, and meet the highest professional standards when presenting evidence to the Children's Court.

In previous years we have raised with Community Services our concerns about their failure to develop and implement a policy and protocols for children living in youth refuges. It is now six years since Community Services acknowledged the need to have protocols with youth refuges about who is responsible for ensuring the needs of these children are met. In the case we investigated, Community Services gave minimal support to a child whose circumstances clearly warranted protective intervention (see case study 7).

CS 6: Inaccurate evidence and assessments

Two and a half years before complaining to our office, a woman's three children were removed from her care. At the time of the incident which led to the children's removal, the woman had been under significant financial and emotional strain. She did not speak English well, her youngest child had been very sick, her husband had had to leave Australia to find suitable employment, and the family were living in cramped conditions. When the oldest of the children complained that she had been hit by her mother and mistreated by her brother, a report was made to the Child Protection Helpline which resulted in the children being removed.

The girl was interviewed by a Joint Investigation Response Team made up of staff from Community Services and the NSW Police Force (NSWPF). The mother was interviewed the following day and admitted to hitting the girl. She subsequently pleaded guilty to a charge of assault causing actual bodily harm and was given a good behaviour bond with no conviction recorded. She was also interviewed about her daughter's allegations about her brother. After the interview, Community Services applied for care applications for the three children.

At the time the mother complained to us, the two older children were living with her again but her youngest child was in statutory care and Community Services had applied to the District Court for the child to remain in care until she turned 18. This was on the grounds that the brother posed a risk to the youngest child and the mother was not protective.

The mother complained to us about a number of things. However, we decided to focus our investigation on the accuracy of the affidavit evidence submitted by Community Services to the Children's Court. This was because our review of the case showed that the handling of the eldest daughter's allegations about her brother was pivotal to subsequent decisions Community Services made about the woman's youngest child.

Our investigation identified multiple errors and incorrect statements in the initiating affidavits filed by Community Services in the care proceedings for the three children. These errors were repeated in risk and other assessments over the years and in this way gained currency. Over the three year period that the case was before either the Children's Court or the NSW District Court, we also found that Community Services staff relied on factually incorrect evidence that supported their position and discounted any evidence which did not.

In response to our provisional investigation report, Community Services commissioned a former Children's Court Magistrate to review the legal files in the case. This review confirmed our findings and made urgent recommendations for statewide training to ensure that in future evidence presented by Community Services to courts is accurate.

We have made a number of recommendations to Community Services. These include apologising to the family and giving the mother a substantial ex-gratia payment that takes into account the trauma she and her children have suffered, the dislocation of the family over three years, and the impact of this on her and the children. Community Services have told us that they intend to provide training for their managers about the NSW Government's model litigant principles and the agency's obligations when presenting evidence to the Children's Court.

Community Services's case to have the youngest child placed in long-term care was heard in the District Court in early 2010. It collapsed when the therapist who had been working with the brother – and who was of the understanding that the allegations made by the girl about her brother had been independently verified – found this not to be the case. Community Services agreed to settle the matter by organising the return of the youngest child to her mother's care.

CS 7: Lack of support for young people in refuges

A crisis youth refuge complained to us about Community Services deciding to close their file for a 13 year old girl after having arranged for her to be placed at the refuge. In their complaint, the refuge noted the girl's child protection history and that she had no support from her family. She had high support needs that they were unable to meet, and when they raised this with Community Services they said there was nothing they could do. At the time of the complaint, the girl had been at the refuge for over six months.

Our inquiries confirmed that before her placement at the refuge the girl had an extensive child protection history, starting when she was a toddler. The evidence we examined showed a history of neglect, maltreatment and emotional abuse.

Over the years, Community Services had not responded to many of the risk of harm reports about the girl. Even when they did do risk assessments, they did not follow up on the risks that were identified. When the girl, then aged 12, could no longer cope with her treatment at home and left to live with a relative, Community Services did not do a proper assessment of her needs. When the relative could no longer look after her, Community Services found a refuge for the girl and closed their file on her. At the time we started our investigation, the girl had dropped out of school because it was too hard for her to get there.

We were particularly concerned about evidence indicating that the girl was developing significant mental health problems but was not receiving appropriate support. Despite Community Services publicly acknowledging for years the need for a policy and protocols for children living in refuges, they had not addressed this issue.

After we completed our investigation, we recommended Community Services provide us with monthly reports on the actions they are taking to find an appropriate placement for the girl and address her identified needs. They have advised us that the girl is now the subject of Children's Court care proceedings. She has recently been moved to a long-term accommodation service for young people with medium to high needs, and Community Services is now developing a detailed case plan for her. Although these actions to meet her needs are welcome, if the girl had been provided with adequate protective intervention a year and a half ago – when it was apparent that she had been abandoned by her family – her needs would be nowhere as great as they are now.

The second issue we considered in our investigation was the lack of policies for children under 16 years of age living in youth refuges. This is an issue we have been raising with Community Services since 2004. Unfortunately, over that six year period, despite several reviews by Community Services of the Youth SAAP policy it eventually developed in 2006, and repeated requests for advice by this office about the status of the latest policy, we have seen little or no effective action on this issue.

Community Services has now advised us that – after the recent legislative changes – their 'revised Youth SAAP policy' will clarify that Community Services will only provide financial and casework support to children living in youth refuges if they are under the parental responsibility of the Minister or where 'there has been a substantiated report of risk of significant harm' and they have an open case with Community Services.

This proposed policy is concerning. It will not ensure that children, like the 13 year old girl referred to in this case study – will receive the support they so desperately need.

Carer probity checking – community services

One of our investigations related to the screening of prospective carers for children in out-of-home care. Everyone that applies to become an authorised foster or relative carer must undergo screening, criminal record checking, and an assessment of their suitability to be carers. These checks are a critical part of child protection work. They are intended to ensure that children who have been removed from their families are not placed at further risk.

However the adequacy of carer assessment and probity checking has been a matter of recurring concern in our work. For example, in 2005 we found that Community Services had failed to adequately assess and check a couple who were given the care of a baby and an older sibling. The baby died in late 2003 of non-accidental injuries while in the couple's care.

As part of their response to the matter, Community Services conducted an audit of carer assessments in one of their regions and found that criminal record checks had not been done in a number of cases.

In our investigation this year, we again found that the assessment of carers by Community Services was inadequate and probity checking was deficient. In this case, a baby suffered serious non-accidental injuries in 2009 while in the care of relatives.

Carer probity checking – non-government organisations

Against this background, while monitoring agencies' handling of reportable allegations, we have also identified weaknesses in the probity checking processes employed by some non-government designated out-of-home care agencies. While these agencies require all potential carers to undergo screening in accordance with the legislation, unlike Community Services' carers, a check of the Community Services' Key Information Directory (KiDS) is not routinely conducted.

In a number of cases, we have learnt that designated agencies have authorised carers without being aware of critical information held by Community Services, that raises questions about the person's appropriateness to provide foster care to children.

We are currently examining this issue, as we see that it is critical that children who are removed from their families are not placed at further risk – regardless of whether they are placed with a carer from Community Services or a designated agency.

For further details about our work in relation to probity checking by funded organisations in the human services sector see page 29 in Stakeholder engagement.

Complaint trends and outcomes

There was a 13% increase in complaints about child and family services in 2009–2010 compared to 2008–2009. We received 23% more formal complaints this year – 552 formal complaints compared to 449 last year – and 8% more informal complaints (see figure 22).

There was also a 10% increase in formal complaints about child protection services, primarily provided by Community Services.

There was a significant increase (33%) in formal complaints about out-of-home care services provided by Community Services and non-government services funded by Community Services and accredited by the Office of the Children's Guardian. We received 304 complaints in 2009–2010 compared to 229 in 2008–2009. The majority of these complaints (90%) concerned out-of-home care services provided by Community Services. These complaints about out-of-home care services made up 55% of all the formal complaints we received about child and family services this year.

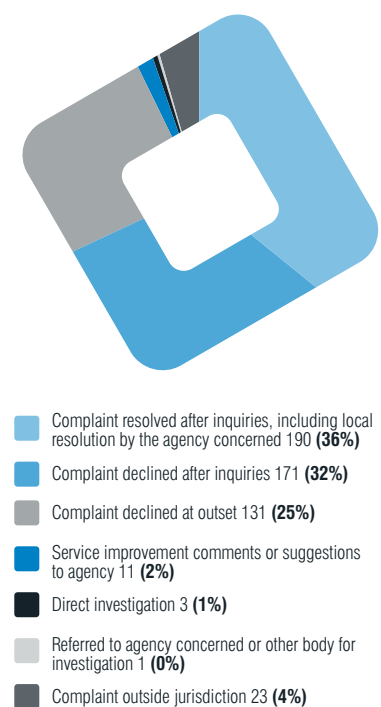
On a more positive note, there was an increase in the number (190 v. 142) and proportion (36% v. 29%) of formal complaints about child and family services that were resolved this year, compared to last year. This resulted in improvements to services for children and young people and their families. In particular, 43% of formal complaints about out-of-home care services were resolved.

For child protection services, the concerns most frequently raised were about the quality of Community Service's casework, case management and decision-making after reports about risks of significant harm of children and young people.

Figure 22: Formal and informal matters received in 2009–2010 about agencies providing child and family services

| Agency category | Formal | Informal | Total |
|--|------------|------------|--------------|
| > Community Services | | | |
| Child protection services | 204 | 276 | 480 |
| Out-of-home care services | 274 | 514 | 788 |
| Children's services | 2 | 19 | 21 |
| Family support services | 5 | 11 | 16 |
| Adoption | 0 | 1 | 1 |
| Sub-total | 485 | 821 | 1,306 |
| > ADHC | | | |
| Child protection services | 0 | 0 | 0 |
| Family support services | 0 | 0 | 0 |
| Out-of-home care services | 0 | 0 | 0 |
| Sub-total | 0 | 0 | 0 |
| > Other government agencies | | | |
| Child protection services | 0 | 1 | 1 |
| Out-of-home care services | 0 | 1 | 1 |
| Children's services | 0 | 1 | 1 |
| Family support services | 0 | 0 | 0 |
| Adoption | 0 | 0 | 0 |
| Sub-total | 0 | 3 | 3 |
| > Non-government funded or licensed services | | | |
| Child protection services | 3 | 20 | 23 |
| Out-of-home care services | 30 | 50 | 80 |
| Children's services | 29 | 31 | 60 |
| Family support services | 3 | 10 | 13 |
| Adoption | 0 | 0 | 0 |
| Sub-total | 65 | 111 | 176 |
| Other (general inquiries) | 0 | 2 | 2 |
| Agency unknown | 0 | 2 | 2 |
| Outside our jurisdiction | 2 | 2 | 4 |
| Sub-total | 2 | 6 | 8 |
| Total | 552 | 941 | 1,493 |

Figure 23: Outcomes of formal complaints finalised in 2009–2010 about agencies providing child and family services



The most frequently raised concerns about out-of-home care services were the assessment, planning and provision of services that were relevant to the needs of the children and young people in care, as well as the quality of overall case management and decision-making.

There was also a small increase in the number of complaints we received about children's services compared to last year. This year we received 31 formal complaints about child care centres (25 in 2008–2009) and 82 complaints overall (67 overall in 2008–2009).

During the year, we reviewed complaint-handling systems in long day care centres and provided information to long day care centres, peak child care agencies, Community Services and the National Childcare Accreditation Council about the Ombudsman's oversight of child care centres. Our review – and the information we provided – may have resulted in this increase in complaints. We will be reporting in detail about the outcome of this review in next year's annual report.

Reviewing deaths of children

In April 2009, an amendment to CS-CRAMA removed our responsibility to review the deaths of children or their siblings who were subject to a report to Community Services in the three years before they died. Community Services is now responsible for reviewing the deaths of these children. We continue to be responsible for reviewing the deaths of children in care, and those whose deaths are or may be due to abuse or neglect or occur in suspicious circumstances.

Under the amended definition of reviewable deaths, we reviewed the cases of 45 children who died in the 12 months from 1 July 2009. Of these, seven deaths were due to abuse, fourteen were due to neglect and eight were suspicious of abuse or neglect. The death of one of the 16 children who died in care was also suspicious of neglect.

Another amendment to CS-CRAMA requires us to report publicly on reviewable child deaths every two years, rather than each year. The first of these reports will cover the period from 1 January 2008 to 30 June 2010.

Other legislation has been passed which transfers responsibility for supporting the work of the Child Death Review Team from the NSW Commission for Children and Young People to the Ombudsman. This transfer is expected to take effect in the coming year.

Promoting improvements through our reviews

Applying for victims compensation

In 2009, we undertook a review of a group of young people who were turning 18 and leaving statutory out-of-home care. A number of these young people had been placed in care because of serious abuse.

Victims of violent crime in NSW are entitled to make a claim under the state's statutory scheme for victims compensation. For children and young people who have been placed in care as a result of violent crime, Community Services are responsible for making a claim on their behalf.

This responsibility extends to children and young people under the parental responsibility of the Minister for Community Services who are placed with carers supported by non-government agencies.

During our review of the support being provided to young people leaving care, we found that many had child protection histories indicating potential eligibility for victims compensation. Despite this, these young people had not had an application for victims compensation made on their behalf during their time in care.

Because of this, we decided to look more broadly at the number of claims Community Services had made on behalf of the children and young people they were responsible for. Although there were more than 16,000 children and young people in care in NSW as at June 2009, Community Services had only lodged 52 claims for compensation on behalf of children in 2008–2009. We therefore decided to investigate the matter.

With the assistance of the Children's Court, we identified a group of 95 children and young people where evidence indicated that they were likely to have been a victim of violent crime before their entry into care. We asked Community Services about how they established whether a child was entitled to claim for compensation and, if so, how they ensured a timely application for compensation was made.

Our investigation found that:

- There were inconsistencies in the way children who had been victims of crime were supported.
- No compensation claims had been made for a significant number of children in care.
- Even if Community Services identifies that a child or young person is eligible to lodge a claim, this does not ensure that a claim is lodged on their behalf before they turn 18. Responsibility for lodging a claim is then transferred to the young people themselves. This is an unfair burden to place on young people who often leave care with significant needs and few supports.
- The current systems for processing victims compensation claims means that significant numbers of children and young people who are, or have been, in care may suffer financial loss because timely claims have not been lodged on their behalf.

- Many children and people are at risk of not being identified as eligible to lodge a claim.

Overall, our findings show Community Services currently does not have the necessary systems in place to ensure that all children and young people in its care, who are entitled to apply for victims compensation, are assisted to do so in a timely manner.

Community Services accepted our findings and recommendations and said that they are committed to improving their support for children in care who have been victims of violent crime.

Our recommendations aim to make sure that every eligible child who is in care now and every eligible child who enters care in the future, receives appropriate support services – including, where appropriate, an application for compensation made on their behalf. Because of the importance of this issue, we issued a report to Parliament. A copy of this report is available on our website.

Helping young people leaving statutory care

Agencies supervising young people who are in statutory care are required by law to prepare and support them when they leave care. This is usually when they turn 18.

Many young people leaving care lack the social, financial and emotional supports typically available to their peers living with their families. Some are expected to leave their care placement abruptly once they turn 18. However, proper planning and support for young people when they are preparing to leave care can have a significantly positive impact on their future lives.

We decided to review the leaving care planning for a group of 124 young people who turned 18 in 2009. Some of our findings were that:

- The government's guidelines on supporting care leavers are not being consistently implemented across NSW.
- Most of the young people in our sample group of 124 turned 18 and left care without an endorsed leaving care plan.
- Young people with disabilities who need ongoing supported care when they turn 18 are generally well supported, but other young people who have high support needs – not related to disability – are not well supported once they leave care.

- Young people who live with extended family, or are in stable foster care placements supervised by Community Services, were more likely than other care leavers to turn 18 without an adequate leaving care plan in place.
- The arrangements to support young people who are still at school when they turn 18 are confusing and not equitable.
- Only one in five of the Community Services teams we interviewed said they provide after care support consistent with the government's leaving care guidelines. This means that if young people leave care without a plan about how they will be supported, it is likely that they will not be followed up once they turn 18.
- Even though financial support is available for young people when they leave care, the administrative arrangements for approving and providing financial assistance are cumbersome and protracted. As a result, young people who need support after leaving care often 'give up' trying to obtain it.

In response to our draft report, Community Services said that they are undertaking a range of activities to improve their services to care leavers. These include:

- developing information resources for young people and their carers
- developing and implementing a new case planning framework
- reviewing their procedures for approving leaving care plans and providing financial assistance for care leavers completing their secondary education.

There is a copy of our report on our website.

Reviewing services for children on short-term care orders

Every child has the right to a permanent and stable home, preferably with their own family. In NSW, the care and protection legislation requires that when a child or young person is removed from their family because of abuse or neglect, consideration must be given to whether they can be realistically restored to the care of their parents. If not, a plan must be developed about how they will be provided with a permanent and stable home. This is called 'permanency planning'.

This year, we initiated a review of a group of children where the Children's Court has issued two-year care orders and the goal of the child's care plan is to be restored to their parents' care. We wanted to establish whether parents and children were being adequately supported to achieve this goal and whether Community Services was carrying out a comprehensive assessment before returning children to their parents.

Juvenile justice

Review of young people at risk of harm who are also engaged in offending behaviour

NSW has one of the highest rates of juvenile incarceration in Australia. This year the number of young people in detention has continued to increase, with more young people remanded across the state in custody and more on community service orders. Fifty three percent of young people in detention across the state are Aboriginal. In Western NSW, this figure as at August 2010 was 86%.

In response to this and the urgent concerns raised by a number of Western NSW community leaders, advocates and some government agencies, we have initiated a review of interventions aimed at young people who are at risk of harm and who are also engaging in high levels of risk-taking behaviour. This behaviour includes serious offending, by an increasingly younger group of children. Many of these young people end up in detention.

Our review will examine data from the NSW Police Force, the Department of Education and Training, Community Services and Juvenile Justice to identify the cohort of children most at risk, and will explore whether current initiatives and interventions to divert them from the criminal justice system are working. Although concerns were raised about a number of communities, the initial stages of our review are focused on initiatives in Bourke and Brewarrina.

Justice and human service agencies have agreed to review the adequacy of responses to the needs of these young people and their families to date, and assess what further action should be taken to provide appropriate supports. For further details about our work in this area see page 34 in Working with Aboriginal communities.

Review of the juvenile justice system

In July 2009, the NSW Government commissioned the first independent review of the juvenile justice system since 1993. The Minister for Juvenile Justice said the review was being done to improve policy and practice and to try to reduce NSW's juvenile re-offending rates.

The Minister asked the Ombudsman to comment on the report before its public release. We provided feedback on several of the review recommendations about arrangements for providing independent advice on juvenile justice issues, and a proposed special inquiry into police practices affecting children and young people.

In May 2010 the government released the review. In summary, it found that prevention and early intervention measures were the best method for reducing entry to the juvenile justice system and re-offending. Reducing juvenile crime requires coordinated action across government agencies, non-government organisations and the community. The review recommended numerous reforms and a 'justice reinvestment' policy. This would involve a major diversion of funding away from the expansion of detention centres to community-based programs to address the causes of juvenile offending.

The government rejected that approach and opted broadly to maintain their current approach to juvenile justice. They said the ongoing implementation of initiatives, including those under the *Keep Them Safe* child protection reform program and prevention strategies under the State Plan, would help to address issues associated with juvenile crime. They also separately announced new spending to build extra accommodation at the Cobham Juvenile Justice Centre in Sydney and to redevelop the Riverina Juvenile Justice Centre.

The review report and the government's response are available on the Juvenile Justice website: www.djj.nsw.gov.au/strategic_review.htm

A more positive approach in June this year was that Juvenile Justice launched a pilot after-hours Bail Assistance Line service in Dubbo to help young people who are eligible for bail, but unable to meet bail conditions.

The pilot involves police calling Juvenile Justice staff to try to secure accommodation and services for young people who would otherwise be remanded in custody. Support services for the pilot are being provided by a non-government organisation and there are plans to extend the pilot program to Sydney and Newcastle. Recent advice from Juvenile Justice is that this initiative has led to significant reductions in the number of young people on remand.

Figure 24: Outcomes of formal complaints finalised in 2009–2010 about juvenile justice



- Complaint resolved after inquiries 22 (35%)
- Complaint declined after inquiries with substantive advice, information provided 31 (50%)
- Complaint declined at outset after assessment 6 (10%)
- Service improvement comments or suggestions to agency 2 (3%)
- Complaint outside jurisdiction 1 (2%)

CS 8: Punishments need to be appropriate

Legislation governing detention centres provides a range of punishments for misbehaviour by detainees, including confining a detainee to their cell or a holding room. When we examined records at one centre, we noticed that the punishment for minor misbehaviour was mostly confinement – including a large number of 24-hour confinements. This form of punishment was being used for a relatively wide range of misbehaviour and there did not seem to us to be any consistent decision-making.

Also, some of the records showed that minor incidents – like a detainee not wearing the correct T-shirt – were quickly escalating into behaviour that resulted in the imposition of a 24-hour confinement. We talked to the centre manager about these issues and were advised that confinement approval procedures had recently been changed to ensure a more consistent approach. We were satisfied with the centre’s approach and decided to monitor the situation during future visits.

Figure 25: Formal and informal matters received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------|-------|-------|-------|-------|-------|
| Formal received | 41 | 49 | 99 | 70 | 72 |
| Formal finalised | 44 | 47 | 98 | 73 | 62 |
| Informal dealt with | 257 | 219 | 243 | 255 | 212 |

Visiting centres

There are nine juvenile justice centres in NSW, including a temporary centre at Sydney’s Emu Plains. During the year we conducted 17 visits. We visited eight centres twice and went once to the centre at Broken Hill. Given that half of all detainees are Aboriginal, we regularly try to involve staff from our Aboriginal Unit in visits.

The purpose of our visits is to actively monitor how centres are running. We arrange our visits in advance and send posters that advertise our presence to detainees and invite them to meet us. We have found that young people in detention are more likely to raise their concerns with us in person than by notifying us about a complaint.

The concerns raised with us ranged from daily routines that were preventing some detainees from telephoning family members to a centre’s refusal to allow detainees to display posters of sporting teams, and a request by six detainees – aged 12 to 14 years – to be allowed to eat breakfast together rather than alone in their cells.

In all these cases, we discussed the concerns with centre managers. They took action to address the issues, including reversing the ban on sports posters and varying access to telephones. The centre that required detainees to eat breakfast alone advised that this was done for security reasons, but detainees were able to congregate for other meals.

When we visit a centre, we also inspect the facilities and examine log books about misbehaviour, segregation, staff use of force and complaints. We check that records are complete and punishments for minor misbehaviour are reasonable and consistent.

During some of our visits this year, we noted records indicating what appeared to be harsh punishments for relatively minor misbehaviour. When we raised our concerns, the centre managers agreed that some punishments were unreasonable and initiated closer monitoring of the punishment regime. One of these cases is outlined in case study 8.

CS 9: Poor conditions in holding rooms

At times, juvenile justice centres place detainees in holding rooms for confinement or segregation. At two centres we were concerned about the dirty state of the holding rooms. In one centre, two holding rooms had dirty toilets and one room had a blood-stained ceiling, floor and walls. We were told that a detainee had bitten his lip and sprayed blood around the room, but he had not been the most recent occupant. This meant that the room had not been cleaned before another boy was segregated there. After we raised our concerns, the centre agreed to use their contract cleaner to deal with the rooms. The centre manager also advised us that staff were responsible for ensuring the rooms were cleaned after a shift change and this would be monitored in future.

At another centre, we saw two holding rooms occupied by detainees who were lying on concrete slabs. There were mattresses available for each room, but these had been removed and left outside. After we brought this up with centre management, they immediately instructed staff to stop removing mattresses in all circumstances – unless a holding room occupant was assessed as being at high risk of self harm.

Figure 26: What people complained about

This figure shows the complaints we received in 2009–2010 about juvenile justice centres, broken down by the primary issue that complainants complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

| Issue | Formal | Informal | Total |
|--------------------------------|-----------|------------|------------|
| Buy-ups | 0 | 8 | 8 |
| Case management | 5 | 5 | 10 |
| Child abuse-related | 0 | 0 | 0 |
| Court cells | 2 | 0 | 2 |
| Classification | 0 | 2 | 2 |
| Daily routine | 13 | 52 | 65 |
| Day/other leave/works release | 1 | 3 | 4 |
| Fail to ensure safety | 3 | 2 | 5 |
| Food and diet | 7 | 32 | 39 |
| Information | 2 | 2 | 4 |
| Issue outside our jurisdiction | 1 | 1 | 2 |
| Legal problems | 0 | 1 | 1 |
| Mail | 2 | 4 | 6 |
| Medical | 6 | 7 | 13 |
| Officer misconduct | 13 | 18 | 31 |
| Other administrative issue | 3 | 33 | 36 |
| Property | 1 | 1 | 2 |
| Records/administration | 0 | 2 | 2 |
| Security | 0 | 0 | 0 |
| Segregation | 0 | 3 | 3 |
| Transfers | 0 | 7 | 7 |
| Unfair discipline | 4 | 8 | 12 |
| Visits | 0 | 4 | 4 |
| Work and education | 1 | 2 | 3 |
| Total | 64 | 197 | 261 |

Access to education and training

The Department of Education and Training (DET) operates schools in detention centres – they are called Education and Training Units (ETUs). DET's policy on suspending students from schools applies to ETUs. While appreciating the policy may need to be applied flexibly to students in a detention centre, we were concerned when complaints we received suggested ETUs might be doing things differently from each other and some practices might not be in accordance with the DET's policy. In particular, we were concerned about a complaint from a young person who said they had been sent out of school, had not been seen by the principal despite their requests, and did not know if they could go back to school.

We asked DET how their suspensions policy is applied in practice in ETUs. They responded by taking the matter to a meeting of ETU principals. DET subsequently advised us that the suspension procedures used for the young person who complained to us were not in line with policy requirements. The meeting of principals confirmed that there was a need for additional protocols to manage suspensions in all detention centre schools, and DET told us that this would ensure procedural fairness for detainees who were suspended.

DET also told us that all ETUs were reviewing their current risk management procedures and suspension procedures will be updated as part of this exercise. We will monitor the results of this work in all the centres we visit.

We also asked DET about supply and demand for ETU places at the state's largest juvenile justice facility – the Frank Baxter centre – that has capacity for 120 detainees. They told us that they staff their units in detention centres on the basis of annual advice from Juvenile Justice about the number of education places they anticipate will be required. This year at Frank Baxter, the ETU capacity is 90 full-time student places. However, because numbers in the centre and in classrooms fluctuate for reasons including detainee movements, court appearances and internal risk assessments, there can be a shortfall of up to 15 places in the ETU.

DET told us they would meet with Juvenile Justice to discuss ways to address the unmet demand for education and training for these detainees.

Adequate access to education and training for juvenile justice detainees is clearly linked to prospects for rehabilitation. We will monitor the results of the agencies' discussions.

Employment-related child protection

Our employment-related child protection division oversees the investigations of certain agencies into allegations against their employees that involve inappropriate or abusive behaviours towards children. The heads of all government and some non-government agencies – including non-government schools, children's services and out-of-home care agencies – are required to notify us of any reportable allegations or convictions involving their employees within 30 days of becoming aware of them.

These reportable allegations include:

- › sexual offences and sexual misconduct
- › physical assault
- › ill-treatment and neglect
- › behaviour causing psychological harm
- › misconduct that may involve reportable conduct.

We also scrutinise the systems that agencies have in place to prevent these types of reportable conduct occurring in the workplace and to respond to any allegations against their employees.

Recognising
35 years of
impartiality

Figure 27: Formal notifications received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-----------|-------|-------|-------|-------|-------|
| Received | 1,786 | 1,995 | 1,850 | 1,667 | 1,366 |
| Finalised | 1,541 | 1,749 | 1,921 | 1,672 | 1,442 |

This year we received 1,366 notifications of reportable conduct, a decrease of 18% on last year. We finalised 1,442 notifications (see figure 27). The downward trend in notifications over the last two years continues, with the most noticeable decrease (46.7 %) this year coming from Community Services (see figure 28). This is primarily due to extended class or kind determinations that have exempted a range of lower risk allegations from having to be notified.

We are currently updating the information we have on various sectors within our jurisdiction to obtain a more comprehensive overall picture of reporting trends. This will allow us to better target our oversight, audit and education work.

Inquiries and complaints

We received 636 inquiry calls this year, a decrease of 9.5% on last year. Most inquiries (approximately 65%) were from agencies with jurisdictional queries or wanting advice about how to manage an investigation. However, we also received inquiries from employees who were the subject of investigations and families of alleged victims. Employees most commonly raised concerns about a perceived lack of procedural fairness and the notification process to the Commission for Children and Young People. Forty-five percent (45%) of those calling on behalf of the alleged victim sought general advice about complaints processes.

Although it is a small component of our work overall, we also look at complaints about how agencies have handled investigations into reportable allegations. This year, we received 40 complaints and finalised 41. In approximately one-third of these matters, we finalised the complaint by making inquiries with the agency or asking them to take certain actions to respond to the concerns raised by the complainant.

Figure 28: Formal notifications received by agency

| Agency | 08/09 | 09/10 |
|---|--------------|--------------|
| Ageing, Disability and Home Care | 19 | 13 |
| Catholic systemic | 72 | 54 |
| Child care centres | 90 | 74 |
| Community Services | 569 | 303 |
| Corrective Services | 8 | 13 |
| Councils | 5 | 6 |
| Department of Education and Training | 432 | 380 |
| Department of Health | 30 | 24 |
| Family day care | 19 | 15 |
| Independent schools | 65 | 65 |
| Juvenile Justice | 63 | 57 |
| Other prescribed bodies | 0 | 0 |
| Other public authority – not local government | 35 | 35 |
| Sport and Recreation | 2 | 2 |
| Substitute residential care | 257 | 321 |
| Agency outside our jurisdiction | 1 | 4 |
| Total | 1,667 | 1,366 |

Monitoring agency investigations

One of our strategies for managing allegations of more serious conduct against employees is to use our s.25E monitoring powers under the Ombudsman Act. These powers allow us to have a more direct input into an agency's investigation and to promptly intervene if we have any concerns. This year we monitored 47% of all notifications that we received – an increase of 17% on last year. The increased number of class or kind determinations exempting more minor matters means we are now dealing with a higher percentage of more serious allegations – and the bulk of these need to be formally monitored.

There have been a number of changes to the child protection system over the past year, and agencies within our jurisdiction have had to manage this changing environment. These changes are outlined in more detail on page 46 of this chapter.

In the area of employment-related child protection, recent class or kind determinations mean that allegations of physical assault or neglect do not now have to be notified to us unless the alleged behaviour resulted in, or had the potential to result in, 'significant harm or injury' to a child.

Extending the range of matters exempted from notification has allowed us to focus on improving the investigations of more serious matters, which often involve criminal allegations. For example, we have been able to:

- review matters more rigorously
- have discussions with Community Services and the NSW Police Force (NSWPF) to improve the support they provide to employers
- increase our support to employing agencies during our oversight of their matters.

Exchanging information

Last year, we reported on the difficulties agencies in our jurisdiction were having with obtaining information from Community Services and the NSWPF. In October 2009, Chapter 16A of the *Children and Young Persons (Care & Protection) Act 1998* (the Act) was enacted to facilitate the exchange of information between government and non-government organisations relating to a child or young person's safety, welfare or wellbeing.

There has been some confusion about the new provisions, as agencies must still use s.248 of the Act to obtain information from Community Services. However, it appears so far that the exchange of information between the statutory child protection bodies and employing agencies has improved significantly (see case study 10).

CS 10: Chapter 16A making a difference

We received a notification from an agency that a foster carer had indecently assaulted an 11 year old girl. The allegation was referred to Community Services and to the Joint Investigation Response Team (JIRT). The agency was initially advised that, after interviewing the alleged victim, JIRT substantiated the allegations but – as the alleged victim did not wish to proceed with any criminal action – the investigation was discontinued. However, the agency was subsequently told by a Community Services caseworker that the allegations had not in fact been substantiated.

Given the serious nature of the allegations and the conflicting advice received, the agency requested information from Community Services and the NSWPF. Community Services declined to provide the risk of harm report and referred the agency to the police. Police also refused to provide information and referred the agency to Community Services. The agency then advised us that they were unable to make a finding in the matter.

We provided advice to the agency about the legislative changes that had occurred since their unsuccessful requests for information. They then made a further request for information under Chapter 16A of the Act. As a result of this request, the agency was provided with relevant information from police and was able to make an appropriate finding in the matter.

Figure 29: What the notifications were about – breakdown of notifications received, by allegation

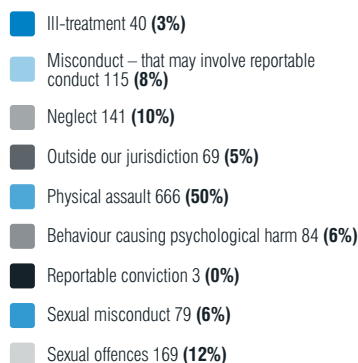


Figure 30: Action taken on formal child protection notifications finalised in 2009–2010



Practice update

In 2009–2010 we published a practice update on our website, 'Making a Finding', which outlines the findings available to agencies when they have completed their investigations. This update includes a finding not previously available, 'not sustained – lack of evidence of weight'. It can be used in matters where the evidence available is of such poor probative value or lacking in weight that it warrants a finding that, on the balance of probabilities, the conduct did not occur.

Assessing notifications

Half the notifications we received (50%) involved physical assault and 12% involved sexual offences (see figure 29). Figure 30 outlines the action taken on the formal child protection notifications finalised and figure 31 breaks down the notifications received by the sex of the alleged offender.

Figure 31: Who the notifications were about – breakdown of notifications received, by sex of the alleged offender

| Issue | Female | Male | Unknown | Total |
|--|------------|------------|-----------|--------------|
| Ill-treatment | 30 | 10 | 0 | 40 |
| Misconduct – that may involve reportable conduct | 20 | 95 | 0 | 115 |
| Neglect | 86 | 55 | 0 | 141 |
| Outside our jurisdiction | 29 | 35 | 5 | 69 |
| Physical assault | 360 | 301 | 5 | 666 |
| Behaviour causing psychological harm | 60 | 24 | 0 | 84 |
| Reportable conviction | 1 | 2 | 0 | 3 |
| Sexual misconduct | 21 | 57 | 1 | 79 |
| Sexual offences | 36 | 133 | 0 | 169 |
| Total notifications received | 643 | 712 | 11 | 1,366 |

The majority of notifications finalised this year (82%) were satisfactory, although approximately 8% of these required some intervention from us before being finalised. If there are deficiencies in an agency's investigation, we may provide feedback and suggestions for handling matters better in the future. If we consider it is in the public interest to address deficiencies more directly, we may request further information or ask the agency to pursue other lines of inquiry or formally request a review of the agency's finding. Case study 11 is one example of where we intervened to address poor investigative practice.

CS 11: Monitoring leads to a better outcome

We were notified of a number of allegations of physical abuse, psychological harm and ill-treatment against a foster carer who, along with his partner, was caring for three children. There were a number of deficiencies in the agency's investigation – including a lack of planning and risk management, inadequate information gathering and documentation, and no information that the foster carer was informed of his rights in the investigative process. We also disagreed with the agency's findings and their decision that no notification was required to the CCYP about the employee's conduct.

We decided to monitor the matter and sought further information from the agency. They gave us this additional information, but we were still concerned that no notification had been made to the CCYP – despite the finding that some of the alleged conduct occurred – and additional allegations made against the foster carer's partner had not been formally brought to our attention. We also found out from the agency that two of the three children had been removed from the placement, but no formal risk management strategies had been put in place for the child that was still there.

We discussed our concerns with the agency and asked them how they were monitoring the remaining child. We suggested that the agency discuss the matter with the CCYP for advice on whether notification was required, and requested them to formally notify us of the additional allegations involving the foster carer's partner. The agency subsequently notified the CCYP and started an investigation into the allegations involving the partner.

If we identify significant systemic issues arising from a notification, we may audit the agency's systems or initiate a direct investigation. We also provide positive feedback when we identify particularly good investigative practice by an agency. Case study 12 is an example of a thorough and appropriate investigation by an agency.

CS 12: A sensitive but thorough investigation

An agency notified us of allegations that a teacher was engaged in concerning conduct with two students who were Sudanese refugees. He was spending time out of school with them, providing them with money for food, and giving both students preferential treatment. The alleged behaviour possibly indicated an overly intimate and inappropriate relationship involving multiple instances of breaching professional boundaries.

The agency conducted a thorough and well-balanced investigation into the allegations. Of particular note was their sensitive consideration of cultural issues in regard to the students. These cultural factors helped the agency understand why the children had felt uncomfortable with the nature of the attention the teacher had shown towards them. Although the agency found that the alleged conduct did not meet the threshold for reportable conduct, they took appropriate steps to suggest the employee adopt more appropriate ways of supporting the children.

Looking to the future

The employment-related child protection scheme has been in operation for over 10 years and we continue to see ongoing improvements in practice across a range of sectors within our jurisdiction.

Streamlining the system

We are now focusing on areas where the system needs to be streamlined and strengthened.

> Our audit program

We believe that reportable allegations that are less serious in nature and therefore present a lower risk should be dealt with more efficiently so that agencies don't have to spend excessive time and resources on managing minor issues.

Over the coming year, we will offer additional class or kind determinations to agencies that demonstrate a good understanding of how to appropriately handle reportable allegations. However, coupled with this, we will increase our auditing of these agencies to ensure that they maintain good practice in their handling of lower risk cases and comply with their class or kind determinations.

Over the past twelve months, we have completed 14 of these 'class or kind' audits.

> Area health services

In 2009–2010, we completed systemic audits of all area health services to check how well they were dealing with reportable conduct. A number of area health services showed very solid practice and compliance with earlier recommendations we had made about potential areas for practice improvement – including developing a handout for new staff that provides information about the Ombudsman's legislation, updating training about reporting roles and responsibilities, and developing a database register to record all reportable allegations involving staff.

> Boarding schools

We completed audits of three government and a number of non-government boarding schools. Effective child protection policies and procedures are very important in these schools, particularly around out of school hours supervision and the maintenance of professional boundaries.

Our audits of the government boarding schools found that staff were deeply committed to the welfare of the students in their care and that overall the policies and procedures clearly outlined what was expected of staff. We also noted that the Department of Education and Training (DET) has drafted comprehensive standards of good practice for boarding schools that, once finalised, will provide schools with a useful tool for regularly reviewing and assessing their systems.

› Aboriginal out-of-home care services

For a number of years we have worked closely with the Aboriginal community to improve service delivery to vulnerable children and young people. This year, we started a comprehensive review program of Aboriginal out-of-home care services.

The purpose of our review program is to examine how Aboriginal out-of-home care agencies are fulfilling their child protection responsibilities under Part 3A of the *Ombudsman Act 1974*, and to examine their complaint-handling systems in line with our responsibility under section 14 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA). Our goal is to strengthen these agencies, by assisting them to improve their systems and practices. For further details see pages 35–36 in Working with Aboriginal communities.

Our focus for next year

The feedback we have received from the agencies we have audited this year has been overwhelmingly positive. We have identified two additional sectors for audits in the coming year – the out-of-home care and independent education sectors.

The out-of-home care sector provides services to a highly vulnerable group of children and needs to have good systems in place for dealing with allegations against carers. We will be developing a targeted audit program to assist these agencies improve their systems for handling employment-related child protection allegations.

The independent education sector is a very large and diverse sector, ranging from Catholic systemic to small independent schools. Through our auditing, we are keen to find out if schools in this sector are fully aware of their reporting and investigative responsibilities.

Strengthening the system

Proactive monitoring of individual matters is one of the ways we work to strengthen the employment-related child protection system in NSW. It involves providing direct support and advice to agencies, particularly in relation to serious reportable conduct matters. Agencies often need to have a better understanding of how to appropriately manage matters involving criminal allegations – and they need to be well supported by Community Services and the NSW Police Force. We have strengthened our focus on looking at ways to promote greater interagency cooperation and improve understanding of the responsibilities of key agencies when there is an allegation of serious reportable conduct.

Matters involving serious criminal allegations

Ensuring serious criminal allegations are reported to the police

We have initiated two investigations related to the failure of Community Services to promptly advise police of serious criminal allegations of reportable conduct. In the first investigation, allegations of sexual assault made against a teacher that were reported to the Helpline by the school were not referred to the Joint Investigation Response Team (JIRT). The matter was initially closed by Community Services. Some weeks later, the school acted on our advice and directly notified the matter to police. Community Services then belatedly made a JIRT referral.

In the second investigation, a report was made to Community Services about a historical allegation of sexual assault. The alleged victim claimed that he had been sexually assaulted by a teacher when he was a student at school. He also indicated that he wished to remain anonymous and did not wish to be involved in any criminal investigation.

The person to whom the alleged victim made these allegations reported the matter to Community Services, but did not provide the name of the alleged victim. Community Services closed the matter without taking any action, apart from referring the allegations to the employing agency. We were concerned that, in light of the seriousness of the allegations, the young man's expressed concern that the teacher may have abused other students – and the fact that he was still engaged in child-related employment – meant that there was a significant risk of harm to a range of children.

We were also concerned that the NSWPF had not been advised of the allegations by Community Services, even though they concerned non-consensual sexual intercourse between a teacher and a student.

In a provisional report on these two investigations, we suggested that Community Services should review their policies and practice for historical allegations and check that they provide adequate information and guidance about:

- › the need to ensure that significant criminal allegations are reported to police, even if Community Services staff believe police may have difficulty in pursuing a criminal inquiry
- › the circumstances that warrant a JIRT referral and those that require a referral to a local police command
- › the particular issues that need to be taken into account when responding to matters involving employees who work in child-related employment.

We have also sought advice from NSW Health about the adequacy of their policies and procedures for handling historical allegations of child abuse, including maintaining client confidentiality.

Ensuring an adequate response by police

In some matters, delays by police in responding to allegations that have been reported to them have impacted on an employing agency's ability to properly manage risk and conduct their own investigations in a timely way. Case study 14 is an example of where we intervened to progress an investigation where concerns existed about the need to manage risks.

Performance indicators

| 2009–2010 criteria | Target | Result |
|--|--------|--------|
| Formal investigation reports recommending changes to law, policy or procedures (%) | 80 | 100 |
| Recommendations that were implemented (%) | 80 | 100 |
| Average time taken to assess notifications (working days) | 5 | 6 |
| Average time taken to finalise/assess final investigation reports (working days) | 70 | 45.5 |

Guidelines for the NSW Police Force to better support employing agencies

During the past 12 months we have met with the NSW Police Force (NSWPF) to explore ways of providing better support to employing agencies that have to deal with reportable conduct involving criminal allegations. Recently, we prepared draft procedures for the NSWPF about their responsibility to support employers in these circumstances. These procedures outline the legislation relating to employment-related child protection matters, and give clear direction to police about the need to keep employing agencies advised of any action that they are taking as part of a criminal investigation into the allegations.

We stress the need for the NSWPF to advise employers of any information they need to know to manage any risks to children for whom they have a duty of care, and to ensure ongoing and timely contact with the employing agency during any police investigation and related criminal proceedings. The NSWPF have agreed to consider our draft guidelines.

Serious allegations about non-workplace conduct

A particularly challenging area for employing agencies is when serious child abuse allegations are made against their employees in connection with incidents occurring outside the workplace. For designated agencies – that have to deal with these matters as reportable conduct – it can be very difficult for them to investigate the allegations, particularly given their limited authority to inquire into the private lives of their employees. To help agencies handle these matters, the police and Community Services need to better appreciate both the presenting risks and the challenges for employers in being able to effectively respond to allegations of this kind. Case study 13 shows the need for agencies to be well supported in relation to alleged non-workplace conduct.

CS 13: Hard to handle non-workplace conduct

We received an allegation that a teacher had physically assaulted and sworn at his stepson. A report was made to Community Services, who subsequently advised the agency that it would not be taking any action to investigate the allegations. The agency requested information from Community Services under s.248 of the *Children and Young Persons (Care & Protection) Act 1998*. They were given limited information in the form of a copy of the Helpline report. As the agency was unable to interview the alleged victim, they put the allegations to the teacher for his response and then finalised their investigation.

We were concerned that Community Services had not notified the alleged physical assault of the child to police. When following up this matter, we learnt that the NSWPF had information that was directly relevant to the allegations. Without this information, the employing agency was left with an obligation to investigate this non-workplace issue with very little information.

CS 14: Delays cause concerns about managing risk

We were notified of allegations that a teacher had sexually assaulted a number of female children within his family. The allegations were reported to police. The agency was advised that police would be investigating and the employee should not be alerted to the allegations while their investigation was underway. As a result, the teacher remained on active duty. Nearly 12 months later, despite regular liaison between the agency and police, the police investigation had not progressed and the agency was unable to take any risk management action in regard to the employee. We were concerned about this delay and asked the police for information about the status of their investigation. We then worked with our police division to make further inquiries about the reasons for the delays.

As a result of our inquiries, police subsequently advised the agency that they would not be taking any further action as they had exhausted all lines of inquiry and gave the agency clearance to start its own investigation. The agency then sought information from the police and, as a result of their inquiries, a further allegation came to light and the employee was removed from active teaching duties for the remainder of the investigation. A number of the allegations against the employee were eventually sustained and these findings were reported to the CCYP.

Sexual offences and sexual misconduct

We deal with a number of matters each year where there are clear allegations of sexual offences. In 2009–2010 the figure was 169 matters, 12% of the total notifications we received.

However another related type of allegation is where there is evidence of inappropriate or improper conduct by an employee that suggests that they may be engaging in more serious misconduct of a sexual nature. This area is a significant challenge for employers and we have been proactive in facilitating discussions between police and employing agencies in these cases.

We have also had a series of informal meetings with police to learn about 'cutting edge' police investigative processes so we are able to provide good strategic advice to agencies in cases where an employee has a profile that the police may be interested in. Cases studies 15 and 16 are examples of where we have intervened in this way.

CS 15: The importance of past history

A person who had contact with children in a school context provided sexually explicit images to two teenage girls via his mobile phone. The issue was whether the images were conveyed accidentally. However, following our inquiries, it came to light that the person had a more serious history of admitted sexual impropriety towards younger children. We reported this additional information to police to help them investigate the circumstances relating to the sexually explicit images being provided to the teenage girls. The investigation is ongoing.

CS 16: Checking all potential sources of information to make sure

A school principal received an anonymous complaint alleging that one of the teachers at the school had been reported to police and asked to leave a teaching post in another state for taking inappropriate photographs of students. As part of the allegations, the anonymous complainant further alleged that the teacher's wife had left him out of concern for the safety of her children. The complaint also referred to the fact that the teacher frequently visited 'hard porn sites'.

The agency made some inquiries with local police, who advised that he was not known to police in NSW or interstate. The agency then decided that there were no other lines of inquiry available and finalised their investigation without putting the allegations to the teacher.

We had concerns that the allegations had not been sufficiently investigated and that the teacher remained exposed if further anonymous complaints were made. We were also concerned that no inquiries had been made with previous employers, despite the allegation that there had been previous disciplinary proceedings against the teacher. We also considered that the agency could have contacted the Child Protection and Sex Crimes Squad to find out if they had any 'intelligence' on the teacher – given the allegation that he visited 'hard porn' sites.

We met with the agency to discuss our concerns and they then made further inquiries with the Sex Crimes Squad, interstate police and previous employers. By pursuing these further lines of inquiry, the agency was able to demonstrate that the allegations had been satisfactorily investigated and no further action was required in regard to the teacher.

Agencies must take appropriate risk management action when dealing with matters where the evidence would suggest a pattern of concerning behaviour on the part of an employee. Case study 17 is an example of good risk management by an agency during and at the end of the investigation.

CS 17: Properly managing both the teacher and the risk

We received a notification that a teacher was engaged in an inappropriate relationship with a female student. There seemed to be significant personal contact, including spending time alone with the student out of school and exchanging text messages. Although the teacher initially remained on active duty after the school learnt of the allegations, a number of additional allegations involving other female students came to light during the investigation. This led the agency to conduct a further risk assessment and place the teacher on alternative duties. The agency informed the teacher in writing of the reasons for taking this action and made sure support was available to the teacher during the investigation.

After a comprehensive investigation, the agency found that the teacher had engaged in a pattern of concerning behaviour with a number of female students. They made findings against the teacher which were notified to the CCYP. The teacher was reprimanded and his conduct will be formally monitored for a significant period of time.

Convening case conferences about complex matters

Complex issues often arise out of investigations and it can be useful to meet directly with an agency to discuss these issues and agree on the best way forward. For example:

- › We received a notification from an out-of-home care agency about a family member of foster carers who was living at his parents' home and had been the subject of several sexual assault allegations. The agency had decided to leave the foster children in the placement on the basis that the carers appeared to be protective towards them and the children were attached to the carers. However, we had concerns that significant risks regarding the family member were not being addressed. The carers seemed not to believe the child protection concerns about their son and therefore could not be relied upon to be protective. We met with the agency and Community Services to discuss our concerns. As a result, further inquiries were made which highlighted significant risks to the children and a decision was taken to remove the children from the placement.
- › An agency asked to meet with us to discuss the best way to manage a matter where multiple allegations were being made against its employees by an anonymous complainant. We provided advice and guidance about the level of investigation required, particularly if allegations lacked detail or an employee was not directly identified, and discussed whether some employees should be informed about the allegations in light of the complex nature of this matter. We also agreed on strategies for managing the volume of complaints, a number of which were being received electronically.
- › We received a notification from an out-of-home care agency that a family member of a foster carer had indecently assaulted a 14 year old foster child in the placement. The agency had started an investigation into the matter but had not notified police of the allegation, despite it being an allegation of criminal conduct. We met with the agency to clarify their reporting responsibilities and they then reported the allegation to police.
- › We held a roundtable meeting with Police, DET and Health to discuss the best way to progress a matter involving a historical allegation about a person currently engaged in child-related employment.

The child care sector – a priority area for change

- › As part of our strategic planning for the coming year, we have identified the child care sector as an area of high priority. Our work with this sector over the past 11 years has shown that many services within the sector lack the necessary skills and expertise to conduct competent investigations into reportable conduct allegations. Many services also have a lack of understanding of their responsibilities to report these matters to our office.
- › As the largest sector within our jurisdiction, which also services a highly vulnerable client group, it is critical that improvements are made to the way agencies in this sector respond to child protection allegations made against their employees. However, the sector is not only large, it is very diverse, ranging from large community-based service providers to private chains and small family-run businesses. It includes not only child care centres, but home-based family day care schemes and sole providers. And there is also a regular turnover of staff and service owners, which make it difficult to retain investigative expertise.
- › Against the background of these concerns and the significant challenges in achieving sector-wide improvement in practice, we are keen to explore options for enhanced training and additional support services to agencies across this sector to assist them to meet their legal obligation to respond appropriately to child protection allegations made against their staff and to broader child protection issues that they are faced with.

Our submission to the CCYP Review

On 15 April 2010 the Minister for Youth, the Honourable Peter Primrose, announced a statutory review of the *Commission for Children and Young People Act 1998*. Section 53(2) of the Act specifies that the review must be done five years after the *Commission for Children and Young People Amendment Act 2005* was assented to in December 2005. The review was brought forward after an operational review of the CCYP and the Auditor-General's findings into the effectiveness of the Working With Children Check.

In our submission we stated that we believed the statutory review should consider whether the overall legislative framework for reporting relevant employment proceedings and conducting child-related employment screening delivers a genuinely integrated and efficient system for protecting the safety of children and the rights of employees and employing agencies. A full copy of our submission is available on our website.

Notifying the CCYP of minor conduct

We are concerned that certain 'one off' and minor child-related employment matters are still required to be notified to the CCYP. This is neither efficient nor fair to the affected employees – and it is inconsistent with the original vision of designing a system that focuses on identifying those who may pose an unacceptable risk to children.

Incomplete relevant employment proceedings

A problem can arise if individuals – who are the subject of very serious allegations – move from one area of child-related employment to another, without their new employer even being aware of the previous employer's uncompleted investigation into the outstanding allegations. This gap in the system needs to be addressed (see case study 18).

CS 18: Alleged offenders moving on

Allegations of serious sexual misconduct were made against a teacher at an independent school. When confronted with the allegations, the teacher immediately resigned. He then sought and obtained employment with another organisation. His Working With Children Check was clear as the original school had not finalised their investigation and made a notification to the CCYP. The current employer subsequently became aware of the concerns about the teacher, but only after they had offered the teacher permanent employment.

Strengths and limitations in the current approach to screening

A key strength of the NSW system is the consideration of Relevant Employment Proceedings (REPs) in working with children background checks. This allows actions or behaviours that do not meet the threshold for police investigation or criminal charges – but provide critical information for assessing the risk a person poses to children – to be considered. There are however a number of limitations in the current screening system.

Limitations

> Scope of records considered

To ensure that the scope of records considered in screening is sufficient to identify all behaviour that may constitute a risk to children, we proposed that the statutory review consider the breadth of records currently considered when conducting employment screening. In particular, we suggested that the review should consider whether a broader range of offences should be considered. The screening carried out in Queensland under the 'blue card' system includes, in its relevant serious offence list, crimes committed against adults and property as well as drug offences. Alternatively, we recommended that the review should consider including a full criminal record check as part of standard employment screening.

> Lack of review and updating of information

A significant benefit of the blue card system in Queensland is firstly that certification is for a limited period (three years) and must be renewed. Secondly, the Queensland Police and the Commission for Children and Young People and Child Guardian (CCYPCG) systems are linked. This enables blue card holders to be flagged on the police system, with police having a statutory requirement to advise the CCYPCG of relevant changes to information held about them. The CCYPCG can then notify employers of any suspension of a blue card and further action, such as additional risk assessment, can be taken.

We suggested that the review consider – as part of the overall screening and/or certification process for people seeking child-related employment – a system that includes a periodic recertification requirement of a person's suitability for working with children. Although we support the adoption of a certification system for NSW, we are firmly of the view that any effective child-related employment screening system should also include checks of completed relevant employment proceedings.

> Child-related employment screening for police

Given that policing activities incorporate significant contact with children and young people, we argued in our submission that it is in the public interest for general duties police officers to have a working with children background check.

> Screening of adults in family day care settings

Working with children background checks have recently been extended to adults who live with foster carers and family day carers. The CCYP has advised us that this screening will only apply to new carers. We are concerned that there is a significant number of people who are already living with foster carers or family day carers who have not been subject to any form of screening – and there is no legislative provision for this to occur. We therefore suggested that the review consider recommending an amendment to the Act to ensure that all adults living with existing foster carers and family day carers are subject to checks.

Probity checking

In April this year we convened a forum of NSW government agencies with responsibilities for health and human services (funded agencies), peak bodies that represent many of the thousands of non-government organisations funded to deliver services (funded organisations) and oversight and regulatory bodies with responsibilities in this area. The forum examined the various screening processes that funded services may use when checking for information about the probity of prospective employees, management committee members or other volunteers involved in the planning or delivery of services.

Through the forum we sought advice on:

- › current practices, including the nature of screening that government agencies require funded organisations to conduct and the systems in place to promote and monitor compliance, and
- › the adequacy of current systems for ensuring that problems that come to light through employment screening and other probity checks are appropriately assessed and managed.

We prepared a discussion paper outlining the current inconsistencies with respect to probity checking practices across the human services and health sectors, and suggested options for developing a consistent probity checking system to support stronger probity standards in the non-government sector.

For further details see page 29 in Stakeholder engagement.

Carer approval checks

This year we commenced an investigation into the adequacy of Community Service's screening of prospective carers for children in out-of-home care.

During the course of our investigation, Community Services advised us that they had conducted a statewide audit of carer assessments; this work found that in one of the agency's local offices involved in our investigation, adequate probity checks or other assessments were lacking for 88 carers.

At the time of writing our investigation was not finalised but Community Services reported that work was underway in several local offices to ensure that all carer assessments complied with policy.

Another concern from our review work involves the probity checking of authorised carers in non-government out-of-home care agencies. In particular, we are concerned that there is no guarantee that – as part of the carer approval process – a check is carried out as to whether any child protection reports have been made about the prospective carers. Although the Community Services policy requires its staff to conduct risk of harm report checks for prospective carers, they do not carry out these checks for prospective carers seeking authorisation by non-government out-of-home care agencies.

Engaging with agencies

This year we presented over 16 workshops, briefings and forums to a range of agencies and approximately 440 stakeholders including out-of-home care, children's services and other public authorities. We also have regular meetings with agencies – such as DET, Community Services, NSW Health, Juvenile Justice, Ageing, Disability and Home Care and a range of non-government stakeholders – to discuss systemic or policy issues. For further details, see page 42 in Stakeholder engagement.

In addition, we help agencies to improve their preventative systems and investigative practice in a number of other ways – including regular liaison meetings with larger agencies and case conferences to discuss issues about individual investigations. We visited a number of juvenile justice centres to provide detainees with information about their complaint options. We also audited documentation to ensure that any reportable allegations were being appropriately identified and reported in line with reporting obligations under the Ombudsman's legislation. For further details see page 57.

We have also developed a training program on responding to employment-related child protection allegations as well as an advanced training course on handling serious allegations involving criminal conduct. There has been a strong demand for this training with 20 people attending the first course delivered in June this year. All six workshops for 2010 have been filled. These are discussed more fully in Community education and training.

People with disabilities

Under the Community Services (Complaints, Reviews and Monitoring) Act 1993 (CS-CRAMA), our responsibilities include handling and investigating complaints about disability and other community services; inquiring into major issues affecting people with disabilities and disability service providers; reviewing the care, circumstances and deaths of people with disabilities in care; monitoring, reviewing, and setting standards for the delivery of disability services; and coordinating official community visitors (OCV) in their visits to licensed boarding houses and supported accommodation (see Official community visitors for details about the OCV scheme).

People with disabilities in care

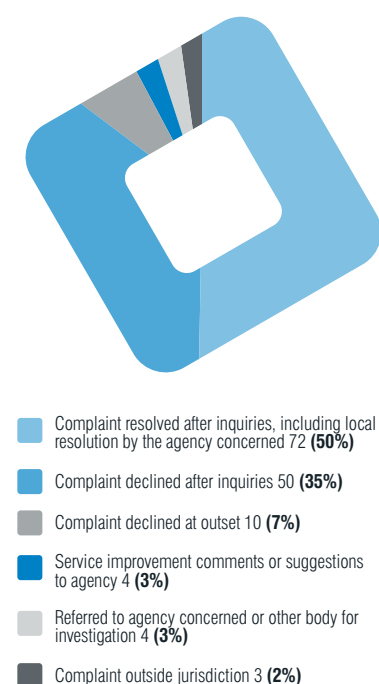
Most of the complaints we receive about disability services are about the care given to people with disabilities living in accommodation provided by Ageing, Disability and Home Care (ADHC) and services that ADHC funds or licenses. The main complaint issues this year related to:

- › **Safety** – including assaults by other residents, action by services to minimise or prevent assaults, provision of behaviour support, use of restrictive practices, support to victims of assault, and communication with families about incidents.
- › **Health** – including responses to changing health needs, implementation of health/medical recommendations, medication management, and use of health care plans.
- › **Adequacy of care** – including complaints about reductions in staffing, limited access to the community, inadequate individual planning, and limited involvement in meaningful activities.
- › **Accommodation changes** – including compatibility of residents, adequacy of planning to inform decisions, consultation with residents and families, assessment of risks, and decisions to exit residents.

Figure 32: Formal and informal matters received in 2009–2010 about agencies providing disability services

| Agency category | Formal | Informal | Total |
|--|------------|------------|------------|
| > Community Services | | | |
| Disability accommodation services | 0 | 1 | 1 |
| Disability support services | 2 | 5 | 7 |
| Sub-total | 2 | 6 | 8 |
| > ADHC | | | |
| Disability accommodation services | 50 | 40 | 90 |
| Disability support services | 28 | 42 | 70 |
| Sub-total | 78 | 82 | 160 |
| > Other government agencies | | | |
| Disability accommodation services | 0 | 0 | 0 |
| Disability support services | 0 | 2 | 2 |
| Sub-total | 0 | 2 | 2 |
| > Non-government funded or licensed services | | | |
| Disability accommodation services | 61 | 44 | 105 |
| Disability support services | 26 | 21 | 47 |
| Boarding houses | 1 | 5 | 6 |
| Sub-total | 88 | 70 | 158 |
| Other (general inquiries) | 0 | 0 | 0 |
| Agency unknown | 0 | 26 | 26 |
| Outside our jurisdiction | 0 | 1 | 1 |
| Sub-total | 0 | 27 | 27 |
| Total | 168 | 187 | 355 |

Figure 33: Outcomes of formal complaints finalised in 2009–2010 about agencies providing disability services



CS 19: A good mediated outcome

A private guardian made a complaint to us about the care provided to a woman living in a funded group home. The woman had injuries and bruising, including a broken collar bone, which the service was unable to explain. The guardian said there was a delay in the woman receiving medical attention, the service had not notified the guardian of the injuries in a timely manner, and had used restraints without consent. The service was also understaffed and there was poor communication between management and staff.

We contacted the service and identified some areas that could benefit from improvement, particularly in relation to communication. As a result of the incident and the lack of communication between the parties, there was a breakdown of trust between them. We facilitated mediation between the guardian and the service – communication and the facts of the injuries were discussed and apologies were given by both parties.

The service also agreed to complete a formal investigation report on the incident, conduct risk-assessments, review practices at the day program the woman attended, and review the compatibility of the residents in the group home. Both parties were satisfied with the outcome of the mediation, and we finalised the complaint after monitoring the progress of agreed actions.

CS 20: Assault in respite care

In July 2009, there were a number of media reports about an assault in an ADHC respite house. A 22 year old male client reportedly assaulted a 15 year old girl who had been staying at the service while her mother recovered from knee surgery. As a result of the assault, the girl required hospitalisation and emergency surgery. Media articles reported that the male client had previously assaulted another client at the respite service, and that an 11 year old child had been offered respite care in the same house.

We met with ADHC to discuss the matter and agreed there were serious questions about the actions taken by ADHC to ensure the safety and wellbeing of clients, provide them with appropriate support, respond to incidents, and ensure adequate communication with families and other services. There was also a question as to whether ADHC staff had breached policy by placing children in respite care with adults.

ADHC appointed an independent consultant to investigate the matter and we received their final report in May this year. There were serious deficiencies in the region in which the respite house was located which meant that clients were not being provided with timely and appropriate services. These deficiencies included:

- > poor understanding of the roles and responsibilities of individual staff positions
- > a failure of senior management to address problems identified over time
- > poor compliance with departmental policy and procedures in critical areas.

The report made over 180 recommendations to address the deficiencies and ADHC has accepted all of them. We will continue to monitor their implementation.

CS 21: Move to group home poorly planned

We received a complaint from an official community visitor (OCV) about a woman with disabilities and complex behaviour needs who was moved from interim accommodation to a new group home with a funded service. The OCV raised concerns about the adequacy of the transition planning, the limited involvement of the client in this planning, and the short timeframe for the move to occur. After discussions with ADHC and the Public Guardian, we referred the matter to ADHC to resolve and report back to us.

We finalised the complaint after receiving advice from ADHC that they had updated and provided all relevant plans to the Public Guardian, the guardian had consented to the move, the client had reportedly settled in well and had indicated that she was happy with the move, and ADHC was providing weekly updates to the Public Guardian.

Four months later, the OCV told us that the group home had 'broken down' due to the incompatibility of the residents. We met with ADHC, the funded service and the OCV to confirm the current and future living arrangements of the three young women in the group home – each of whom had complex support needs and a history of unsuccessful placements. In the meeting, we were advised that the client profiles had not been updated since 2007 so did not contain current information, the placement had started to break down within four weeks, and after eight weeks all residents had returned to separate accommodation and living arrangements with 1:1 staffing support.

It had been known before the group home was set up that the three proposed residents had been supported in 1:1 situations because of their challenging behaviours, histories of trauma, personality disorders and mental health issues – and that each of them had little or no history of living successfully with other people. As a result, we had concerns about the planning, assessment and transition process used by ADHC in creating the group home.

ADHC told us that they would review the adequacy of their processes for establishing the group home. The review would consider whether a change in process and practice could ease future transitions for the three women or other clients in a similar situation, minimise any detrimental impact on individuals of a failed placement, and maximise the potential of a successful transition. We have referred the matter to ADHC to investigate and report back to us, and they have appointed an external consultant to do the review.

People with disabilities in the community

Community-based support for people with disabilities includes Home and Community Care (HACC) services, post-school and day programs, respite, case management services and drop-in support. Services are either provided or funded by ADHC. This year, complaints tended to focus on:

- › Access to accommodation – including complaints about people with disabilities remaining in hospital or mental health units due to difficulties in obtaining supported accommodation.
- › Access to in-home support – including inability to obtain support due to a lack of service capacity, and loss of service after moving areas.
- › Adequacy of support and the professional conduct of staff.
- › Fees – including complaints about being charged for in-home support while in hospital and being over-charged.

Accessing SAAP services

In May 2004, we tabled a special report to Parliament about homeless people and the Supported Accommodation Assistance Program (SAAP). One of our findings was that people with physical disabilities were often excluded from SAAP because of the physical accessibility of premises. For example, we found 41.6% of agencies (95 agencies) excluded people with physical disabilities in their eligibility policies – that is, almost half the agencies surveyed did not consider them eligible to become service clients.

We recommended that Community Services, with Housing NSW, develop a joint plan of action to improve access to SAAP by people with physical disabilities. Community Services supported this recommendation, but their proposed strategies for doing this have kept changing over time and we have been unable to identify any substantive progress. In February 2010, we began an investigation into the actions of Community Services in relation to access of people with physical disabilities to services provided under SAAP. This investigation is continuing.

Community Participation services

In addition to handling complaints about disability services, one of the key functions of our office is to review the complaint-handling systems of service providers and to assist services to improve their complaint-handling procedures and practices.

Last year we reported on the findings from our review of complaint-handling in ADHC-funded Community Participation services. The Community Participation program provides young people with disabilities and moderate to high support needs with alternatives to paid employment, such as skills development to increase independence. One of the key recommendations from our review was the need for services to ensure that staff receive training in effective complaint-handling.

Since completing our review, we have monitored the progress of services in implementing our recommendations.

This year, ADHC has developed a fact sheet for Community Participation services that summarises the recommendations of our review and the resources available to help services improve their complaint-handling processes. ADHC also told us that they are going to provide training opportunities, information and other service system development initiatives. We have provided feedback on the fact sheet and will monitor the work of ADHC and funded services in this area.

Through our complaint-handling reviews, we have identified the need to improve sector-wide practice in this area. We are currently working with National Disability Services (NDS) to develop a complaint-handling training program specifically designed to suit the needs of the disability services sector. The program will be delivered in metropolitan and regional centres across the state in 2011.

Children and young people with disabilities

Consulting with families

During May and August 2010, we carried out a consultation project with families who have a child with a disability living at home about their recent experiences in obtaining information, services and support for specialist disability services and mainstream services.

Consultations included telephone interviews and focus groups in metropolitan and regional areas, and meetings with disability peak agencies, advocacy organisations and a selection of service providers.

We consulted with more than 300 people during the course of the project and will release our report on this work later this year.

During the consultations, we were also contacted by many families of adults with disabilities who are living at home – wanting to discuss their experiences in obtaining services and support. The information provided by these families will inform our further work in this area.

CS 22: Children with disabilities in school

In March this year, there were a number of media reports about children with disabilities in a western suburbs primary school being confined during recess and lunch to a 'caged' area of the playground for safety reasons. The media reports indicated that the fenced-off area had no grass, water or toilets, and that parents had been making complaints to the school, the department and the Minister about the situation for seven months.

We made inquiries with the Department of Education and Training and visited the school to meet with the principal and inspect the site. The principal told us that in 2008 she was approached by parents of children in the support unit, raising concerns about safety. The layout of the school meant that the children – who tended to run around and not follow directions – were at risk. In consultation with parents, it was decided that an area would be fenced and used as a transition area. As socialisation was a key factor, the area was created in one of the existing playgrounds. The ground surface was dirt, which was the same as the surrounding playground.

On enrolment, the Assistant Principal Support and parents identify children who need assistance to learn how to safely use the playground. These identified children are required to be in the enclosed area at recess and lunch until they get used to the playground environment, other children and noise. They are then transitioned by staff into the main area of the playground by spending increasing lengths of time in that larger area.

At the time of our visit, we were informed that there were currently no children who were required to be in the enclosed area – but many children chose to use the area because of the shaded seating under a heritage-listed tree. Students were able to come and go out of the area via a latched gate, and the area was not segregated.

We also found that although one parent had made a complaint, this was about the ground surface of the enclosed area – not the existence of the area itself. The weekend after the media coverage, the area was resurfaced with special rubber flooring. We advised the department that we would not be taking further action.

Young people with disabilities leaving care

In late 2009, the Public Guardian raised concerns with us about the process for young people with disabilities leaving the care of the Minister for Community Services. One of the key concerns was that the Public Guardian was often not involved in the leaving care planning until late in the process, to the detriment of the young person.

In March this year, we facilitated a meeting between the Public Guardian, the Guardianship Tribunal and Community Services to discuss this matter.

It was agreed that Community Services would identify young people in out-of-home care who have turned 16 and are likely to need at least some aspects of guardianship after leaving care. They would then start guardianship applications for these young people to appoint a guardian – who would advocate for the young person during the ages of 16 to 18 years to ensure their smooth transition to after care services and support.

Community Services and the Public Guardian have also agreed to improve their collaborative work to ensure good outcomes for young people leaving care, including providing information and training for staff.

People with disabilities who are ageing

Last year, we recommended to ADHC that they develop a policy that clearly articulates and documents their directions, strategies and actions for supporting people with disabilities as they age. We also recommended that they develop a policy for disability services to guide decision-making and the delivery of services when working with people with disabilities who are ageing.

In July 2009, ADHC told us that they were developing an overarching statement/position on ageing – including how people are supported in the disability specialist support system. They said that further operational policy needs would be assessed once the statement was finalised.

To date, ADHC has not released an overarching statement on ageing or developed policy guidance for disability services. However, this year they have funded an 'ageing in place' research project to identify the ways in which ageing affects the support needs of people with disabilities and their carers. They plan to use this information to develop a service response strategy that meets clients' changing needs and promotes ageing in place.

Our work in reviewing the deaths of people with disabilities, and our liaison with service providers, indicates that the lack of a clear position about people with disabilities who are ageing continues to be an issue. We also handled five complaints about younger people with disabilities who had been, or were proposed to be, placed in aged care facilities. While two of the placements related to palliative care, the other complaints concerned younger people with disabilities being admitted to nursing homes reportedly because of a lack of suitable supported accommodation options.

We have concerns about the placement of younger people with disabilities in aged care facilities, particularly in light of the Younger People in Nursing Homes program that is aimed at getting these individuals out of aged care facilities and preventing their inappropriate admission. We will continue to pursue this issue.

People living in large residential centres

Individual planning in large residential centres

Last year we released a report about how services were planned and delivered to meet the individual needs of 60 people living in ADHC's large residential centres. We raised significant concerns about residents not being active participants in the planning and delivery of their services, rarely being involved in decisions that affect them, having limited opportunity to make choices and develop and practise life skills, not having meaningful involvement in the broader community and lacking advocacy support.

In response to our findings and recommendations, ADHC developed action plans that detail the steps they will take to address the issues identified in our report. This year, we have been monitoring ADHC's progress in implementing the action plans by obtaining regular progress reports and speaking with OCVs about what they have noticed during their visits.

A successful forum on devolution

In 1998, the NSW Government announced that all government and non-government institutions housing people with disabilities would close by 2010. Today, over 1,600 people with disabilities still live in institutions (also known as large residential centres). The government's commitment remains that institutions will close, but progress has been slow and there is little publicly available information on current plans for devolving the existing centres.

We decided to hold a public forum so that people with disabilities and other stakeholders could engage in constructive discussions on the progress towards closing institutions and the related challenge of providing options for people with disabilities to live their lives to the full within the community. This forum, on the closure of institutions or 'devolution', was held in June this year in partnership with the Disability Council of NSW.

The forum was facilitated by Julie McCrossin and attended by close to 300 people – including a broad mix of people with disabilities, family representatives, service providers, advocates and government representatives. The Chief Executive of ADHC spoke about the current status of devolution, a panel of people with disabilities and their representatives described their experiences moving out of institutions, and a panel of service providers, staff and a researcher outlined what it takes to successfully deliver community-based support.

Attendees at the forum had a diverse range of views, but there were a number of areas of broad agreement. These included that:

- › People with disabilities and their families need to have direct and meaningful involvement in discussions on devolution and planning for the future.
- › One model of housing and support does not suit everyone, and there needs to be a focus on individuals.
- › People with disabilities and their families need choices. There needs to be greater diversity of housing options, not just group homes. Participants discussed self-directed funding, the inclusion of people with disabilities in affordable housing options, shared equity arrangements, partnerships between government, non-government and people with disabilities and their families, and the need for more innovative options.
- › Devolution and community-based support for people with disabilities needs to include consideration of regional and rural NSW.
- › It is important to have a focus on relationships, including maintaining relationships between people with disabilities and their families as well as fostering and facilitating relationships with the broader community.

We encouraged participants to provide feedback to us on the forum and their key recommendations from the day. We received 115 written responses, and continue to receive feedback through a variety of means. The recommendations are broadly in line with the issues highlighted above, but have also emphasised the need for increased resourcing.

Our report on this issue was tabled in Parliament in August this year. It examines the progress of work in ADHC large residential centres to improve the lives of people with disabilities living there, considers the progress of devolution, reports on the outcomes of the forum, and makes recommendations for the future.

Deaths of people with disabilities in care

Reviews of deaths in 2009

We review the deaths of anyone living in, or temporarily absent from, residential care provided by a disability service or a licensed boarding house. Our focus is to identify procedural, practice or systems issues that may contribute to deaths or may affect the safety and wellbeing of people with disabilities in care, and recommend strategies that may help to prevent or reduce these deaths.

In 2009, we reviewed the deaths of 104 people with disabilities – 87 people who lived in disability services and 17 people who lived in licensed boarding houses. To date, we have taken further action in relation to 23 of these deaths – such as meeting with services, seeking advice from our Reviewable Disability Deaths Advisory Committee, reporting concerns to the service, or conducting an investigation (see case study 23).

CS 23: Poor response to critical health issues

This year we investigated the conduct of ADHC in relation to the death in February 2009 of a 58 year old man who lived in a government-operated large residential centre. He had a severe level of cognitive impairment, communication difficulties, and relied on a wheelchair for mobility. He also had significant health concerns that required ongoing management and regular review, including epilepsy and gastroesophageal reflux disease.

The man was booked in to have a colonography and received bowel preparation medications in the days leading up to the test. The evening before he was due to have the colonography, nursing staff at the residential centre received a copy of the man's pathology results. These indicated that he had electrolyte imbalance, with elevated sodium levels and low potassium levels. Staff called an after hours medical service and were advised over the telephone to administer Gastrolite, an electrolyte replacement to prevent dehydration.

That evening and the following morning, staff recorded that the man was accepting very little fluid. They had tried to syringe thickened fluids into his mouth, but he was swallowing only a small amount. The man went to the colonography appointment, but when he returned he refused all food and accepted only a small amount of fluid. In the late afternoon, staff noted that the man's condition had deteriorated. He had become listless and lethargic and was no longer sitting upright in his wheelchair. Staff put him in bed and noted an hour later that he had started dribbling and had a fixed stare.

Staff contacted the after hours nurse manager, and called for an ambulance 17 minutes later. On arrival at hospital, the man was found to be extremely dehydrated and had a number of life-threatening electrolyte abnormalities, including acute kidney failure. His condition did not improve and he died the following morning from pneumonia.

We found that the actions of ADHC staff in response to the man's critical health issues were inadequate because they:

- did not call for a review of his condition by the centre's medical officer at any point, despite significant health risks and numerous triggers to do so
- did not clearly identify the risk of dehydration or take adequate action to address the risk
- were not responsive to the change in the man's health needs the evening before his death and did not identify that his condition was critical and required immediate medical attention.

We also found that staff had withheld the man's anti-convulsant and anti-reflux medications on two consecutive occasions during this period, without medical authority to do so.

We have made a number of recommendations to ADHC to address the issues in our report. These are targeted at improving practice in the large residential centre and ensuring that nursing staff across ADHC's residential centres have the skills and knowledge to adequately fulfil their responsibilities. ADHC has accepted all of the recommendations and we will monitor their implementation.

Systemic work

In addition to reviewing individual deaths, we also undertake research and projects and try to improve outcomes for people with disabilities in care, and minimise preventable deaths, through our systemic work. The following activities have been a focus for us this year.

Training for staff in disability services

We have started delivering training to direct care staff in disability services on the key findings from our reviews. This training provides a useful forum for improving staff awareness, resolving concerns and discussing any practical challenges or regional differences in practice. Next year, we plan to expand our training to a wider range of services.

Improving support for people with disabilities in hospital

Through our reviewable deaths reports, we have consistently made recommendations aimed at improving the support provided to people with disabilities in hospital. We have seen some progress – with the development of relevant policies by ADHC and NSW Health, and the implementation of local area agreements between some disability services and local area health services or individual hospitals. However there continues to be problems in this area, including a lack of clarity about who pays when disability services staff provide support to their clients while they are in hospital.

In October, we met with NSW Health, ADHC and the peak non-government organisation National Disability Services to discuss work to resolve these issues. We were advised that NSW Health and ADHC have agreed to develop a statewide protocol with the mandatory principles that should be included in local arrangements between area health services and ADHC regions. They are also preparing a template for hospitals and disability providers to help them develop local protocols.

ADHC has released a first draft of the statewide protocol to disability services for comment. We will continue to monitor the progress of this work and the implementation of the protocol once it is released.

Promoting access to mainstream health programs

Many of the people whose deaths we review have chronic health issues – such as respiratory illness, diabetes and gastroesophageal reflux disease. They often have multiple admissions to hospital, but are rarely linked in with chronic disease management programs that are available to the general community. These programs provide health support to people in their homes and help to reduce unplanned and avoidable admissions to hospital.

The report from the Garling Inquiry into the acute care system included recommendations that NSW Health expand their severe chronic disease management program to all high risk patients over the age of 18, and develop a plan for expanding the Hospital in the Home programs of care for chronic and complex patients. Under the *Caring Together* action plan, NSW Health is undertaking work to implement these recommendations.

We are currently exploring opportunities with NSW Health and ADHC for ensuring that people with disabilities and chronic and complex health needs are linked in with these mainstream health programs. In October 2009, we were advised that this is an agenda item on the ADHC/NSW Health Senior Officers' Group, and that the agencies would be undertaking work to identify people with disabilities in care who meet the criteria for chronic disease management programs.

Analysing causes of death

Last year we engaged the National Centre for Health Information Research and Training (NCHIRT) to analyse the causes of death of people with disabilities in care who died between 2003 and 2007, compare their leading causes of death to those of the general population, and review the literature on risk factors that may contribute to these deaths.

This year we have contracted NCHIRT to expand the analysis to include deaths of people with disabilities in care in 2008 and 2009, and to extend the comparison with the general population across the three-year period of 2003–2005.

This work will help to improve our knowledge about particular causes of death and potential factors that may contribute to those deaths, and help us to identify and target strategies for reducing or preventing premature deaths. Our findings will be included in our next reviewable deaths report.

Aboriginal people with disabilities

Last year we reported that we had begun a review of Ageing, Disability and Home Care's implementation of their *Aboriginal Policy Framework and Aboriginal Consultation Strategy*, which aim to ensure that Aboriginal people and their carers have equal access to ADHC's programs and services and can participate in ADHC's planning and decision-making. The review involved audits of each of ADHC's six regions.

This year we provided each region with a detailed report outlining our findings and recommendations. We also prepared a report summarising the main systemic issues that we identified across all regions.

For more details about our work in this area see page 36 in *Working with Aboriginal communities*.

Licensed boarding houses

Under the *Youth and Community Services Act 1973* (YACS Act), boarding houses are required to be licensed by ADHC when two or more people with disabilities live at the premises. Licence conditions specify the requirements expected of the licensee, licensed manager and staff. However, many of the licence conditions are considered to be unenforceable or *ultra vires*. Since at least 2002, we have raised concerns about the unenforceability of the licence conditions and the associated reduced safeguards for residents.

Last year, we reported that ADHC had started work on identifying the *ultra vires* conditions that should be included in new regulations to resolve the issue of enforceability. The Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010 has been enacted this year.

The prescribed standards in this regulation were already covered in the existing licence conditions, but they provide minimum standards and ensure that these requirements are enforceable by ADHC.

However, our reviews of the deaths of people with disabilities in licensed boarding houses have identified areas where the minimum standards need to be improved. In particular, regardless of the accommodation setting, at least one person on shift should have current first aid qualifications. Under the current standards, only one staff member must hold current first aid qualifications, which is of no benefit to residents when that staff member is off duty.

In June, ADHC released a Regulatory Impact Statement for a new Youth and Community Services Regulation 2010 and consultation with stakeholders. They propose to remake the current provisions and incorporate additional provisions covering:

- › The requirement that one staff member on duty must hold qualifications in the administration of first aid.
- › Requirements about the administration of prescribed medications – including the obligation to provide certain prescribed medications to residents in dose administration aid devices (pre-packed blister packs) and maintain records of these administrations.

In our feedback to ADHC on the proposed Regulation, we emphasised the urgent need for the review of the YACS Act to be completed, as the amendment of the existing regulations does not remedy the broader problems with the legislation. In our feedback, we stated our view that:

- › The YACS Act is outdated, provides inadequate protection to residents of licensed boarding houses, and fails to uphold the rights of people with disabilities.
- › A review of the legislation is required to resolve broader questions about the appropriateness of boarding house accommodation for some people with disabilities, and to ensure that the accommodation and support options available to people with disabilities provide choice and a decent quality service.
- › The existing legislation does not apply to people with disabilities living in unlicensed boarding houses. There are inadequate safeguards for people with disabilities living in these facilities, including restrictions on agencies such as ADHC to investigate complaints about potentially illegal operators.

In their Regulatory Impact Statement, ADHC indicates that an Interdepartmental Committee (IDC) on Reform of the Shared Private Residential Services Sector is 'developing a whole of government approach to the broader boarding house sector and is considering options for future regulatory requirements including reform, repeal and consolidation of existing legislative instruments, including the YACS Act.'

In our feedback on the proposed Regulation, we noted that the IDC has been in operation since 2008, and ADHC had previously told us that the committee would release a discussion paper for public consultation at the end of 2009. To date, we have not received any information to suggest that this work has progressed.

We believe that it is critical that a plan for this broader reform work is developed and progressed as a matter of priority.

CS 24: Concerns about licensing issues

An advocate made a complaint to us about ADHC's actions in relation to a licensed boarding house following the death of the licensee or licensed manager. The advocate alleged that ADHC had:

- › acted unlawfully by failing to revoke the licence upon the death of the licensee, as required by the *Youth and Community Services Act 1973*
- › no lawful authority to deal with the executor of the estate of the deceased licensee as if the estate was the licence holder
- › failed to act on the unlicensed operation of the boarding house
- › failed to follow operational policies for closures and licence applications
- › failed to provide residents with the opportunity to relocate to alternative appropriate accommodation
- › not provided a satisfactory response to the advocate's complaint.

We had concerns about ADHC's dealings with the executor of the estate, the assessment of the licence application made by the spouse of the deceased licensee, and the granting of a licence to the spouse. We have started an investigation into ADHC's conduct and their dealings with other licensed boarding houses where the licensee or licensed manager has died.

Supporting inmates with intellectual disabilities

In May 2004, three additional support units were opened at the Metropolitan Special Programs Centre (MSPC) for inmates with an intellectual disability. These units accommodate offenders who, because of their disability, require placement outside the mainstream correctional centre environment for assessment, general management or to participate in a specific program to address offending behaviour. Staff in the units also liaise extensively with external service providers such as ADHC to ensure offenders have access to appropriate support services once they are released from custody.

In 2006 and 2008, we met with Corrective Services to discuss issues relating to inmates with an intellectual disability, and raised our concerns that two of the three designated support units at the MSPC were being used to house other inmates. In June 2009, we learnt that inmates with an intellectual disability were still only being accommodated in one of the designated units.

Corrective Services indicated that one current unit provided assessment and general programs, but when all three additional support units became fully operational they would be able to conduct assessments, therapeutic programs, vocational training, work options and more intensive pre-release planning.

In September 2009, we asked Corrective Services what progress had been made towards opening the other two units, and what access inmates with intellectual disabilities currently had to therapeutic and pre-release programs.

In November 2009, the department advised that all three additional support units at the MSPC were now accommodating inmates with an intellectual disability, in addition to the pre-existing unit in Goulburn Correctional Centre.

Official community visitors

The Ombudsman is responsible for monitoring the official community visitor (OCV) scheme. OCVs are independent statutory appointees that help to ensure people living in residential services in NSW receive the highest standard of care possible. They are appointed by the Minister for Community Services and the Minister for Disability Services for a period of up to six years.

OCV functions

OCVs visit residents who live in services funded, licensed or authorised by either Ageing, Disability and Home Care (ADHC) or Community Services (CS). These include services for people with disabilities, children and young people in out-of-home care (including those with disabilities), and people living in licensed boarding houses.

The functions of OCVs include:

- › informing the Ministers and the Ombudsman about matters that affect the conditions of residents
- › promoting the legal and human rights of residents
- › considering matters raised by residents
- › providing information and assistance on advocacy
- › helping to resolve any grievances and concerns residents may have.

OCVs make regular visits to services. They observe the standard and adequacy of care that is being provided, talk to residents, staff and management and – where possible – try to resolve any issues they identify directly with services. If they are unable to resolve an issue or an issue is serious, OCVs may decide to refer their concerns to the Ombudsman or to the relevant Minister.

Administering the scheme

We administer the OCV scheme, set visit priorities and provide support to OCVs. We do this by:

- › monitoring the capacity of the scheme
- › recruiting, inducting and training OCVs
- › supporting OCVs at meetings with services and agencies – including conciliations aimed at resolving complaints between service providers and residents
- › providing administrative support including help with travel and accommodation bookings
- › meeting and consulting regularly with OCVs about the operation of the scheme.

We also coordinate an annual conference for OCVs. This year's conference was attended by the Minister for Community Services and the Minister for Disability Services, featured addresses by key sector agencies about current issues and initiatives affecting residents of visitable services, and provided workshops for OCVs on negotiation skills and report writing.

During the year, 10 OCVs completed their terms of appointment or finished their terms early due to changed personal circumstances. In the coming months we will conduct a general recruitment to replace them.

Issues raised by visitors

In 2009–2010 the budget for the OCV scheme was \$757,000. This supported 42 OCVs to go to 1,243 services, conducting 3,335 visits to 6,422 residents. OCVs provided 5,941 hours of service to residents.

During 2009–2010, OCVs identified 5,250 issues of which 3,782 were finalised (72%). Services, with the assistance and oversight of OCVs, resolved 3,187 (84%) of the issues that had been finalised (see figures 34 and 35).

OCVs continue to monitor services' action about 1,468 ongoing issues that were identified during the year.

Figure 34: Issues identified and finalised by Official Community Visitors in 2009–2010

| Services | Number of issues: | | Breakdown of finalised issues: | | |
|---|-------------------|---------------------|--------------------------------|-------------------------|---------------------|
| | Identified | Finalised | Resolved ¹ | Unresolved ² | Closed ³ |
| Children and young people | 779 | 511 66% | 407 80% | 92 18% | 12 2% |
| Children and young people with disabilities | 298 | 259 87% | 164 63% | 12 5% | 83 32% |
| Children, young people and adults with disabilities | 128 | 97 76% | 78 80% | 0 0% | 19 20% |
| Adults with disabilities including residents of boarding houses | 4,045 | 2,915 72% | 2,538 87% | 246 8.5% | 131 4.5% |
| Total | 5,250 | 3,782 72% | 3,187 84% | 350 9% | 245 7% |

- 1 Services take action to remedy the issue, resulting in improved services for residents.
- 2 Services are unable or unwilling to resolve issues. For example, issues that are beyond the capacity of services to resolve as they are affected by systemic budgetary, policy or other factors. OCVs may report such issues to the NSW Ombudsman with a view to complaint or other action.
- 3 Issues are no longer relevant. For example, because a service closes or a resident of a visitable service about whom an issue has been identified relocates to another service.

Figure 35: Visits by Official Community Visitors in 2009–2010

| Services | Number of: | | | |
|---|--------------|--------------|--------------|--------------|
| | Services | Residents | Hours | Visits |
| Children and young people | 138 | 249 | 511 | 499 |
| Children and young people with disabilities | 36 | 122 | 313 | 168 |
| Children, young people and adults with disabilities | 16 | 56 | 127 | 65 |
| Adults with disabilities in residential care, including boarding houses | 1,053 | 5,995 | 4,990 | 2,603 |
| Total | 1,243 | 6,422 | 5,941 | 3,335 |

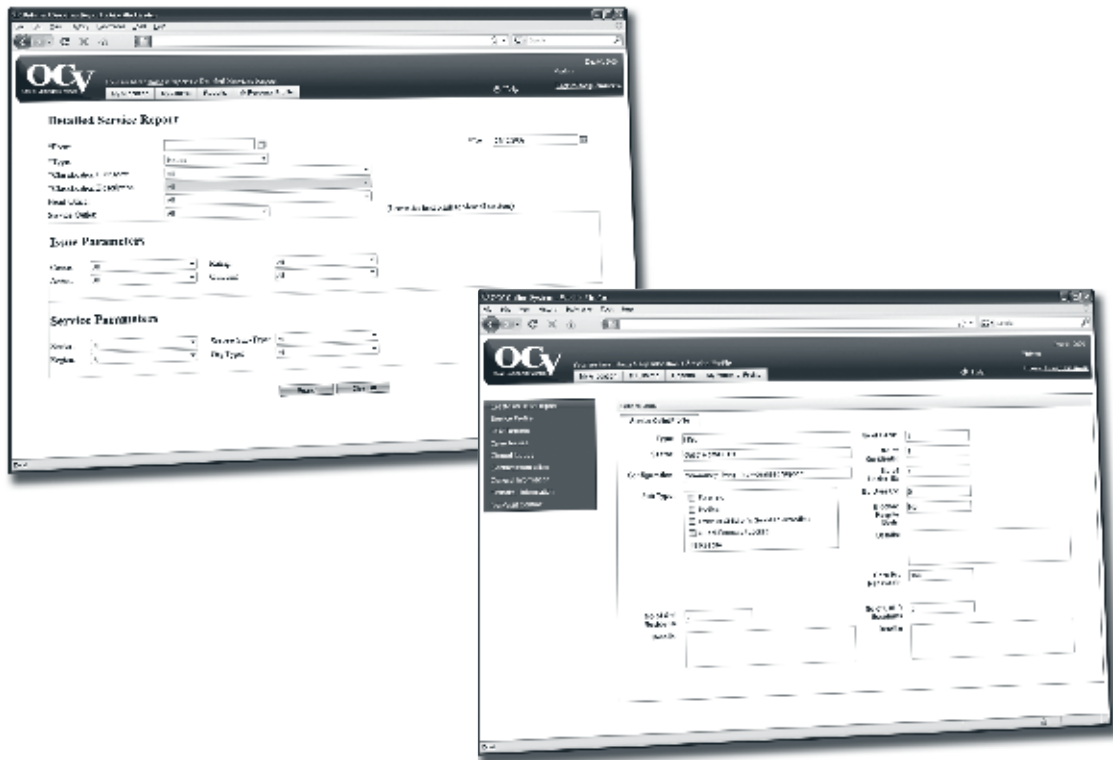
OCV Online

This year we developed a new OCV IT and reporting system that will enable OCVs to electronically report to services about the quality of care provided to residents. The system – called OCV Online – benchmarks the service issues identified by OCVs against the Disability Services Standards, ADHC's Integrated Monitoring Framework, the NSW Children's Guardian Out-of-Home Care (OOHC) Standards and the Guardian's Accreditation framework. The system started operating on 1 July 2010.

OCV Online improves the effectiveness of the scheme by:

- providing greater consistency and quality in OCV reporting about service provision against relevant legal and policy requirements
- replacing the current paper based systems with a fully integrated electronic reporting and document management system
- ensuring that historical information about visitable services and service quality is recorded, available and accessible
- enabling statewide access to the system from any location
- providing data for OCVs, the Ombudsman and services about the trends and patterns of service provision in disability and OOHC services.

OCV Online was designed, developed and implemented as a major cross-office project within our office, in consultation with OCVs and key agencies within the community services sector.



At the end of our first year, the office had a staff of 15 people. This included the Ombudsman, three stenographers and six investigators.

35 years on, we now have a full time staff of 170, which includes investigators, project staff, trainers, IT professionals, and more. Our staff bring a broad range of experience and different perspectives with them to the office, improving the standard of our work.

Highlighting
35 years

Some of the most common issues identified by OCVs this year were about the provision of:

- › services targeted to the assessed individual needs of residents – 952 (18%) of the issues identified by OCVs
- › relevant and meaningful behaviour management plans and implementation of those plans – 648 (12%) of the issues identified by OCVs
- › the provision of a well maintained, clean and home-like environment for residents – 523 (10%) of the issues identified by OCVs.

Each year, we report to Parliament on the work of the OCVs and provide further details about the issues and outcomes that have been achieved for residents. Case studies 25 and 26 are examples of the outcomes our OCVs have achieved this year.

CS 25: A better way of lifting

A woman in residential care had significant mobility problems and needed staff assistance to get in and out of her wheelchair. She was reluctant to accept assistance and, as a result, had a number of falls. This led to increased tension between the woman and the staff who had difficulties in helping her back into the wheelchair.

The woman told an OCV that she sometimes avoided calling staff to help her because they complained about her weight and how difficult this made it for them.

Staff said they were concerned about manually lifting the resident because of her increasing weight and their fears of injury. The service had promised to introduce a manual lifter, but the staff were not confident that this would address the occupational health and safety issues.

The OCV discussed the matter with the service manager who arranged a home assessment. This assessment recommended installing an electronic overhead lifter. The overhead lifter allowed staff to transfer the resident from bed to chair mechanically, plus gave the resident control over the speed of the lift and the position she could adopt while it was done. The woman's ability to control the process made her feel more at ease about being assisted, alleviating the tensions between her and the staff, and resolving the problem.

CS 26: Access to food

For children and young people living in residential care it is critical that the environment they live in is as home-like as possible. During visits over a 12-month period to three homes run by a service provider, an OCV identified a number of similar issues about the food provided.

In each of the houses, all food was kept in the staff office in a locked fridge. Although the service provided nutritious meals at scheduled meal times, there was no food available in the kitchens for the young people to have a snack when they wanted. Outside of set meal times, anyone who wanted something to eat had to ask a staff member for something from the locked fridge in the office. Some of the young people told the OCV that they felt uncomfortable about doing this. They felt they were living in an institution rather than a home.

When the OCV raised this concern with staff and management, they could not understand why this was an issue. They believed residents were given good, healthy food on a regular basis and the home environment was clean, safe and met the sector standards. Staff explained that the reasons for the restrictions on the food included one resident's medical condition, that required a strict diet regime, and because residents regularly used food in food fights or wasted it.

The OCV expressed concern that the restrictions affected the human rights of the young people and that their views were not being taken into account. The service accepted the OCV's suggestions and worked with staff to ensure the practice stopped and new procedures were put in place.

The OCV reports that all three homes now have food available in the kitchens that is easily accessible and the new arrangements better meet the needs of the young people.



Highlights

- › Reviewed 1,896 individual complaints that were investigated or resolved by police, and found the majority of them had been handled satisfactorily. [SEE PAGE 74](#)
- › Investigated police practices for destroying fingerprints, using tasers and activating in-car video and provided recommendations for improvement. [SEE PAGES 78–79](#)
- › Reviewed more than 3,000 complaint records from across the state during one investigation, and will use the findings to work with the Professional Standards Command to improve police systems for recording complaints on c@tsi. [SEE PAGE 80](#)
- › Inspected the records of 342 controlled operations, and prepared an annual report on our monitoring work under the *Law Enforcement (Controlled Operations) Act 1997*. [SEE PAGE 85](#)
- › Prepared six monthly reports for the Attorney-General on our inspections of 449 surveillance device records of NSW law enforcement agencies. [SEE PAGE 86](#)
- › Completed two inspections of the NSWPF's records for covert search warrants, reviewing 48 files. [SEE PAGE 86](#)

| | |
|----------------------|----|
| › Policing | 74 |
| › Witness protection | 84 |
| › Covert operations | 85 |

3 Police and Compliance

Our police and compliance branch is responsible for overseeing the way police handle complaints.

We do this through auditing complaints, reviewing police complaint investigations and conducting our own direct investigations. We also monitor the exercise of certain police powers through our legislative review role.

We monitor compliance with requirements relating to covert operations. We hear appeals and handle complaints relating to witness protection.

Policing

We are committed to working with police to achieve a police complaint system that reaches fair and just outcomes and fosters good customer service. We also aim to help police improve the way they operate by addressing issues raised in complaints.

To do this, we closely review complaints about serious police misconduct and provide feedback to the NSW Police Force (NSWPF) about best practice in complaint-handling. We also check how well police are handling less serious complaints and regularly audit the effectiveness of their complaint-handling systems.

Our legislative review role includes keeping under scrutiny how police use certain new powers. We also investigate particular areas of police practice if we think it is in the public interest to do so.

Our role in the police complaints system

The police complaints system is governed by the *Police Act 1990*, which sets out how complaints are to be addressed. Approximately 5,000 complaints about police officers are made each year. These come from both the public and from within the police force itself. Approximately 60% of these complaints are directly assessed by our office.

Under the statutory framework, police conduct the majority of complaint investigations. We are required to oversee the way these complaints are handled, including any decisions not to investigate. Police must notify the Ombudsman about more serious complaints – such as complaints involving allegations of criminal, corrupt or unreasonable conduct.

We complete detailed reviews of all police investigations of more serious complaints. Our role is to ensure these investigations are effective and timely and the action taken is appropriate. For example, we may:

- > ask police to review the action taken if we consider it is inadequate
- > seek further information
- > monitor the police investigation
- > prepare a report about the investigation if we consider it deficient
- > investigate the matter of our 'own motion'
- > report to Parliament about issues of significant public interest.

We have a class or kind agreement with the Police Integrity Commission (PIC) that sets out the types of less serious complaints that can be handled by police without our oversight – such as complaints about poor customer service, rudeness or minor workplace conduct issues. These complaints are resolved by local commanders without our direct oversight. However police are still required to register the details of these complaints on their complaints management system, and we conduct regular audits to make sure they are being handled appropriately.

Current complaint trends and outcomes

This year we received 3,032 formal or written complaints about police for individual assessment and oversight. This included complaints we received directly as well as those that were notified to us by police or referred from the PIC. We finalised 3,093 complaints. Figure 36 shows the number of complaints we have received and finalised over the past five years.

Figure 36: Formal complaints about police received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-----------|-------|-------|-------|-------|-------|
| Received | 3,753 | 3,466 | 2,969 | 2,948 | 3,032 |
| Finalised | 3,833 | 3,555 | 3,254 | 3,094 | 3,093 |

Figure 37: Who complained about the police?

This figure shows the proportion of formal complaints about police officers made this year by fellow police officers and from members of the general public, compared to the previous four years.

| | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|--------|-------|-------|-------|-------|-------|
| Police | 1,151 | 1,268 | 1,056 | 1,158 | 1,090 |
| Public | 2,602 | 2,198 | 1,913 | 1,790 | 1,942 |
| Total | 3,753 | 3,466 | 2,969 | 2,948 | 3,032 |

We determined that 27% of complaints could be declined for investigation for reasons such as the availability of an alternative and satisfactory means of redress – such as raising the allegations in court if they directly related to a charge. Another 340 complaints were assessed as local management issues and referred to commands for direct action. We quality reviewed 1,896 individual complaints that were fully investigated or resolved by police, and found that the majority of them had been handled satisfactorily. However, in 283 matters (15%) we considered the handling to be deficient. This included 161 or 8.5% of matters where we believed the initial investigation or proposed management action taken in response to the findings of the investigation was deficient, and 122 or 6.5% of matters where the timeliness of the investigation alone was found to be unsatisfactory. Following our advice, police were able to remedy the deficient investigation and management actions in 74% of the cases where we identified deficiencies.

Figure 37 shows the proportion of oversights complaints about police officers made this year by fellow police officers and by members of the public, compared to the previous four years. The high proportion of complaints raised by officers about their colleagues is an indicator of the low tolerance for misconduct within the current NSWPF. Figure 38 shows a breakdown of the kinds of complaints that were notified to us this year (some complaints may contain more than one allegation). Appendix A provides more detail about the types of complaints and the way they were handled.

Over the past three years, we have seen an increase in the use of informal resolution by police to address complaints and a reduction in formal investigations, as shown in figure 39. This shift reflects the effects of the new streamlined complaints resolution approach introduced across the NSWPF in 2008. The aim of this streamlined process is to resolve less serious complaints more efficiently, rather than relying on resource intensive complaint management teams.

The NSWPF is still not meeting its own internal timeliness standards for completion of investigations and informal resolutions although completion times are continuing to improve (see figure 40).

An important issue we monitor is the adequacy of the management action the NSWPF takes following a complaint. Even if an allegation is not sustained against an individual officer, police may decide some action is required to improve operational issues or the complaint-handling process. In 2009–2010, 66% of the investigations we reviewed resulted in some form of management action (see figure 41).

Figure 39: Action taken in response to formal complaints about police that have been finalised

| Action taken | 07/08 | 08/09 | 09/10 |
|--|--------------|--------------|--------------|
| Investigated by police and oversighted by us | 1,983 | 1,395 | 1,145 |
| Resolved by police through informal resolution and oversighted by us | 99 | 443 | 751 |
| Assessed by us as local management issues and referred to local commands for direct action | 490 | 468 | 340 |
| Assessed by us as requiring no action (eg alternate redress available or too remote in time) | 682 | 788 | 857 |
| Total complaints finalised | 3,254 | 3,094 | 3,093 |

Figure 40: Timeliness of the completion of investigations and informal resolutions by the NSW Police Force

| Percentage of | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---|-------|-------|-------|-------|-------|
| Investigations less than 90 days | 28 | 28 | 34 | 40 | 44 |
| Informal investigations less than 45 days | 21 | 14 | 15 | 41 | 47 |

Figure 41: Action taken by the NSW Police Force following complaint investigations

| | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------------------------|--------------|--------------|--------------|--------------|--------------|
| No management action taken | 895 | 936 | 837 | 500 | 386 |
| Management action taken | 1,236 | 1,221 | 1,146 | 895 | 759 |
| Total investigations completed | 2,131 | 2,157 | 1,983 | 1,395 | 1,145 |

Figure 38: What people complained about

| Subject matter of allegations | No. of allegations |
|---|--------------------|
| Arrest | 134 |
| Complaint-handling | 211 |
| Corruption/misuse of office | 278 |
| Custody/detention | 153 |
| Driving-related offences/misconduct | 107 |
| Drug-related offences/misconduct | 178 |
| Excessive use of force | 723 |
| Information | 678 |
| Inadequate/improper investigation | 677 |
| Misconduct | 1,414 |
| Other criminal conduct | 398 |
| Property/exhibits/theft | 200 |
| Prosecution-related inadequacies/misconduct | 265 |
| Public justice offences | 167 |
| Search/entry | 149 |
| Service delivery | 1,148 |
| Total | 6,880 |

Note: Please see Appendix A for more details about the action that the NSW Police Force took in relation to each allegation.

Of the 751 informal resolutions of notifiable complaints we oversighted, police took some form of management action in almost half (47%). Non-reviewable sanctions such as management counselling, official reprimands or warning notices, additional training, performance agreements and mentoring are the main types of management actions used to correct misconduct. In the majority of cases we have agreed with police that the proposed management was appropriate and reasonable.

The system continues to work well in relation to complaints about serious misconduct. In matters where disciplinary action was finalised this year, 95 officers had been charged with a total of 300 offences. Some of the most common charges were for unauthorised access to information/data (56 charges were laid against four officers), assault (46 charges laid against 34 officers), and driving offences, including drink driving (24 charges laid against 24 officers), and negligent/dangerous driving (16 charges laid against nine officers).

A total of 31 officers were charged with 51 'other summary offences', including public mischief, making false statements, unauthorised possession of a prohibited weapon, and failure to quit premises. The 69 criminal charges for 'other indictable offences', were laid against 12 officers, and included offences such as possession of child pornography, firing a firearm in a manner likely to injure persons or property, and drug offences. Case study 27 is an example of a dismissal as a result of charges laid against the officer.

CS 27: Stealing army clothing

An on-duty police officer stole several hundred dollars worth of army clothing while supervising a boot camp held at Holsworthy army base, aimed at preventing youth offending. The officer placed the clothing in a police vehicle, and then drove to a nearby service station where he put the items in his girlfriend's car. Police at the camp wrongly accused the young people of stealing the property and searched their bags. Later, a complaint into the officer's conduct was initiated by another officer who had witnessed the removal of the property. As a result of the investigation into the complaint, the officer was charged with larceny. He was convicted, fined \$5,000, and dismissed from the police force as a result of his conduct.

Twenty five police officers were removed from the NSWPF during the financial year and at least another four resigned as a result of disciplinary procedures.

See figure 42 for a five year comparison of charges against police arising from complaints that were finalised during each period.

Overseeing serious misconduct investigations

The complaints system is more than a disciplinary process for individuals who have acted wrongly. It is also about ensuring police act reasonably and police policies and procedures are reasonable. The complaints system allows police action to be reviewed and officers to be educated when mistakes have been made. Complaints may also help police identify circumstances where their practices need to change.

Our role is to help police achieve best practice in complaint-handling and investigation by:

- providing feedback about potential problems in investigative approaches
- highlighting operational issues that may not have been identified in the process of handling the complaint.

Police have to take into consideration a multitude of laws and regulations when policing in the community. Sometimes, they get things wrong – as shown in case studies 28 and 29. This can adversely impact the rights of the public and may also compromise criminal investigations.

CS 28: Difficulties handling a noise complaint

In response to a late-night noise complaint, police attended a property where a fancy-dress party was being held. After receiving no response from knocking on the front door, the officers went to the rear of the property through a side gate. They encountered the owner of the property and another person dressed in police uniforms claiming to be police officers. The owner told the officers to leave the property and not to come back without a warrant.

The officers promptly left and contacted a more senior officer who went to the property a short time later. The officers went to the front door, again without a warrant. The senior officer recognised the two people dressed in police uniform as ex-police officers and asked that they return the uniforms. After a short while, the officers entered the house and seized the uniforms. The ex-police officers were later charged with possession of police uniforms and impersonating a police officer. A magistrate dismissed the charges on the basis that the attending officers trespassed when obtaining evidence of the offences. Costs of \$15,000 were ordered against the police.

The owner of the property complained about the unlawful actions of the officers. The police investigator made no sustained finding, stating the officers erred on a point of law and did not intentionally abuse their powers. We raised concerns about this finding given that the magistrate found that the officers acted unlawfully. We recognised that they had acted in good faith when trying to deal with the noise complaint, but nevertheless exceeded their powers. We also acknowledged the officers attempted to deal with the noise complaint in a sensible and practical manner.

We suggested that the issues raised in this complaint provided an opportunity for educating all police officers on their powers of entry when dealing with noise complaints. The NSWPF agreed with our suggestion and issued a Law Note published in the Police Weekly. This outlined the various powers of entry when dealing with noise complaints – including the requirement to obtain a warrant if an occupant requests that police leave the property before they have a chance to address the noise complaint.

Figure 42: Police officers criminally charged in relation to notifiable complaints finalised

| Number of | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---|------------|------------|------------|------------|------------|
| Complaints leading to charges | 65 | 63 | 50 | 63 | 92 |
| Officers charged | 64 | 60 | 49 | 60 | 95 |
| Total charges laid | 101 | 184 | 136 | 259 | 300 |
| Officers charged following complaints by other officers | 51 | 48 | 32 | 45 | 68 |
| Percentage of officers charged | 79 | 80 | 65 | 75 | 72 |

We regularly receive complaints about the lawfulness of arrests. The issue raised in case study 30 demonstrates that some police officers may not fully appreciate the fact that an arrest is a measure of last resort, and suspects can only be arrested for limited purposes outlined in section 99(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

CS 29: Searching garages and mail boxes

Police attended a residence to see if a person wanted for questioning was present. Without the consent of the owner, police opened the garage door to check if the person's vehicle was there. They also opened and searched the mail box and the mail inside. Police claimed they did this to establish whether the person was present at the location. The initial complaint investigation found that the officers' actions were an acceptable part of police investigative process and no adverse findings were made.

After reviewing the matter and the relevant legislation, we formed the view that police did not have the power to conduct these searches in the circumstances. We wrote to the NSWPF and asked them to reconsider the findings made and take appropriate management action.

Police reconsidered the matter and accepted that the searches were unlawful. As a result, sustained findings were recorded, the officers involved were counselled about appropriate search practices, and training was provided to all general duties officers in the local area about the legalities of searching mail boxes and garages without the owner's consent.

CS 30: When is an arrest unlawful?

Investigators from the Professional Standards Command were investigating allegations that two police officers were running a debt collection business without a licence and without secondary employment approval – and they arrested the officers while they were on duty. The purpose of the arrest was to give the officers the opportunity to participate in a criminal interview and ensure they could be controlled during the execution of search warrants at their respective homes. During the subsequent legal proceedings, a magistrate found the investigators unlawfully arrested the officers.

After the charges for conducting a debt collection business without a licence were dismissed, the officers complained to us about the unlawful arrests. The NSWPF initially declined to investigate the allegation on the basis that the investigators relied on internal legal advice when deciding to arrest the officers, and on the understanding that the magistrate did not make any adverse finding or comment about the conduct of the investigators.

We obtained a copy of the transcript, noting the magistrate criticised the actions of the investigators in arresting the officers. We prepared a comprehensive legal advice outlining our view that the investigators appeared to have unlawfully arrested the officers – given that their purpose of arrest was to conduct investigative procedures and to control the officers, rather than start legal proceedings at the time of the arrests. We gave a copy to the NSWPF requiring them to investigate the issue of unlawful arrest. We also suggested that the complaint provided an opportunity to clarify legal and procedural issues about the arrest of police officers and members of the public during criminal investigations.

The NSWPF agreed the investigators unlawfully arrested the officers. The officers received an apology and internal complaint-handling guidelines have been amended to clarify the scope of the power of arrest when conducting criminal investigations involving police officers.

Case study 31 involved serious allegations against a senior police officer. Unfortunately, police failure to properly investigate the matter affected the outcomes that could be reached. We identified problems with the investigation, including a failure to properly follow complaint-handling protocols. We hope this will help police to avoid similar problems in the future.

CS 31: A lack of integrity and a missed opportunity

A superintendent who was a local area commander was detected by highway patrol (HWP) officers driving at 176kph in a 100kph zone. When stopped by the HWP officers, the superintendent claimed he was in pursuit of another driver for a traffic offence. The HWP officers joined this pursuit with two vehicles, but eventually realised the vehicle the superintendent referred to did not exist.

The region commander took action after a short investigation. We were critical of this investigation as it failed to conduct criminal inquiries and ask adequate questions about the superintendent's reasons for speeding. Although the superintendent admitted he had lied to HWP about the involvement of another vehicle, his admissions could not be used in any criminal proceedings as he had not been criminally cautioned and the admissions were not electronically recorded. In our view, the superintendent's conduct could have constituted an offence of public mischief and an attempt to pervert the course of justice.

As the complaint involved an integrity issue, it needed to be referred to the Internal Review Panel (IRP) – a panel of senior officers who recommend management action for complaints involving serious misconduct and integrity issues. However this did not occur. We raised this with the commander of Professional Standards Command who agreed the conduct should have been notified to the IRP. They could have provided a more robust and independent consideration of the matter.

The superintendent received a region commander's warning notice, a fine of \$1,674 and a six month licence suspension. He was also decertified from driving police vehicles for the same period and required to requalify. No action was taken against the region commander in relation to his handling of the investigation as he had retired from the NSWPF.

We look at the complaint histories of both complainants and subject officers when we are assessing complaints. Case study 32 shows how not disclosing the identity of complainants may affect both the complaint investigation and our oversight.

Investigations by the Ombudsman

In addition to our powers to oversee police complaints under the Police Act, we may decide to investigate police practices using the Ombudsman Act if it is in the public interest to do so.

Destroying records of fingerprints

On 12 December 2006, the *Law Enforcement (Powers and Responsibilities) Act 2002* 'LEPRA' was amended to allow fingerprints taken by police to be destroyed if they were taken for an offence where the person was found not guilty or was acquitted, or the charges were withdrawn or dismissed.

After the amendment to LEPRA, people began applying to have their fingerprints destroyed. We received a number of inquiries and complaints about the NSWPF refusing to destroy fingerprints after valid applications had been made. The NSWPF advised us that they were relying on legal advice suggesting that destroying fingerprint 'records' would contravene the State Records Act.

The inconsistency between LEPRA and the State Records Act was resolved on 6 March 2009, allowing the NSWPF to lawfully destroy fingerprint records. They destroyed the fingerprint records of the five people who had complained to our office, but had no plans to re-visit rejected applications where the applicant had not complained to us.

We decided to investigate the NSWPF's practices for destroying fingerprints and found out that there were a further 414 rejected applications. The NSWPF proposed to write to the rejected applicants inviting them to complete a fresh application. There did not appear to be any legal requirement for a fresh application – and it would just result in more time-consuming paperwork. We also thought there might be some unforeseen or unintended consequences if the NSWPF used fingerprint records after there had been a valid application for them to be destroyed.

CS 32: Problems with anonymous allegations

An officer made an allegation of illicit drug use by another officer. The officer who made the allegation wanted to remain anonymous, and said they had received the information from another officer who also wanted to remain anonymous.

The Police Act requires the NSWPF to protect the identities of internal police complainants, but there are no provisions for granting anonymity. If officers are not identified, it may have an impact on the effectiveness of the complaint investigation. Lines of inquiry are immediately closed down. Identification is important for reviewing the complaint history of the involved officers to see if they may be making a reprisal complaint. Additionally, failure to identify the complainant means we are unable to properly monitor the complaint investigation and attend any interviews.

As the officer who made the allegation declined to provide the NSWPF with the name of the officer who reported their observations, no further enquires were able to be conducted with that officer. We also understand that there were other officers present at the function where the alleged drug use had occurred. These officers were also not able to be identified or interviewed.

We requested the identities of all the officers in this matter. The local area commander advised that he could not comply with our request as undertakings had been given to the officers that their identities would not be disclosed.

The investigator had also failed to review the subject officer's history. This showed he had previously admitted to illicit drug possession and use, but was allowed to remain with the NSWPF as he had provided information about other police who were alleged to be using illicit drugs.

We raised the matter with Professional Standards Command who directed the local area commander to provide us with the identities of the involved officers. The NSWPF subsequently amended their guidelines to reflect the requirement for complainants' identities to be disclosed to our office.

We recommended that the NSWPF act upon all previous valid applications and only ask for further information from applicants if they could not identify the fingerprint record to be destroyed. We also recommended that they provide clear information on their website about the process for applying to have fingerprints destroyed.

The NSWPF agreed with our recommendations and are currently implementing them. This includes writing to previous applicants to advise them that their fingerprints have been destroyed.

Using Tasers

In March 2009, an experienced police officer used a taser on a person who had been seen walking erratically in the middle of the road near Oxford Street. The officer stated that the person appeared drug or alcohol affected and initially did not respond to his requests to get off the road.

CCTV footage indicates that the person eventually complied with the police direction to move onto the footpath. By this time, at least four other police had arrived although the officer's evidence was that he was not aware of this. When the person attempted to step onto the footpath, the police officer tasered him in the back and he fell onto the roadway.

He then stood up and was surrounded by four police. The taser was then used a second time and the person again fell onto the roadway before being physically controlled by the other attending police. He was subsequently found to be in possession of a small amount of illicit drugs and arrested.

A subsequent complaint investigation by police found that the use of the taser was appropriate and within the NSWPF guidelines. We had concerns about the adequacy and outcome of the investigation but, as the incident was to be reviewed in court proceedings, we decided to wait for the outcome of those proceedings.

The magistrate dismissed all charges against the person on the basis that the arrest was unlawful and the use of the taser was unreasonable and amounted to assault.

Having considered all the available information, we issued a statement of provisional findings and recommendations to the police. In our view, the officer's use of the taser constituted excessive force. We recommended that an adverse complaint finding be made against the officer and that he and the other involved officers receive further training in appropriate use of tasers. We also recommended that this case become an example in police training of how a taser should not be used.

While the officers involved subsequently received additional training, the police did not support making an adverse finding against the main officer although it acknowledged that the NSWPF could have handled the incident differently. The NSWPF expert in relation to taser deployment also did not concur with our conclusion that the taser use was inappropriate and police stated that there were less ambiguous examples of inappropriate use available for training purposes.

At the time, the standard operating procedures (SOPs) for Tasers did not, and still do not, contain an instruction prohibiting the discharging of tasers upon a subject in passive non-compliant situations. The officer, most probably in good faith, used his discretion within the tactical operations model utilised by the NSWPF to take control of the situation and justified his taser use within the terms of the relevant SOPs on the basis he was acting to prevent potential injury to the person as a consequence of being struck by a motor vehicle or to others as a result of the person's perceived irrational behaviour.

We continue to believe that the SOPs that guide police use of tasers contain criteria for use that are capable of too wide an interpretation and leave too much to the discretion of individual officers. In our 2008 report to Parliament on *The Use of Taser Weapons by New South Wales Police Force* we recommended among other things that the SOPs be tightened to make clear that they should only be used in situations where a person is violently confronting or resisting police. The NSWPF have refused to do this. Interestingly, Victorian Police, like some other jurisdictions, recently issued SOPs that make it abundantly clear that tasers must not be used as a compliance tool against individuals offering passive resistance.

Prior to finalising our consideration of this individual matter, the Police Integrity Commission utilised its power under section 70 of the *Police Integrity Commission Act 1996* to take over from the Commissioner the investigation of this and a related complaint. As a consequence the matter was taken outside Part 8A of the *Police Act 1990* and the Ombudsman's oversight role with respect to this incident at this time has ceased.

Performance indicators

| 2009–2010 criteria (%) | Target | Result |
|---|--------|--------|
| Formal reports about police conduct that made recommendations relating to law, policy or procedures | 70 | 86 |
| Recommendations in formal reports supported or implemented by the NSW Police Force | 80 | 96 |

Activating in-car video

In December 2009 we started an investigation into compliance with legislation and police guidelines for using in-car video (ICV).

ICV is a key tool in modern traffic policing. It is an objective source of evidence and can be invaluable to establish or clearly refute allegations of misconduct.

Getting the best out of ICV, for the NSWPF and the public, relies on having appropriate guidelines that are reinforced by commanders and supervisors. It also relies on the NSWPF having procedures in place that ensure that ICV is used both as a source of evidence and as a tool for identifying and addressing risks in their command and fostering good police practice.

Since ICV was introduced in 2004, we have overseen a number of ICV related complaints. ICV evidence has often been invaluable in establishing whether misconduct has occurred – such as in case study 33. However we have also identified some ongoing concerns.

These concerns are:

- Police are not always activating audio when required. When they fail to activate audio, there is often no attempt to explain why or for investigators to act on non-compliance.
- ICV is not always used effectively as a source of evidence. Incidents are reviewed or investigated and statements prepared without looking at the ICV record.
- In a number of cases where assault is later alleged, the ICV shows the detained person being removed from the field of view of the ICV camera – and the reason for this is not adequately explored.

In May 2010, we gave the NSWPF a copy of the provisional findings and recommendations of our investigation. The NSWPF have since supported all of the recommendations made.

CS 33: Police officer detected not driving safely

ICV provides valuable evidence in pursuit matters. Reviewing ICV after a pursuit can also help senior police to find out whether the pursuit was conducted in accordance with best practice. Sometimes, ICV can even detect serious misconduct.

After a review of the ICV in one pursuit, a region traffic coordinator detected some very serious breaches of the safe driving policy by one of the vehicles involved. The officer driving the vehicle had activated the ICV, but not the audio. The ICV footage showed that, although the pursuit had been terminated, the officer continued to follow the subject vehicle – driving dangerously with no flashing lights or sirens and driving on the wrong side of the road up a crest. At the Safe Driver Panel convened to consider this officer's conduct, the region traffic coordinator commented that he had 'never seen such a blatant breach'.

Although we are not usually notified of breaches of the safe driving policy, in this matter we were. This was because of the seriousness of the breaches and the officer's poor complaint and driving history.

Significant management action was taken in relation to the driver of the police vehicle, including reducing his driving classification. He was also referred for consideration of reviewable management action.

Safe driving

Safe driving has been a prominent issue this year with the introduction of the *Crimes Amendment (Police Pursuits) Act 2010* in March.

In December 2006, we issued the NSWPF with a report about our audit of police compliance with the safe driving policy. We made 39 recommendations, with 18 relating to the terms of the safe driving policy. Police are the experts in police driving, so our aim was to prompt the NSWPF to genuinely evaluate their policy in light of the investigation findings. Of the 18 recommendations we made about safe driving, eight were not implemented and four were only partially implemented. Those not implemented included recommendations such as the use of ICV to routinely review pursuits, the review of all pursuits by the State Pursuit Management Committee, providing greater guidance to police drivers to assess the seriousness of the offence and the appropriateness of engaging in a pursuit, and guidance about what is required after a pursuit has been terminated.

We will continue to closely monitor complaints about police pursuits, ICV and other traffic policing situations.

Keeping the complaint system under scrutiny

The Ombudsman's role includes an obligation to keep the overall police complaints system under scrutiny. This includes inspecting records to ensure NSWPF are complying with requirements under the Police Act, and examining the systems used by police to check how well they are operating. This year we have looked at systems and procedures in a number of areas – such as assessing and registering complaints, Working With Children Checks, handling domestic and family violence complaints (see page 81) and drug testing of police officers.

Registering complaints

Part 8A of the Police Act sets out how complaints about police conduct are to be handled. The NSWPF is required to register all complaints that fall within the terms of Part 8A on c@tsi, their complaint information system – including the details of the investigations conducted and the managerial actions taken to remedy complaints that are found to be 'sustained'.

Complaints that are resolved directly by police without our oversight are also registered on c@tsi.

Complying with this requirement is essential to the effectiveness of the complaint system. This is because:

- Complaint histories of individual police officers inform decision-making about new complaints, and are used by the NSWPF to assess the integrity of officers being considered for promotion.
- Recording complaints encourages consistency in decision-making and promotes transparency and accountability.
- We access c@tsi to audit complaint-handling and assess the reasonableness of complaint outcomes.
- Complaint records provide information about trends across the NSWPF, including levels of complainant satisfaction, and provide data that can be used to drive improvements to service delivery.

This year we started an investigation into the NSWPF's practices for deciding whether to register a complaint on c@tsi. We inspected over 3,000 records from across the state. Our provisional findings suggest a widespread failure to comply with the requirements for registering complaints. We found more than 250 complaints that the NSWPF had incorrectly assessed as being 'not Part 8A' complaints and therefore had not recorded on c@tsi – such as case study 34. Of these, 104 included allegations of serious misconduct that the NSWPF failed to notify to the Ombudsman, such as the example at case study 35.

The NSWPF has accepted our findings. In the next year we plan to work closely with the Professional Standards Command to improve police compliance with requirements for registering complaints on c@tsi.

CS 34: Road rage incident not notified

A local area command received a complaint alleging that an off-duty probationary constable used offensive language and improperly displayed his police badge during a road rage incident. The complaint was handled by informal resolution and the officer was counselled about his conduct. The NSWPF took steps to resolve the complainant's concerns and to address the officer's conduct, but then assessed that the complaint was 'not Part 8A'. As a result, the complaint was not registered on c@tsi or notified to the Ombudsman.

CS 35: Letter not classified as a complaint

A community worker from a drop in centre complained about the conduct of police officers who attended the centre and searched one of its visitors. The letter of complaint indicated that the complainant considered the use of force was unreasonable and excessive, with a number of officers forcing the visitor to the ground and using a taser to subdue him. They felt that the force used was unnecessary and could have been avoided, and said police had failed to recognise that the visitor was trying to cooperate with their directions. The local area command assessed the letter as not being a complaint under Part 8A, so it was not recorded on c@tsi or notified to the Ombudsman. We have asked the NSWPF to investigate this matter.

Child-related employment notifications and checks

In February 2008, the NSWPF finalised a class or kind agreement with the Commission for Children and Young People (CCYP). This agreement covers the NSWPF's obligations to notify the CCYP of completed employment proceedings – that is, proceedings against an employee relating to reportable conduct or acts of violence committed in the course of employment and in the presence of a child. These notifications are required so that the CCYP can provide Working With Children Checks for child-related employment.

This year we raised concerns with the NSWPF about delays in notifying the CCYP of employment proceedings completed before the class or kind agreement was finalised. The Professional Standards Command set up a project to identify and notify outstanding matters, and this resulted in 75 notifications to the CCYP. Of the 75 notified, 19 related to currently serving police officers.

We have also had ongoing discussions this year with the CCYP about the application of the child-related employment screening system to general duties sworn police officers. Only a handful of police positions – such as work in a Joint Investigation Response Team or with the Police Band – currently include a Working With Children Check as a requirement of their employment.

We are concerned that general duties police officers do not have to undergo a Working With Children Check when they join the NSWPF, as the CCYP does not consider they are engaged in child-related employment – as defined by section 33 of the *Commission for Children and Young People Act 1998* (CCYP Act).

Police officers have statutory responsibilities for protecting children under the *Children and Young Persons (Care and Protection) Act 1998*. For example, they make mandatory reports about children and young people at risk of significant harm, apply for apprehended violence orders on behalf of children, and remove children and young people who are at immediate risk of serious harm.

Given that policing activities involve significant contact with children and young people, we believe it is in the public interest that general duties officers have to undergo a Working With Children Check. We raised these concerns in our submission to the statutory review of the CCYP Act.

New drug testing procedures

The Police Act allows for the testing of police officers for prohibited drugs and steroids. This year the NSWPF introduced procedures for directing off-duty police to return to work for a drug test under section 211A of the Police Act. The power to do this was introduced in November 2006, but had not been previously used. Under the new procedures, the NSWPF will notify the Ombudsman within three days of a decision to direct a police officer to return to duty for a drug test. Since its introduction, the procedure has been used once and led to criminal charges being laid against the officer tested.

Policing domestic violence

A significant development this year was the passage of legislation to establish a 'domestic violence death review team' in NSW. Our 2006 report to Parliament, *Domestic violence: improving police practice*, drew attention to the benefits of a domestic homicide review process and since then we have reiterated our support for its establishment on several occasions. Disappointingly, the NSW Government has decided to establish the team in the office of the NSW Coroner, despite the majority of the expert advisory panel it convened recommending that the function be located in this office.

The advisory panel preferred this model based on our significant legislative functions, powers and expertise in relation to monitoring and reviewing child deaths as well as reviewing and investigating broader systemic issues, particularly the delivery of government and non-government community services and the policing of domestic violence. This infrastructure, which includes access to the NSW Police Force and Community Services databases and the National Coroners' Information System, would have enabled prompt implementation of the domestic violence death review model.

Importantly, locating the function in our office would have also avoided potential duplication of effort and resources in relation to reviewing child deaths. We note that the NSW Opposition has stated its opposition to the location of the domestic violence death review team within the office of the Coroner and indicated it will transfer the function to the Ombudsman if elected to government.

This year also saw the public release of the NSW Police Force's *Domestic and Family Violence Code of Practice*. The development of the code, which was launched by the Police Minister in December 2009, was one of the key recommendations of our 2006 report. We recommended that the code be developed to provide victims and their advocates with a document that clearly delineates and reinforces the responsibilities of police in responding to domestic violence. We provided feedback to police on a draft version of the code.

Auditing domestic and family violence complaints

This year we completed an audit of the NSWPF's handling of domestic and family violence complaints. The audit was carried out in accordance with s.160 of the *Police Act 1990*, which requires us to keep under scrutiny the systems established by the NSWPF for dealing with complaints.

The audit included both 'notifiable' and 'non-notifiable' complaints received and registered by the NSWPF in the 2008 calendar year. The objective was to generate a snapshot of the handling of domestic violence related complaints and the quality of the policing of domestic violence more generally.

Using a detailed questionnaire, approximately 400 complaints were reviewed to determine whether they were correctly classified by the NSWPF and satisfactorily handled, including whether police took appropriate action to resolve any immediate concerns raised by the complaint, whether the complaint was dealt with in a timely manner and whether the complainant was satisfied with the outcome.

In addition to providing an insight into how well the NSWPF handles complaints about domestic violence, the audit has revealed useful information about the most common complaint issues and demographic data about complainants. It has also extracted information about the number and details of complaints involving police officers alleged to be domestic violence offenders.

We have prepared a preliminary report to consult with NSWPF that sets out the findings of the audit and puts forward a range of recommendations designed to improve the handling of complaints about domestic violence and the quality of service delivery more generally in this critical area of policing.

Working with stakeholders

In August 2009 the Ombudsman was invited to give a keynote address at the annual conference for the NSWPF's Domestic Violence Liaison Officers. The Ombudsman used this opportunity to outline the different ways in which we work with police to improve the service they provide to the people of NSW. He also dispelled some of the myths surrounding our role in oversighting the police complaints system.

Following his address, the Ombudsman answered questions from attendees on a range of topics including recent initiatives aimed at better responding to domestic violence, changes to the child protection system and concerns about the ability of police officers and other workers to exchange information.

This year the NSWPF sought our feedback about the development of a new specialist domestic violence course for police prosecutors. Our 2006 report recommended that this training be provided. The course will be rolled out early in 2011. We were also invited by the NSWPF to sit on a committee convened to consider a proposal to introduce 'on-the-spot' apprehended domestic violence orders (ADVOs).

We canvassed this issue in our 2006 report and were pleased to have the opportunity to share the knowledge we have gathered about the operation of the ADVO system as a result of our unique role oversighting complaints about police. In September 2009 we also accepted an invitation to visit Sutherland LAC to observe the strategies used by that command to respond effectively to domestic violence.

Our inaugural Domestic Violence Community Stakeholders Forum in December 2009 was very positively received. The forum was organised to provide community workers in the domestic violence sector with an opportunity to speak directly to us about their issues and concerns in relation to the response by police and other agencies to domestic violence, and to enable us to update them about our ongoing work in this area.

The 60 workers who attended the forum were addressed by the Ombudsman, Community and Disability Services Commissioner and staff from our strategic projects division and police division. A range of issues was covered, including progress made by the NSWPF in implementing the recommendations of our 2006 report and changes to mandatory reporting and referral processes as a result of the Wood Inquiry. (For further details about the forum see page 28 in Stakeholder engagement).

As a result of feedback provided by participants at the forum, we subsequently raised a number of issues with the NSWPF's Corporate Spokesperson for Domestic Violence, including continuing concern about women being inappropriately charged with domestic violence offences because of the alleged failure of police to correctly identify the 'primary aggressor'.

This led to the NSWPF Corporate Spokesperson agreeing to support research conducted by the Domestic Violence Coalition which will track incidents involving women charged with domestic violence-related offences and/or where an ADVO is taken out against them. This will be checked against whether the woman also has a history as a victim of domestic violence. The feedback from the forum has also informed our domestic violence complaints audit.

In addition to our stakeholder forum we liaised with the domestic violence sector on a number of occasions throughout the year. We attended the NSWPF domestic violence stakeholder forum in September 2009 and met with the Domestic Violence Coalition, Women's Health NSW and the Women's Domestic Violence Court Advocacy Scheme (WDVCAS) Network to discuss a range of issues, including establishing a regular consultation mechanism to allow the WDVCAS Network to raise systemic matters with us.

During these discussions we often make suggestions to stakeholders about how best to approach resolving any concerns they may have with the NSWPF at a local and/or corporate level. We also participated in a focus group run by the Education Centre Against Violence about intersectoral domestic violence training needs.

This year we also maintained strong links with frontline domestic violence workers by partnering with Women's Legal Service (WLS) to provide domestic violence advocacy training to workers in the community, health and legal sectors as part of *Reaching out for Rights*, a project developed by WLS to provide workers with the skills needed to assist women experiencing family violence to successfully navigate the justice system. These training sessions were conducted across the state and gave us the opportunity to gather useful information to inform our domestic violence complaints audit. For further details see page 43 in Community education and training.

CS 36: Restoring confidence

After her ex-partner was convicted for seriously assaulting her, a woman approached us to complain about her treatment by police some years earlier. Prior to the assault for which he was convicted, the woman had contacted police on several occasions to report that her ex-partner had assaulted and was stalking her. She complained that police failed to investigate these matters and did not apply for an ADVO on her behalf at the earliest opportunity. While an ADVO was later sought and granted, the woman alleged that police then failed to act on her reports that the order had been breached. As a result of the poor service she felt she received, the woman reported that she eventually lost confidence in the ability of police to protect her.

Because of the ongoing trauma the woman experienced following the serious assault and subsequent, prolonged court proceedings, we arranged to receive her complaint verbally. After reducing it to writing and seeking the woman's views about what she would like to happen as a result of her complaint, we approached the NSWPF Corporate Spokesperson for Domestic Violence. He agreed to meet with the woman to provide her with the opportunity to tell her story, and to allow him to explain the changes that have taken place to the policing of domestic violence since her experience. The Corporate Spokesperson subsequently met with the woman at her home. As a result of her complaint, the woman's story will be featured in a training DVD for police officers. The woman was pleased with this outcome and contacted us to convey her appreciation for the assistance we provided.

Recognising
35 years of
oversight

Future directions

To be truly effective, good complaint systems need to fulfil four major functions. They need to provide:

- ▶ Accountability and a mechanism for citizens to have government agencies review their actions and decisions when they are thought to be wrong, unfair or unreasonable.
- ▶ An internal quality control mechanism for agencies to check that the individual conduct and decisions of their employees are proper and correct.
- ▶ A mechanism for redress and corrective action when things have actually gone wrong.
- ▶ Data that can shed light on the effectiveness of an organisation's policies and programs and lead to system and organisational improvements.

In our view, the police complaint system achieves the first two functions well. However, given the time and resources allocated to investigating and reporting on the more serious matters, inadequate attention is currently given to providing feedback and redress to the complainants and victims of incidents that generate complaints. The system primarily focuses on finding fault with individual officers. Little attention is paid to underlying causes of misconduct and the patterns and trends of complaints, or the implications these have for identifying useful changes or improvements that could be made to existing policies, procedures, training, communication or management practices at individual police commands.

NSWPF statistics for about 28,000 management actions taken in 2008-2009 arising from over 5,300 complaints showed that only 2% of all actions were about customer negotiation and resolution and only 3% of actions related to organisational improvements. In a presentation at the Police Academy in April 2010, Deputy Ombudsman Greg Andrews urged Professional Standards Duty Officers to pay more attention to providing fair redress for affected parties and identifying how complaints can inform service and process improvements.

In the coming year, we will be focusing on how well police are resolving complaints and how they are delivering and measuring complainant satisfaction.

Working with police to improve the complaint system

This year the Professional Standards Command commenced an important initiative called 'Project Lancaster'. It has involved a review of the disciplinary process within the NSWPF that aims, among other things, to improve the procedural fairness provided to police officers who are the subject of complaint investigations. The review examined the provision of information to these officers and the timeliness of disciplinary or reviewable actions taken under Part 9 of the Police Act.

A review was done of appeals by police officers to the Industrial Relations Commission (IRC) relating to decisions made under Part 9 of the Act to dismiss them or impose other penalties reviewable at the IRC – such as reducing their rank or seniority or deferring a salary increment.

As a result of the review, the NSWPF has indicated an intention to make greater use of non-reviewable management actions to deal with officer conduct that falls short of professional standards. This is in line with the principles in the 1997 report of the Royal Commission into the New South Wales Police Service which provided the framework for the current complaint system. In particular, Justice Wood said that:

- ▶ A presumption should exist that all members of the [NSWPF] are inherently capable of performing to the standard required, and that individual shortcomings can be addressed by counselling, monitoring and learning from mistakes.
- ▶ Mistakes and conduct falling short of the standard should be dealt with openly and fairly, not only from the standpoint of the police officer who is the subject of the inquiry, but also from the point of view of any person who brought the problem to notice.

We believe that these changes have the potential to deliver a range of positive benefits to the NSWPF, particularly if they encourage police to be more open in admitting wrong doing and making appropriate amends. Rather than having officers on suspension, they may be returned to work more quickly after appropriate training or counselling. If officers engage in further misconduct, there is a stronger case for dismissal or reviewable action if the matter is appealed to the IRC.

At the same time, the proposed changes bring new risks that serious misconduct may be treated too lightly and stronger disciplinary action avoided when it is clearly warranted. We will be monitoring the progress and implementation of this project and will continue to closely oversee the proposed management action taken on individual cases.

Reviewing the implementation of legislation

Since 1998, the NSW Parliament has required the Ombudsman to keep under scrutiny the powers conferred on police in over 25 new laws. We undertake an independent and impartial analysis of the exercise of these powers – taking into account the perspectives of police officers, agencies and the people upon whom the power is used.

Appendix B lists our legislative review activities in 2009–2010.

Terrorism powers

We have been tracking the implementation of recommendations we made in our review report on Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*. Under Part 2A a person can be detained by a court order for up to 14 days to prevent, or preserve evidence of, a terrorist act. Part 3 allows police and Crime Commission staff to obtain covert search warrants if this would help them prevent or respond to a terrorist act.

Out of the 20 recommendations we made for the NSWPF, 17 are awaiting implementation – including 13 recommendations about changes to the standard operating procedures (SOPs) for preventative detention, and two about developing a memorandum of understanding with Corrections NSW and Juvenile Justice. At the time of writing, the preventative detention SOPs were in draft form.

The Department of Justice and Attorney-General finalised a statutory review of the Act and provided a copy to us in late June 2010. The review is fully or partially supportive of 33 of the 37 recommendations in our report. The government introduced a Bill into Parliament on 24 June 2010, which implemented many of the legislative amendments we suggested. The Bill also proposed extending the Ombudsman's monitoring function of both the use of covert search warrants and preventative detention.

We are required to report further on the powers conferred on police under this Act as soon as practicable after December 2010.

Criminal organisations

The *Crimes (Criminal Organisations Control) Act 2009* came into operation on 3 April 2009. We are required to keep under scrutiny and report on the exercise of powers by police under the Act for the first two years of its operation.

This Act provides police with powers to apply to an eligible judge for an organisation to be declared a criminal organisation. It also allows police to apply to the Supreme Court for control orders on members of declared criminal organisations. The Act creates a range of offences – such as association between controlled members, recruiting people to join declared organisations, and failure to disclose identity upon request by police who are trying to serve control orders or suspect an association offence is being committed.

Controlled members can also be prevented from engaging in a range of prescribed activities. These include working in the security industry, carrying on a business buying, selling or repairing motor vehicles, possessing firearms licences and licences to sell liquor, operating a casino, operating a tow truck and a range of activities in the racing industries.

During the year we monitored the NSWPF's preparations to implement the new law, including observing meetings of the implementation committee. The first application to have an organisation declared was not made until July 2010.

Delays in tabling our reports

At the end of our reviews, we have to provide a report to the relevant Minister and the Attorney-General detailing our findings about the way the powers have been used. The legislation usually requires the Attorney-General to table our report in Parliament 'as soon as practicable' after we complete it.

In nine of the 17 legislative review reports we have finalised since 2005, it took six months or more for the Minister to table the report in Parliament (see Appendix B). We acknowledge that Ministers have competing priorities, but we are concerned that delays in tabling create a risk that the data may lose relevance and important 'public interest' issues may not be raised. For example, the criminal infringement notices (CINs) legislation requires our report to be tabled in Parliament as soon as practicable after receipt. However, the report we completed in August 2009 on the impact of CINs on Aboriginal communities was not tabled until July 2010.

Although it is ultimately a matter for Parliament, we consider that the independent review of new police powers could be more effective if we were given the responsibility to table the report in Parliament directly – as we do with our reports under the Ombudsman Act.

A better approach for implementing our recommendations

Our report on police powers to conduct personal searches on arrest and in custody, establish crime scenes and require the production of documents – under the *Law Enforcement (Powers and Responsibilities) Act 2002* – was tabled in Parliament in May 2009. We made 77 recommendations, many about improvements to police procedures and providing officers with sufficient training about the new powers. The NSWPF and the Department of Justice and Attorney-General are now undertaking a policy review, required by the Act, to check that the Act continues to meet the objectives Parliament intended.

Although it is now over a year since our report was tabled, we cannot report on the implementation of our recommendations. Police have declined to provide any information pending the finalisation of the policy review. We understand that the findings and discussions in our report may inform that policy review, but it is not clear why that process should delay implementing the recommendations primarily focused on operational issues – particularly given the powers are so regularly used by police.

Under the Ombudsman Act, we can require agencies to notify us of any action taken or proposed following our investigative reports. However, we have no general statutory power to require information about action taken in relation to legislative review reports. It is up to Parliament to decide what powers it wants us to review and the way new powers are exercised. We believe we could do our role more effectively if we were able to require information about the implementation of our recommendations. This would also make the review process more rigorous and transparent.

Witness protection

The witness protection program was established under the *Witness Protection Act 1995*. It aims to protect the safety and welfare of Crown witnesses and others who have given information to police about criminal activities. The Ombudsman is responsible for handling complaints from people in the program and hearing appeals about the exercise of certain powers.

Appeals

The NSW Commissioner of Police has the power to refuse someone entry to the witness protection program or remove them from the program. A person directly affected by such a decision can appeal to the Ombudsman. The Ombudsman must determine an appeal within seven days of receiving it and our decision overrides the Commissioner's decision. This year we received no appeals under the Act.

Complaints

Every person taken onto the witness protection program has to sign a memorandum of understanding with the Commissioner of Police. This memorandum sets out the basic obligations of the participant and includes provisions such as:

- prohibitions from engaging in specified activities
- arrangements for family maintenance, taxation, welfare or other social and domestic obligations or relationships
- matters relating to their identity
- the consequences of not complying with the provisions of the memorandum.

Witnesses must also be informed they have a right to complain to the Ombudsman about the conduct of police in relation to any matters covered in the memorandum.

Historically, we have received only a few complaints from participants in the witness protection program. When complaints have raised systemic issues, the police have responded positively and resolved those issues. This has contributed to the noticeable improvement in the management of the program and a related decrease in the number of complaints we receive. This year we received only one complaint from a participant.

Covert operations

The NSW Police Force, the NSW Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission have the power to do a range of things – as part of a covert operation – that would otherwise be illegal.

We are responsible for scrutinising the compliance of these agencies with accountability requirements relating to the use of telecommunications intercepts and surveillance devices, undercover operations, and covert and criminal organisation search warrants.

Agency compliance

Under the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and the *Surveillance Devices Act 2007*, they can intercept telephone conversations and plant devices to listen to and photograph or video conversations and track positions of objects. They can also carry out controlled or ‘undercover’ operations under the *Law Enforcement (Controlled Operations) Act 1997* that would otherwise involve committing breaches of the law – such as being in possession of illicit drugs. The Australian Crime Commission, the Australian Federal Police and the Australian Customs and Border Protection Service are also authorised to conduct controlled operations under the NSW legislation. To date, only the Australian Crime Commission has used their powers under the NSW Act. All of these powers are aimed at gathering evidence of criminal or corruption offences and disrupting the activities of criminal organisations.

As these kinds of operations involve significant intrusions into people’s private lives, the agencies may only use these powers if they follow the approval procedures and accountability provisions set out in the relevant legislation. An important function of the Ombudsman is to review the compliance of these agencies with these requirements.

Controlled operations

Controlled operations are an important investigation tool. They allow law enforcement agencies to infiltrate criminal groups – particularly those engaged in drug trafficking and organised crime – to obtain evidence to prosecute perpetrators of criminal offences or expose corrupt conduct.

The chief executive officer of the law enforcement agency gives approval for controlled operations without reference to any external authority. To ensure accountability, the Ombudsman monitors the actual approval process.

Agencies must notify us within 21 days if an authority to conduct an operation has been granted or varied, or if a report has been received by the agency’s chief executive officer on the completion of the operation.

We are required to inspect the records of each agency at least once every 12 months to ensure they are complying with the requirements of the Act. We also have the power to inspect agency records at any time – and make a special report to Parliament if we have concerns that should be brought to the attention of the public.

During 2009–2010, we inspected the records of 342 controlled operations.

We report in detail on our monitoring work under the *Law Enforcement (Controlled Operations) Act 1997* in a separate annual report that is available on our website. As well as reporting on compliance with the Act, the report includes details about the type of criminal conduct targeted in the operations and the number of people who were authorised to undertake controlled activities. It also provides some basic information about the results of those operations.

Telecommunications interceptions

The Ombudsman has been involved in monitoring compliance with the legislation for telecommunications interception since 1987.

A judicial officer or member of the Administrative Appeals Tribunal grants a warrant for a telephone interception, so, unlike controlled operations, we do not scrutinise compliance with the actual approval process.

We make sure that the agency carrying out the telecommunication interception complies with all the necessary record-keeping requirements. These records must document the issue of warrants and how the information gathered was used. Some records have to be given to the Attorney-General and all intercepted material must be destroyed once specified conditions no longer apply. All telephone intercept records have to be kept under secure conditions by the agency.

We have to inspect each agency’s records at least twice a year, and also have a discretionary power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney-General. The *Telecommunications (Interception and Access) (NSW) Act 1987* prevents us from providing any further information about what we do under that Act in this annual report – or in any other public report we prepare.

Surveillance devices

The *Surveillance Devices Act 2007* came into operation on 1 August 2008 and repealed the Listening Devices Act. It includes the listening devices covered by the repealed Act, but has a much broader application. The new Act covers the installation, use and maintenance of listening, optical, tracking and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities and information obtained from their use. It empowers specific NSW law enforcement agencies to use surveillance devices to investigate crime and corrupt conduct and use the evidence obtained to identify, locate or prosecute offenders.

Under the Act, applications are made to:

- eligible judges for warrants to authorise the use of most surveillance devices
- eligible magistrates for tracking devices or retrieval warrants for tracking devices.

The Act imposes a number of record-keeping, reporting, use and security responsibilities on the law enforcement officers granted a warrant. It also requires the Ombudsman to inspect the records of each agency from time to time to check the extent of compliance with the Act by the agency and its law enforcement officers, and report to the Attorney-General at six monthly intervals on the results of those inspections.

We have carried out four inspections under the *Surveillance Devices Act 2007*. On 21 October 2009, we presented our report to the Attorney-General on our inspections of surveillance device records up to 30 June 2009. On 31 March 2010, we presented our report to the Attorney-General on our inspections of surveillance device records up to 31 December 2009. Both reports are available on our website.

Inspecting records of search warrants

Covert search warrants

On 7 April 2009, the NSW Government introduced new covert search warrant powers to combat organised crime. Supreme Court judges may now issue search warrants that enable police and other law enforcement officers to covertly enter and search premises to investigate serious criminal offences.

If necessary, the warrants also authorise entry to properties adjoining or providing access to the subject premises. They also authorise the executing officer to impersonate another person to execute the warrant and do anything else that is reasonable to conceal the covert entry.

The *Law Enforcement (Powers and Responsibility) Amendment (Search Powers) Act 2009* provides for the Ombudsman to inspect the covert search warrant records of the NSW Police Force (NSWPF), the NSW Crime Commission and the Police Integrity Commission every 12 months to check that the requirements of the Act are being complied with.

The Police Integrity Commission had not applied for any covert search warrants during the first year of the Act's operation. We have carried out three inspections of the records of the NSWPF and one of the warrant records of the Crime Commission under the Act and reviewed 48 files.

Our first annual report was issued to the Attorney-General and Minister for Police in July this year. It is available on our website.

Criminal organisation search warrants

The *Criminal Organisations Legislation Amendment Act 2009*, which was assented to on 19 May 2009, enables an eligible judge to issue a new form of search warrant – a criminal organisation search warrant. These warrants allow police to search in or on premises for things connected with an organised criminal offence. These are serious indictable offences arising from, or occurring as a result of, organised criminal activity. This means any activity that is carried out to advance the objectives of committing serious violence offences or gaining material benefit from such conduct. The activity needs to be carried out on more than one occasion and involve more than one participant. This new type of search warrant was part of a package of new laws made in response to concerns about criminal conduct associated with outlaw motorcycle gangs.

The powers conferred in these warrants are the same as for existing search warrants, except they operate for seven days instead of 72 hours and have a lower evidentiary threshold. 'Reasonable suspicion' applies to these warrants, compared to 'reasonable belief' for ordinary search warrants. Applications to the Supreme Court must be approved by a police officer of the rank of superintendent or above.

Under the legislation, we have to inspect the records of the NSWPF every two years and report on the results of that inspection to ensure that the requirements of the Act are being complied with.



Highlights

- › Nearly 80% of the suggestions to departments were adopted, including giving apologies, changing or reviewing a policy and implementing training. [SEE PAGE 88](#)
- › Investigated a range of issues around managing asbestos in NSW, including agency responses when asbestos is identified, confusion about responsibilities, and the information about asbestos available on council websites. [SEE PAGE 92](#)
- › Spent 160 person days visiting 48 correctional centres around NSW, meeting with inmates and staff and observing conditions, routines and programs. [SEE PAGE 96](#)
- › Made 24 recommendations to Manly Council to improve their administrative practices, supervision of staff, decision-making, and the way they handle complaints. [SEE PAGE 101](#)
- › Released a discussion paper to the local government sector and stakeholders about the role of Internal Ombudsman positions in councils. [SEE PAGE 104](#)
- › Established ties with the new Office of the Information Commissioner including signing an information sharing agreement. [SEE PAGE 104](#)

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4 Public Administration

Our public administration division deals with complaints from members of the public who consider they have been treated unfairly or unreasonably by government.

This section reports on our work with NSW departments and authorities, the adult correctional system, local councils, freedom of information and protected disclosures.

Departments and authorities

One of the traditional functions of Ombudsman across the world is dealing with complaints from members of the public who consider they have been treated unfairly or unreasonably by government.

Decisions by government departments and local councils can have a significant impact on both individuals and the community. Our work in this area is an essential part of keeping NSW government agencies accountable and improving the standard of public administration.

The broad range of issues we have dealt with this year is a reflection of the large number of NSW government agencies and their diverse roles and functions. We concentrate our resources on dealing with complaints about issues that affect a large number of people, as well as those that have a serious impact on individuals.

Figure 43: Formal complaints finalised



- Preliminary or informal investigation 646 (46%)
- Assessment only 649 (46%)
- Conduct outside our jurisdiction 114 (8%)
- Formal investigation 5 (0%)

| Current investigations at 30 June 2010 | No. |
|---|-----------|
| Under preliminary or informal investigation | 86 |
| Under formal investigation | 3 |
| Total | 89 |

Figure 44: Formal and informal matters received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------|-------|-------|-------|-------|-------|
| Formal received | 1,329 | 1,158 | 1,348 | 1,349 | 1,438 |
| Formal finalised | 1,317 | 1,167 | 1,354 | 1,310 | 1,414 |
| Informal dealt with | 3,625 | 3,465 | 3,962 | 3,949 | 3,777 |

Data does not include complaints about public sector agencies that fall into the categories of local councils, the correctional system, police, community services, freedom of information and protected disclosures.

Complaint trends and outcomes

Overall complaint numbers have remained constant this year. We received 1,438 complaints in writing (which we call 'formal complaints') and 3,777 complaints over the telephone or in person (which we call 'informal complaints', see figure 44). Compared to last year, this is an increase of 6% in formal complaints and a decrease of 4% in informal complaints.

After improvements to our website and online complaint form, we received fewer complaints this year about conduct we cannot look at because it is outside our jurisdiction. Providing more detailed information on our website about alternative sources of help for these types of problems has helped save people time and prevent some of the frustration people feel when they are referred to different agencies.

This year, we conducted 646 preliminary or informal investigations and five formal investigations that involved using the Ombudsman's coercive investigation powers (see figure 43). See figure 45 for the issues people complained about.

Nearly 80% of the suggestions we made to departments and authorities were adopted – including apologising, changing or introducing a policy, implementing training, and reviewing and changing decisions.

A full list of the agencies we received complaints about this year and how we dealt with those complaints is in Appendix G.

Figure 45: What people complained about

This figure shows the complaints we received in 2009–2010 about NSW public sector agencies other than those complaints concerning police, community services, councils, corrections and freedom of information, broken down by the primary issue in each complainant. Please note that while each complaint may contain more than one issue, this table only shows the primary issue.

| Issue | Formal | Informal | Total |
|--------------------------------|--------------|--------------|--------------|
| Approvals | 57 | 350 | 407 |
| Charges/fees | 149 | 396 | 545 |
| Child abuse-related | 1 | 1 | 2 |
| Complaint-handling | 206 | 346 | 552 |
| Contractual issues | 111 | 319 | 430 |
| Correspondence | 9 | 21 | 30 |
| Charges/fees | 4 | 12 | 16 |
| Customer service | 218 | 556 | 774 |
| Enforcement | 126 | 316 | 442 |
| Information | 80 | 163 | 243 |
| Management | 55 | 60 | 115 |
| Misconduct | 33 | 66 | 99 |
| Natural justice | 18 | 32 | 50 |
| Issue outside our jurisdiction | 88 | 342 | 430 |
| Object to decision | 199 | 453 | 652 |
| Officer misconduct | 0 | 1 | 1 |
| Other administrative issue | 28 | 169 | 197 |
| Policy/law | 56 | 167 | 223 |
| Records | 0 | 7 | 7 |
| Total | 1,438 | 3,777 | 5,215 |

How we bring about change

Resolving problems

Whenever possible, we work cooperatively with agencies to resolve problems. When we receive a complaint we generally telephone an agency to find out their side of the story. We ask them to provide us with evidence of the action they have taken and, if an error has been made, we expect the agency to recognise this. We then discuss what needs to be done to fix the problem – both for the individual complainant and to stop it happening to someone else. We resolve many complaints in this way, resulting in some significant improvements (see case studies 37 to 40).

CS 37: Invoices finally paid

A contractor provided temporary bus shelters for RailCorp in early 2007, but was unable to remove them at short notice due to restricted access to the site. The contractor claimed that, although the accounts department were willing to pay him, the staff member he was dealing with at RailCorp was refusing to approve the payment. He contacted RailCorp several times but the matter remained unresolved. We contacted RailCorp and found that full payment was not being made because some invoices were missing. The contractor agreed to provide copies of these missing invoices and RailCorp agreed that the contractor would be paid. After trying to resolve the problem for over three years, the contractor was very happy with this outcome.

CS 38: Inspectors, dealers and faulty cars

The owner of a new car believed that it was faulty and took the matter to the Consumer, Trader and Tenancy Tribunal or CTTT. The CTTT asked the Office of Fair Trading (OFT) to provide a report on the car. In an attempt to resolve the complaint, the OFT inspector met with the car dealer and the owner at the dealership – but had met in private with the car dealer before the meeting. This and other actions caused the car owner to believe the inspector was biased and had a previous relationship with the car dealer.

He wrote to the OFT complaining about the inspector and making allegations of bias and corruption. He received a very brief response that dismissed his allegations. He complained to us that the response was inadequate. On contacting OFT we were given more information about how the matter had been investigated. Our inquiries established that the allegations of corruption were not reported as required, the internal complaint-handling system was not followed, there was limited analysis of complaints, and the procedures manual used to guide inspectors was out of date. Although we did not agree with the car owner that there was any evidence of wrong conduct on the part of the inspector, we agreed that OFT's response was inadequate.

We suggested to OFT that they send an apology letter to the car owner for the way his complaint was handled, review their complaint-handling system, provide complaints data to managers, update their procedures manual, and produce a fact sheet to explain the role of inspectors in matters referred by the CTTT. We were particularly concerned that regional offices should report complaints as a way of monitoring potential risks and encouraging accountability. We were pleased that OFT accepted our suggestions which should result in a more effective and transparent complaint-handling system.

CS 39: Helping customers with a disability

Our inquiries about a complaint from a disability advocacy service established that a RTA motor registry had refused to provide a customer with an Auslan interpreter to help her complete a transfer of registration for her vehicle. As a result of our suggestions, the RTA agreed to provide disability awareness training for staff at all motor registries and develop a disability policy, as part of their Disability Action Plan, to help staff provide assistance to customers with special needs. The RTA also passed on their apologies to the customer and assured her that action was being taken to ensure that the difficulties she had experienced would not be encountered by other customers.

CS 40: Driving licence unfairly cancelled

An advocate complained that an asylum seeker had his driving licence cancelled on the basis that it was obtained fraudulently. He had arrived in Australia on a passport in a false name due to concerns about his safety in his country of origin. His original residency application was lodged in his real name nine years ago and it was not known when it might be finalised. Although the Department of Immigration had recently accepted his real name, the RTA refused to issue another licence until he was granted permanent residence. As a result of our intervention, the RTA reviewed their original decision and issued the man with a new driving licence at no extra cost.

Performance indicators

| 2009–2010 criteria | Target | Result |
|---|---------|-----------|
| Percentage of complaints assessed within two days | 90 | 93 |
| Average time taken to finalise complaints (not including complaints about FOI) | 7 weeks | 5.5 weeks |
| Complaints resolved by providing advice or through constructive action by the public sector agency (%) | 65 | 67 |
| Formal investigation reports recommending or suggesting changes to law, policy or procedures (%) | 90 | 100 |
| Recommendations made in investigation reports that were implemented by public sector agency/authorities (%) | 80 | 96 |

Housing

In last year's annual report we noted the continuing expansion of the community housing sector and changes to how the sector is regulated, including the appointment of a Registrar of Community Housing. NSW is still in the early stages of a 10-year plan to more than double the number of homes in the sector, by supplying new housing and by transferring public housing properties to community housing providers. These providers are generally non-government organisations.

Significantly, public housing tenants who transfer to community housing are also moving outside of our jurisdiction. This means we are unable to investigate complaints about a community housing provider.

In December 2009 we met with the Registrar and Community Housing Division (CHD) of Housing NSW to discuss the handling of complaints about community housing providers under the new regulatory framework. We sought and received clarification about the respective roles of the Registrar and CHD in relation to the receipt, referral and investigation of complaints. We also established a regular liaison arrangement with the Registrar and CHD.

Helping people with a mental illness access and sustain social housing

In November 2009 we tabled a special report to Parliament about the findings and recommendations of our investigation into the implementation of the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGOS). As we reported last year, the investigation found that the overall implementation of the JGOS has been ineffective and has failed to achieve systemic improvements.

Our report detailed the reasons for this failure and outlines three key areas where reform is needed:

- discharge planning for mentally ill people leaving hospital
- the ability of government and non-government service providers to exchange information about clients when their safety, welfare or wellbeing is at risk
- the availability of supported accommodation for people with a mental illness and other complex needs.

As part of monitoring the implementation of our recommendations, we have sought advice from Housing NSW about the development of a new Housing and Mental Health Agreement – an outcome of our investigation – as well as a range of other issues including the adequacy of guidance provided to housing workers about factors that should be considered prior to taking action against tenants before the Consumer, Trader and Tenancy Tribunal, and the circumstances in which a tenant's personal information can be shared with other agencies.

Resolving complaints from public housing tenants

In relation to tenants who remain in public housing, this year we finalised 223 formal complaints and conducted preliminary or informal investigations into 129 (or 58%) of these matters. We dealt with a broad range of issues including tenants' concerns about delays in the provision of maintenance or repairs, debt recovery and enforcement issues and objections to decisions. We have also received complaints about poor communication by NSW Housing, inadequate provision of information and deficient complaint-handling.

In many cases, we deal with complaints initially by referring tenants to NSW Housing local offices to resolve matters. However, if a complaint or a series of complaints indicates that there may be a systemic issue, we may respond by making our own inquiries or meeting with senior agency managers (see case study 41).

CS 41: Debt recovery practices

This year we received complaints from individual tenants and from advocacy and legal services concerning a debt recovery program that NSW Housing initiated.

These complaints were about letters NSW Housing sent to more than eight thousand tenants about repaying outstanding rent, water charges and miscellaneous debts. The correspondence did not provide any particulars of the debts, including the meaning of 'miscellaneous' debts. In some cases, complainants said they were being directed to repay debts that were more than six years old and thus beyond the time period for legally recoverable debt.

Further, when the tenants or their advocates asked NSW Housing to clarify its demands, they claimed that they got no response, other than (in some cases) follow up letters requiring tenants to make immediate arrangements to pay back the debts. Some complainants believed that they would be in danger of eviction unless they settled the matter. Given the number and scope of these complaints, we met with NSW Housing to discuss the issues involved. We will report on the results of our approach next year.

Submissions to inquiries

We also use information from complaints to inform submissions we make to inquiries and reviews to bring about more systemic change. This year we provided information to parliamentary inquiries into the taxi industry, education for students with a disability, and substitute decision-making for people lacking capacity.

In our submission about substitute decision-making, we drew attention to the problems faced by some clients of the NSW Trustee and Guardian (NSWTG) who, for example:

- pay significant bank fees because they inadvertently overdraw their accounts and make withdrawals from the ATMs of other banks

- incur multiple fines that are then dealt with by the State Debt Recovery Office.

As a result of our submission, these problems were raised at the public hearings of the Inquiry and the NSW TG made a commitment to resolve them. For more details, see case study 42.

CS 42: Saving bank fees

The NSW Trustee and Guardian manages the financial affairs of people who are unable to make their own financial decisions. Many clients are on Centrelink benefits and some can pay hundreds of dollars in bank fees. As a result of our inquiries about a number of complaints we had received, we learned that the NSW TG does not always know this is happening because bank statements often go directly to the client. In some cases, they will ask the bank to refund the fees, but there is no systematic way of doing this. The fines can cause significant hardship and may not leave enough money for individuals to buy food and other basic necessities.

We asked the NSW TG to look at this issue in a 'bigger picture' way to try to prevent fees from being incurred in the first place. They did an audit of client files and, as a result, have established contacts at each of the major banks to resolve issues of clients unnecessarily incurring fees and charges. They are also going to:

- include information in their newsletters about low fee accounts and monthly account fee exemptions and reductions
- introduce a new category in their client payment system to identify and track clients who incur bank fees, and run monthly reports to identify such problems and any action that needs to be taken.

Investigating public interest issues

We also investigate issues – such as ongoing problems with school heaters – on our own initiative if we identify a matter of significant public interest. There has been considerable community debate about the appropriateness of using unflued gas heaters in schools. Our concerns about heating in schools date back to 1989 when we conducted a formal investigation into the issue.

That investigation established that the Department of Education and Training (DET) had been aware of health concerns about unflued gas heaters since 1988, after a study of a number of schools was completed by AGL.

Levels of nitrogen dioxide found in sample schools had ranged from acceptable to unusually high. A three phase study was conducted as a consequence of these results. The department advised us at that time that, in response to the reports, they were spending \$4 million on a program of leak detection and inspecting every unflued gas heater in state schools. Sub-odour leaks were eliminated and heaters beyond economical repair were disconnected and replaced with newly designed low NOx burners. Low NOx heaters were installed in schools in very cold climates.

Our final investigation report identified the need to set a safe indoor upper limit for nitrogen dioxide. Although the National Health and Medical Research Council was considering the issue at that time, they had not set a standard – but had identified this as a priority area for further research. Such research apparently did not take place and further action to establish a safe indoor limit does not appear to have been taken until early 2009, when DET and NSW Health agreed to jointly sponsor an application to the research council.

We have made the department aware of our concern that some twenty years after they first became aware of the significance of this issue, they have yet to develop a long-term evidence-based strategy for heating in schools. We will be closely monitoring their response to the recent research results with the expectation that a considered and robust strategy is developed to make sure heating in schools is both appropriate and safe.

Promoting better communication

Clear and accurate communication with members of the public is essential. For agencies with complex responsibilities, it is particularly important that they are able to explain complicated requirements in simple terms. For example, inquiries to us suggest that many people find correspondence from the RTA hard to understand and its website difficult to navigate. We have given this feedback to the RTA, along with some specific examples of problems that people have experienced (see case study 43).

CS 43: Confusion about registering vehicles

We received several complaints from pensioners and other concession holders – who do not have to pay registration fees – saying that RTA information about registering their vehicles was confusing and misleading. The information on the registration renewal papers gave concession holders the impression that their vehicles were registered after they had completed online payments for green and pink slips. However, they later found out they had been driving unregistered cars as they had failed to complete a necessary validation step. In one instance, the concession holder drove unregistered for five months until she was stopped by the police. Her insurance was also invalid because her car was unregistered, despite the fact she had paid for green slip third party liability insurance.

We found that the information on the registration labels was indeed confusing and open to misunderstanding. The labels contained advice that pensioners claiming a concession must ensure they receive a receipt number from the RTA for the Certificate of Registration. However the label also stated that no receipt was required when registration was renewed online.

The RTA has modified the message on the labels to state in bigger font that pensioners must obtain a receipt number. However, as the message is still potentially unclear, we have suggested a number of ways in which further clarification could be given to concession holders about what they need to do to register their vehicles. The RTA has agreed to consider these suggestions.

Websites are a useful and important way for agencies to provide easily accessible and up-to-date information. However, it is important that the same rigour is applied to the quality and accuracy of this information as any other government communication. Unfortunately, this is not always the case (see case study 44).

CS 44: Inappropriate website content

We found that the Game Council had published inappropriate material on their website, including a paper that misquoted and misrepresented the work of a conservation advocacy group.

We wrote to the Director General of the Department of Industry and Investment, the super department responsible for the Game Council, about our concerns that:

- › the Game Council had not corrected the quote voluntarily when asked to do so
- › the content and tone of other articles on the website was inappropriate for a statutory authority
- › the advocacy role played by the Game Council might potentially conflict with their regulatory function of administering the licensing system for game hunters
- › the Game Council's complaint-handling policy was inadequate.

The Director General expressed his disappointment that the Game Council had not voluntarily amended the quote and agreed some of the media releases on their website appeared to be inconsistent with what would normally be associated with a government department. He said he believed the Game Council could undertake an advocacy role as well as a regulatory function, but advised that in the future the super department's media unit will check all material before it goes on the Game Council's website. Game Council staff will also be given clear information about the super department's policies and procedures, including those to do with complaint-handling.

Highlighting 35 years

In the last 35 years, there have been five Ombudsmen:

- 1975 – Mr Ken Smithers
- 1981 – Mr George Masterman QC
- 1988 – Mr David Landa
- 1995 – Ms Irene Moss AO
- 2000 – Mr Bruce Barbour

Communication between agencies is also important. A failure by agencies with common clients, or dealing with a related issue, to discuss policy and practice issues with each other can have significant consequences (see case study 45).

CS 45: Information hard to get

The NSW Trustee and Guardian does not always have information to hand that families and relatives expect. A complainant told us he was having difficulties getting information about his mother's housing situation. He was told by Housing NSW that they were only authorised to give information to the NSW TG. This was a source of conflict between the son and both the NSW TG and Housing NSW.

It became apparent that the complaint was more about who was able to get information, rather than how the estate was being managed. We contacted Housing NSW and asked if there was any problem with supplying information to the client's son if NSW TG agreed to this. Housing NSW was happy to note this on their system for future reference, and the NSW TG agreed – on condition that the client's son could access the information but did not have authority to make decisions on his mother's behalf.

NSW TG also said that there were times when they needed to speak with Housing NSW, as many NSW TG clients live in public housing, but were unsure about how to do this. We suggested a memorandum of understanding (MOU) with Housing NSW to ensure good and ongoing communication – and this suggestion has been adopted by both agencies.

Improving enforcement

Many government agencies play an important role in enforcing legislative or administrative requirements that have a significant impact on people's lives. Last year we reported on two major investigations we were conducting. One was into WorkCover's handling of an asbestos exposure incident and the other was into the adequacy of the then Department of Water and Energy's action on complaints about the illegal damming of a river. We are now able to report on the changes brought about by those investigations, as well as further work we are doing to examine the adequacy of asbestos management procedures in NSW.

Key compliance changes being implemented

Last year we investigated a complaint about the then Department of Water and Energy (now the Office of Water) and found that they had failed to take adequate enforcement action against illegal damming of a river. We are pleased to report the department has been gradually complying with our recommendations. They have formally apologised and paid an ex-gratia payment to the complainant and are taking action to implement key changes. These changes include:

- implementing a new case management system and reviewing compliance branch documentation and file management practices

Managing asbestos in NSW

As a result of our investigation last year into the management of an asbestos incident, WorkCover agreed to implement some of our recommendations. They will also be taking many of the issues we raised to Safework Australia – to be considered as part of ongoing consultations about the standardisation of national occupational health and safety legislation.

After the release of our investigation report, the CEO of WorkCover set up an Asbestos Co-regulators Working Group – made up of representatives of all government agencies that have responsibilities for asbestos issues – to look at how each agency deals with asbestos and how they interact. We were pleased to be invited to participate as an observer at the working group meetings and we look forward to seeing their report, which is due to be released in March 2011.

We are also investigating the response of various agencies to the identification of friable and bonded asbestos at the Wallaga Lake Aboriginal community. In November 2007, the Eurobodalla Shire Council and the Department of Environment, Climate Change and Water were advised of the presence of friable asbestos at an unofficial tip some 500m from the nearest residence. Bonded asbestos was identified at residences in April 2009. After intense media coverage, attempts to process applications and obtain government funding to remove the asbestos finally bore fruit.

Although some work had been done before this to clean up the tip site, the actual cleanup by licensed asbestos removalists did not start until November 2009. We inspected the site before and after the clean up and were concerned about the adequacy of the work done. Broken bonded asbestos was still scattered around residences, in driveways and in neighbouring bush land. Consultants provided a report to the council and the community stating there was no danger to the residents from the remaining bonded asbestos.

This advice was given despite most authorities, including the World Health Organisation, stating there is no safe level of exposure to asbestos.

We have also looked at how councils throughout NSW deal with asbestos and, in particular, how members of the public can access information on asbestos through council websites. We found that many council websites contained out-of-date or inaccurate information on asbestos or no information at all. We wrote to all councils suggesting they review their websites and local policies – and we were pleased to see that the majority of councils responded favourably.

We remain concerned about how asbestos incidents at workplaces and in residential settings are coordinated by government agencies. In November 2009, we started our own investigation into how NSW Government agencies deal with asbestos. Our work to date has raised issues about coordination between the various agencies involved, gaps in legislation and confusion about responsibilities. We hope to report on the outcome of this investigation before the end of 2010.

- › preparing templates for commonly-used compliance actions and a reasons for decision document
- › developing a training module on custody of evidence and document management
- › finalising a complaint management policy
- › developing a certification system to ensure records management practices are adequate, a compliance branch corruption prevention plan, guidelines on providing legal advice on compliance matters, and a compliance business plan to match existing resources with priority areas.

Our investigation found that the department's failure to deal appropriately with the complaints had been due to significant under-resourcing of their compliance function. We are pleased to note that the Office of Water has recently submitted a case for increased compliance resources as part of the IPART pricing review.

Good record-keeping

Good record-keeping helps improve accountability and transparent decision-making. Poor record-keeping practices are often associated with poor complaint-handling. If records of conversations are not made, reasons for decisions are not recorded, and emails and letters are not placed on files, it can be difficult for complaints to be properly investigated (see case studies 46 and 47).

CS 46: No record of conversations

The son-in-law of a Housing NSW tenant complained to us about the way Housing NSW had dealt with his complaints and not responded to his emails and phone calls. Our inquiries established that the Housing officer had not made any record of the conversations he claimed to have had with the complainant. We have identified poor record-keeping as an issue in other complaints about Housing NSW, so we asked them to develop a record-keeping policy – pointing out that this is also a requirement of the State Records Act. They have responded positively to this suggestion.

CS 47: Lack of policies rectified

A complainant wrote to us about the Department of Premier and Cabinet's apparent lack of a complaint-handling policy and records management program. In addition to failing to comply with Premier's memoranda on complaint-handling and breaching the State Records Act, the complainant said he had personal experience of how the lack of these policies was having a detrimental impact on the ability of the department to deal efficiently and effectively with complaints and track correspondence. Our inquiries showed that the complainant was correct and the department did not have these policies. The department responded promptly – they have developed appropriate policies and put their new complaint-handling policy on their website. In our closing correspondence to the department, we strongly suggested that they review their existing policies and procedures to make sure they are complying with other statutory obligations and policy directives – and set a good practice example to other agencies.

Corrections

In our corrections work, we try to see as many matters as possible resolved – either by giving people information about who they can approach for help or assisting to actually resolve their problems.

We find people in the correctional system are very likely to know about the Ombudsman and what we do. Inmates, correctional staff and management, and people who have family or friends who are imprisoned generally understand that – if they believe something is not going right and they cannot fix it themselves – they can ask for help from the Ombudsman.

Working to resolve issues

Most matters about corrections are raised with us by phone. Inmates can call us on a freecall number from the phones in their centre, and the call is not monitored by correctional staff. Inmate calls to the Ombudsman are limited to 10 minutes – so our staff must quickly assess whether the issue is something we can help with, or if we can provide advice about what else they could do to fix their problem.

Complaints often arise from a lack of communication between inmates and centre management, so we put significant resources into providing information to inmates (and other complainants) that they should have been given by Corrective Services NSW, GEO (which operates Junee and Parklea Correctional Centres) or Justice Health in the first place. However, relationships in a correctional system are different from those in society generally. There is distrust and fear on both sides, and a significant power imbalance between inmates and staff – often increased by the lack of information shared between the two groups. In these circumstances, we are often a necessary circuit breaker and can help work out ways for important information to be shared.

Communication can sometimes also be a problem for us when we try to resolve complaints with Corrective Services NSW. While the quality of the response we receive on some issues can be very good, on other occasions the quality of information given to us is poor, and often involves us having to repeat the same questions. This in turn also causes delays – which at times can be quite lengthy – and ultimately affect the usefulness of our inquiries. We remain committed to liaising with Corrective Services at all levels, including between the Commissioner and the Ombudsman, as a way of communicating and achieving good results as quickly as possible.

Inmates with special needs

A large number of inmates have a mental illness and find the correctional system frightening and confusing. Frequently, they do not understand what they have been told or what they are supposed to do. Sometimes they need to be told the same thing many times because they cannot retain the information. In many instances these people present as 'challenging' to correctional staff, particularly those who are not in designated mental health areas.

Inmates with a mental illness are particularly vulnerable and will often contact us for information or reassurance about something they have been told. Sometimes they make quite serious allegations of abuse – and assessing the validity of their complaints is an increasing challenge for us.

We have trained our staff in mental health awareness, including things we can do to help understand and assess the concerns of complainants who have a mental illness. Without significant changes to the outside environment that continues to bring mentally ill people into the custodial correctional system, this is an area that will continue to provide challenges for both us and Corrective Services.

Figure 46: Formal complaints finalised



| |
|---|
| Preliminary or informal investigation 573 (79%) |
| Assessment only 135 (19%) |
| Conduct outside our jurisdiction 13 (2%) |
| Formal investigation 1 (0%) |

Current investigations at 30 June 2010

| | No. |
|---|------------|
| Under preliminary or informal investigation | 102 |
| Under formal investigation | 1 |
| Total | 103 |

Giving reasons for decisions

Over several years we have stressed to the Commissioner the importance of giving inmates reasons for decisions made about them. Barring any potential harm to the security of the correctional system or the safety of the community, people should be told why decisions have been made, especially if those decisions are detrimental to them – such as removing privileges other inmates enjoy. In times when the correctional system holds many serious offenders, including those convicted of terrorist-related activities, it is important we do not lose sight of the importance of reasonable, fair and humane treatment.

The role of the Ombudsman is to help those who run the correctional system to do so in a way that is fair, reasonable, accountable and transparent. Helping people to resolve their complaints is one way we do this. We also investigate systemic problems and make suggestions and recommendations to the Commissioner about a range of matters. Achieving positive outcomes sometimes takes considerable time.

Wall mounted restraints

In last year's report, we explained our concerns about wall mounted rings that are used to attach inmates by their handcuffs in interview rooms and beside phones in the segregation unit of some correctional centres. We believed the metal rings were an unauthorised instrument of restraint.

As a result of our inquiries, the Commissioner firstly directed that these restraints were not to be used unless they were specifically authorised by him. He asked for information from relevant centres about their restraints and the procedures that could be adopted for their use. No restraints were subsequently authorised by him.

However when our staff visited John Morony Correctional Centre in March 2010, they were surprised when an inmate they interviewed was attached by his handcuffs to the wall mounted ring in the segregation unit's interview room. As a direct result of further inquiries with the Commissioner, the general manager of each centre where the restraints were in place was called by their relevant Assistant Commissioner and directed to remove them from the walls and phones immediately.

Extra bunks in cells

Over the past two years we have been making ongoing inquiries with Corrective Services, Justice Health and NSW Health about extra bunks being put into cells in correctional centres which had only recently been built. Specifically, we questioned the exemptions that had been given by the Minister for Health when the extra bunks in cells at centres such as Wellington contravened the minimum space allowed under the Public Health Regulation.

We have also identified additional bunks at the Mid North Coast Correctional Centre as potentially breaching the regulation, as well as plans for even further changes at Wellington requiring attention by NSW Health. Wellington Correctional Centre was inspected by Justice Health and we are still waiting for further advice about the outcome of the exemption application made by Corrective Services as a result of that inspection.

Trends and issues

In 2009–2010 we were contacted on approximately 4,000 occasions about matters relating to the correctional system. This is a similar number of contacts to the previous year, probably because the inmate population in NSW finally remained relatively stable at just under 10,500 over the 12 month period.

The issues that were raised with us, and the frequency with which they were raised, has also been relatively similar from year to year. For example, over the past three years we have received around 350 complaints each year about inmate property issues and around 250 complaints a year about visits.

Figure 47: Formal and informal matters received about correctional centres and Justice Health

| | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-------------------------------------|--------------|--------------|--------------|--------------|--------------|
| Formal | | | | | |
| Correctional centres, CSNSW and GEO | 772 | 566 | 779 | 686 | 671 |
| Justice Health* | 80 | 69 | 61 | 64 | 53 |
| Sub-total | 852 | 635 | 840 | 750 | 724 |
| Informal | | | | | |
| Correctional centres, CSNSW and GEO | 3,242 | 3,010 | 2,902 | 2,825 | 3,096 |
| Justice Health* | 218 | 266 | 241 | 237 | 303 |
| Sub-total | 3,460 | 3,276 | 3,143 | 3,062 | 3,399 |
| Total | 4,312 | 3,911 | 3,983 | 3,812 | 4,123 |

* Justice Health provides services in correctional centres. For simplicity, all Justice Health matters are reported in this figure.

When we begin to see changes over a period of time, such as allegations of unfair discipline – which have increased from 118 three years ago, to 137 last year and up to 165 this year – we begin to consider causes and look at conducting our own motion inquiries. Some other areas where we have received increased numbers of complaints are more easily attributed to a specific reason. For example, this year's increase in the daily routine category is probably due to the overall changes made by Corrective Services to the way correctional centres operate.

Investigating the use of force

This year we decided to investigate issues around the use of force on inmates as we had received many complaints about this over the past three years.

It is often necessary for force to be used on inmates who will not comply with lawful directions of custodial staff – such as to move out of their cell, to submit to a search or to stop fighting. It is important that correctional staff are properly trained in how to use force and how to report when it has been used. All uses of force must also be reviewed by more senior officers to ensure that policies and procedures are being complied with.

We worked collaboratively with Corrective Services to increase both the efficiency of the process and the effectiveness of the recommendations made.

The primary concerns we wanted to address included:

- The adequacy of investigations into uses of force – including those that were complained about and those identified through internal review as needing further assessment.
- The level of guidance provided to senior staff who are responsible for assessing the adequacy and appropriateness of all uses of force within a correctional centre or at other departmental locations.
- The systems for monitoring and scrutinising the use of force.
- The training provided by Corrective Services for staff in the use of force.
- How Corrective Services might best use complaints about uses of force for risk assessment and risk management purposes.

Figure 48: What people complained about

This figure shows the complaints we received in 2009–2010 about correctional centre concerns, broken down by the primary issue in each complaint. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

| Issue | Formal | Informal | Total |
|--------------------------------|------------|--------------|--------------|
| Buy-ups | 14 | 112 | 126 |
| Day/other leave/works release | 8 | 42 | 50 |
| Classification | 29 | 146 | 175 |
| Daily routine | 88 | 574 | 662 |
| Legal problems | 9 | 31 | 40 |
| Officer misconduct | 62 | 205 | 267 |
| Probation/parole | 13 | 91 | 104 |
| Records/administration | 47 | 154 | 201 |
| Visits | 48 | 213 | 261 |
| Other administrative issue | 19 | 161 | 180 |
| Fail to ensure safety | 23 | 41 | 64 |
| Unfair discipline | 32 | 133 | 165 |
| Medical | 15 | 169 | 184 |
| Case management | 26 | 101 | 127 |
| Food and diet | 14 | 45 | 59 |
| Segregation | 20 | 72 | 92 |
| Property | 83 | 263 | 346 |
| Transfers | 29 | 243 | 272 |
| Mail | 20 | 60 | 80 |
| Periodic/home detention | 7 | 13 | 20 |
| Work and education | 18 | 102 | 120 |
| Issue outside our jurisdiction | 7 | 12 | 19 |
| Court cells | 1 | 2 | 3 |
| Community programs | 0 | 2 | 2 |
| Security | 19 | 70 | 89 |
| Information | 20 | 39 | 59 |
| Total | 671 | 3,096 | 3,767 |

Our investigation methodology included reviewing policy and procedural documents, auditing a variety of use of force reports, and talking to key people within Corrective Services about operational aspects of using, recording, monitoring and scrutinising force being used.

The investigation identified where improvements could be made in each of the areas we investigated. As a result, we formulated a series of recommendations – in consultation with Corrective Services. The recommendations covered areas such as:

- An overall review of the policy and procedures for using force on inmates.

- Guidance to staff who review each use of force.
- Refresher training for all general custodial staff and a training needs analysis for some specialist groups of staff.
- Data collection and analysis about the use of force in the correctional system.
- Investigation of uses of force which do not comply with policy and procedures.
- Approving arrangements at privately managed correctional centres.

Corrective Services have adopted an action plan to implement the recommendations over the coming months and we will continue to receive regular advice about this implementation process as it progresses.

Recognising
35 years of
good conduct

Visiting correctional centres

Providing access to Ombudsman staff who can assist with inquiries or complaints is just one of the focal points of our visits to correctional centres. These visits originally started to assist inmates with low literacy levels, who were unable to make a formal written complaint, to be able to lodge their grievances.

Despite the increased access inmates now have to telephones to call us to discuss their issues, the 10 minute time limit is sometimes not enough to provide all the relevant information. Often inmates who have difficulty outlining their complaint over the phone are at a similar loss if we ask them to write it down and send it to us. Many inmates also still have a lingering distrust about the confidentiality of phone calls and letters to our office and want to talk directly to us.

We have significant experience in dealing with Corrective Services and recognise the importance of working with correctional staff to achieve outcomes and change. This experience, in part, comes from our long history of visiting correctional centres. During our visits we also take the opportunity to understand the operations of individual centres and become acquainted with managers and frontline staff.

This knowledge informs our work with corrections generally. For example, if there is a change to local procedures or policies that impacts on a complaint we may be inquiring about by phone, it can often be easily explained to us because of the general picture we already have about that centre.

At other times, we use our visits to resolve complaints we have already received over the phone or by letter, or to assess the implementation of actions already agreed upon. For example, during our visits this year we assessed the level of compliance with a direction the Commissioner of Corrective Services issued for all operational staff to wear a badge with either their name or some identifying number on. If inmates can't properly identify staff it makes it impossible for them to raise, and for us to pursue, complaints about staff conduct.

After the instruction was issued, we noted on our visits a lack of badges being worn by staff – especially at some centres. We have asked the Commissioner to follow up on this and provide us with further advice about how he intends to address the lack of compliance with his instruction.

We also find on our visits that inmates are more likely to raise systemic issues, conditions or procedures with us that they feel are generally unreasonable – but would find it hard to convey the impact of these by phone or in writing. In some cases, it is only after you see the fourth or fifth inmate in a row who complains about something that has happened that the real impact is understood.

After some of our visits we have also written to the Commissioner of Corrective Services directly, raising with him our concerns about the physical conditions provided for some inmates. During the past year we found it necessary to do this for the Mid North Coast Correctional Centre. Inmates with an A2 (maximum security) classification were sharing cells with inmates holding a medium or minimum security classification. This caused anxiety to both classes of inmates.

Lower security inmates, especially those serving short sentences, will live and act very differently to a maximum security inmate who may still have many years of a sentence to serve. We also raised our concerns about:

- The poor condition, especially the lack of privacy, for inmates who have to sleep in dormitory style accommodation in the minimum security area of the Grafton Correctional Centre known as 'the units'.
- The inability of Corrective Services to provide each inmate with a cell they can occupy by themselves, unless they need to share due to medical or other sufficient reason – as is required under clause 33 (1) and (2) of the Crimes (Administration of Sentences) Regulation 2008.

After several months we are still waiting for the Commissioner's response to these important issues.

CS 48: Returned to sender

Several inmates at the Mid North Coast Correctional Centre complained that property sent in by their friends and families – that the management had deemed was unsuitable to be handed to the inmate – was being returned to the sender at the inmate's expense. This included things like books and magazines, so postage costs were sometimes quite high. After we raised this with the general manager, he introduced a new process – the inmate would be told about any unsuitable mail items and could then decide to have them returned at their cost, destroyed or donated to an appropriate place such as the library.

CS 49: Charging inmates for damaged property

At Glen Innes Correctional Centre, all of the inmates in one of the units were reimbursed \$5 they had each been charged for replacing a damaged fire extinguisher. Although such damage is not condoned, Corrective Services is not legally entitled to take compensation from any inmate unless they have first been found guilty of a correctional offence. In this case the culprit could not be identified, so no one had been charged for the damage. We also reminded the inmates the fire extinguisher would only be a life saver in an emergency if it was in good working condition.

CS 50: A more positive focus

When our staff visited Kariong Juvenile Correctional Centre, a number of the young inmates complained they only ever got 'bad' case notes. Staff at Kariong use the case notes written about the inmates as part of the process for deciding if they can earn additional privileges. We felt it was particularly important that case notes should reflect the overall behaviour of these young inmates and not just focus on any negatives. We took the issue to management who agreed they would remind staff about the need to include positive case notes in the inmate's case files so a more complete picture was available to the people making decisions about them.

Better information and communication

A lot of information is needed to make sure a correctional system operates in a secure manner and provides fair and reasonable treatment. This information must be communicated to all staff – as well as generally to inmates.

Many times a complaint is appropriately resolved when correctional management agree to remind staff of information which is already recorded in Corrective Services policies and procedures. Occasionally problems are caused because there was some misunderstanding about how the policy or procedure should have applied. At other times, our inquiries point to the need for new policies or for existing ones to be reviewed.

CS 51: Frightened of other inmates

When an inmate was told he would be transferred from the Metropolitan Special Programs Centre (MSPC) to Parklea Correctional Centre he spoke to staff about fears he had for his safety, advising them he had previously been assaulted by other inmates at Parklea. He said he had told correctional staff which inmates he did not want to associate with in future because of the assault. MSPC staff checked the OIMS computer system but could find no record of the association alert. The inmate then called us because he was fearful of being returned to Parklea. When we made inquiries, MSPC staff checked again and found the inmate had been assaulted at Parklea, and arranged for the relevant association alerts to be entered onto the OIMS system. The inmate's transfer to Parklea was cancelled and he was transferred to a more appropriate centre.

CS 52: Procedures for drug tests

Urinalysis – the testing of urine samples for the presence of drugs – is conducted on inmates either randomly, as part of a program, or targeted because of a concern they may be using prohibited substances. Before the inmate is asked to provide the urine sample, they are strip searched by officers to make sure they do not have a container of 'clean' urine in their possession or any other form of contraband. When one inmate was strip searched at Dawn de Loas Correctional Centre, he was not allowed to put his clothes back on before being required to provide the sample. He complained to us and we found out that a manager, who had since left Corrective Services, had incorrectly told staff this was the procedure for urine testing. The manager we spoke to ensured that all staff were instead informed about the correct way to conduct both the strip search and the urinalysis collection.

We also find there can be communication problems between Corrective Services and other agencies that have an impact on inmates and lead to complaints to our office. One of the major areas where we see this is between corrections and the health system, mainly via Justice Health. Communication between these two agencies is integral to inmates getting timely and proper access to medical services.

CS 53: Providing safe transport

Justice Health recommended that an inmate with an advanced chronic cardiac illness should be transported in a car or a van – instead of the large trucks used by Corrective Services to move inmates – to minimise the risk of aggravating his medical condition. However, he was continuously moved between correctional centres and courts in a truck and on one occasion needed hospitalisation as a result. Our initial inquiries led to the Commissioner introducing new procedures for inmates who need this type of special transport. Unfortunately, the inmate continued to be moved by truck.

Our next inquiries were with both Corrective Services and Justice Health, and we found two causes for the problem. Justice Health's recommendations for special transport, even for chronic conditions, had to be reviewed every two months by a doctor – but it can sometimes take several months to be seen by a doctor for all but emergency needs. There was also a problem with the way the corrective services and health databases communicated about the need for special transport.

As a result of our investigation, Corrective Services have developed a new alert for appropriate cases where special medical transport will not need to be continually reviewed by a doctor. Justice Health and Corrective Services are also upgrading their databases to allow proper communication and maintenance of information about these types of alerts.

CS 54: Unfair drug test results

When inmates have a positive urine test come back from the laboratory, correctional staff check with Justice Health about any prescribed medications the inmate may be taking that could account for the result. If the test shows the presence of an unprescribed or illicit drug, the inmate is charged and punished. An inmate who contacted us when he was charged for a positive test was adamant he had been prescribed the drug by Justice Health, despite their note on his result sheet saying it was 'unprescribed'. He had tried to have this reviewed, but the general manager had already advised him the charge would stand.

When we called the general manager he asked Justice Health to review the inmate's prescribed medications. They then advised their initial information had been incorrect. This appeared to be a 'one-off' oversight. The inmate's charge was dismissed and he was no longer banned from receiving visits for 42 days.

When people first come into custody because they are refused bail they are often held in a police or court cell complex. This is sometimes for very short periods, but occasionally can be for up to a week. These complexes, which are operated by Corrective Services, are usually basic and cannot provide offenders with the same level of facilities or services they would have in a correctional centre.

CS 55: Giving clear information about facilities

One woman who spent several days in two different police/court cell complexes complained about her treatment while she was there and the general lack of facilities, especially for women – such as access to showers and feminine hygiene products. When there are large numbers of offenders in the cell complexes, the lack of facilities can make it difficult to provide regular, private access to showers and we were told offenders are given verbal advice about this when they arrive.

We thought it might be difficult to provide clear and consistent information to offenders when these complexes were especially busy, so suggested notices providing information about medical, legal, visits and personal hygiene matters would be useful. Corrective Services agreed and sent us a copy of the notice that was made available.

Inmate discipline

Often the complaints we receive about inmate discipline processes are also about communication and providing information. This is a two way process – in corrections problems can arise when information is not willingly received, as much as when it is not provided. An inmate may complain to us because they feel they were not given the opportunity to provide all of the relevant information about an alleged correctional offence before a decision is made about their guilt. If the adjudicating officer does not have all the relevant information to hand, then the result may be an unsafe decision. Another area of complaint about the disciplinary process is when there is a question about the reasonableness of the decision or the punishment. Case studies 56 and 57 illustrate these points.

CS 56: An unfair punishment

For sound security reasons, inmates can only make telephone calls to specific numbers and can only use telephones for personal calls that can be recorded and monitored. Emergency calls can be made in the interests of an inmate's welfare, but again these are carefully controlled. A woman from the Silverwater Women's Correctional Centre had been punished for allegedly using the welfare staff telephone account to access the inmate telephone system and running up a bill for \$90. The woman claimed she was being unfairly punished as she had not made the calls.

Our inquiries prompted a review of her case and it was found that the evidence used against her in the misconduct hearing was incorrect and the calls were actually made by someone else. The charges were dismissed and punishment removed.

CS 57: Returning confiscated clothing

Three different inmates called us from Junee Correctional Centre alleging their clothes had been taken as part of their punishment for correctional offences. They were not disputing the disciplinary action, but were upset about the clothes as they were items they had bought themselves on the inmate 'buy-up'.

When we spoke with managers at Junee we were told they were a 'withdrawable privilege' as they were personal property. Technically this is correct, but Junee later agreed the reference to 'private property' was usually taken to be recreational type items – not clothing purchased to supplement the very basic inmate clothing entitlement. They reversed the decisions and returned the items of clothing to the inmates.

Segregation and separation

Each year we receive complaints from inmates who believe they are unfairly segregated and those who claim they are kept in conditions equivalent to segregation but are not subject to a lawful segregation direction. The *Crimes (Administration of Sentences) Act 1999* provides for the Commissioner or his delegate to remove an inmate from association with all inmates, or from specific inmates, for reasons of good order and security or the personal safety of any person. This is known as administrative segregation and is not a punishment for a correctional offence. When an inmate is segregated under these provisions, various reports have to be made. The longer they remain segregated, the more reports have to go to more senior managers in the correctional system. After six months the reports must go to the Commissioner, who must then advise the Minister in writing.

Most importantly, the legislation allowing segregation also provides for an independent review of the segregated custody direction by the Serious Offenders Review Council (SORC) once the inmate has been segregated for more than 14 days. After application by the inmate, SORC reviews the reasons for the ongoing need for segregation and may retain, revoke or vary the conditions of the segregation order.

This year we have made various inquiries with the Commissioner about his staff's understanding of their responsibilities for the levels of reporting required for segregated inmates. We have also raised concerns about the adequacy of the department's policies and procedures to support their staff in complying with legislative requirements. We expect to receive further advice from the Commissioner about this in the near future.

With large numbers of offenders coming into custody who are associated with various gangs, including 'bikies', we have also seen Corrective Services using the separation powers introduced during 2009 into the *Crimes (Administration of Sentences) Act*. This retrospectively gave the Commissioner the ability to separate inmates without the use of a segregation direction.

Unfortunately separation, as opposed to segregation, was hurriedly introduced by the Parliament in response to a decision of the court that would have found that the then High Risk Management Unit was in effect a segregation unit. When the Commissioner was given the ability to separate inmates, Parliament did not include any procedures for ensuring they were fairly treated or provide any right of review – such as there is for those who are segregated.

Offenders who are separated from the mainstream inmate population are usually managed on restricted regimes that previously may have constituted segregated custody. In relation to the 'bikies', Corrective Services have advised this was done in response to the need to protect these inmates from others and various groups of inmates from other groups. When we received complaints from these separated groups, we tried to ensure the inmates were not isolated from all other inmates wherever this was possible, that they were still able to associate with at least one other inmate, exercise out of their cell, have visits and in-cell property. Because of the legislative amendments there was little other action we could take.

Justice Health

Justice Health provides health services within the correctional system, including having nursing staff available in some court cell complexes to deal with the immediate needs of offenders when they first come into custody.

Health services provided by Justice Health (which is part of the wider NSW Health system) are generally equivalent to those received in the public health system. However, Justice Health must also work within the daily regimes and security requirements of a correctional centre and this can make delivering the services difficult.

In regional areas there is also sometimes difficulty in acquiring sufficient professional services – such as dentists, optometrists etc – to regularly go into the centres and provide treatment. Many inmates are brought out into the community for medical services. This requires a high level of coordination with Corrective Services staff to provide security escorts for the inmates. Some of the case studies in this chapter have illustrated how communication between the two agencies sometimes breaks down and the effect it can have on the provision of medical services.

We regularly receive calls from inmates who believe they should be going to an outside medical appointment – but do not know if it has been booked, when it might happen, or if they have missed it because they are not told the date of the appointment for sound security reasons. Often we will contact Justice Health to find out if an appointment has been made, and they will tell us when it will take place. Although we also cannot tell the inmate when the appointment will be, they are mostly satisfied to know there actually is something booked for them.

Working proactively

From a combination of our complaint work, visits and general interaction with various people and agencies associated with the criminal justice system we are in a unique position to observe the NSW correctional system. Often this leads us to make formal inquiries using the Ombudsman's own motion powers. We are also able to make suggestions for improving how the correctional system is managed.

This year we have identified several issues that we have raised both directly and indirectly with Corrective Services. We will also monitor them in the coming year to check they are addressed. Those issues include the following:

- There needs to be a transparent classification and case management system for serious offenders, including providing reasons for decisions made about inmates. Both the efficiency and transparency of the current system could be improved by the Serious Offenders Review Council (SORC) being the actual decision-maker about the classification and case management of serious offenders. Under existing legislative provisions, SORC assesses serious offenders and makes recommendations to the Commissioner of Corrective Services.

The Commissioner is not required to accept those recommendations, nor give reasons for his decision. As SORC is headed by a judicial officer, they would be able to properly manage and consider any confidential information and intelligence about serious offenders that is currently made available by law enforcement agencies to the Commissioner. The SORC could also consult with the Commissioner on appropriate placement and programs. In our view the current arrangements do not provide adequate independence and transparency in the decision-making about these offenders.

- The different needs of Aboriginal inmates are well documented due to the impact of past government policies on Aboriginal people. The correctional system needs to support its staff to understand some of the specific challenges facing Aboriginal inmates to help them better address their needs in a culturally appropriate way. While this often occurs, this is not always the case. Aboriginal inmates at Goulburn have raised a number of issues with us, including that:
 - they are not permitted to have an inmate from among their own unit take on the role of unit domestic worker (or sweeper),
 - their cells have additional security grills to those in other wings which reduces airflow,
 - they also have lesser access to education and work than other inmates at Goulburn who are also deemed high risk.

Responses to our repeated inquiries have indicated the management of Aboriginal inmates was in response to union concerns and objections. Originally, there were sound reasons for Aboriginal inmates at Goulburn being managed in this way – the centre was the scene of a very serious incident in 2002 when Aboriginal inmates attacked staff resulting in serious injuries to several staff members. Many of the staff involved still work in the centre, however, most of the inmates who are now in Goulburn were not there at the time of the incident. Eight years after the incident, action to ensure equal and fair treatment of Aboriginal inmates at Goulburn would be more likely to reduce any residual tension between inmates and staff, instead of fostering it as the current regime appears to do.

- The inmate disciplinary system does not seem to provide an appropriate/reasonable safe level of procedural fairness. The current informal system is not governed by clear and sufficient rules and procedures to ensure inmates charged with correctional offences receive a 'fair trial'. Compared with other jurisdictions, this hampers any later examination of the procedures followed or the reasonableness of the outcome.
- Young offenders at Kariiong Juvenile Correctional Centre are managed on a behavioural program largely modelled on the program operated at the High Risk Management Correctional Centre – the state's most restricted regime for adult inmates. We are concerned that inmates who are under 21 (and sometimes under 18) can spend several months in segregated conditions while they strive to move beyond the basic program level. A fundamental component of the program should be to ensure it recognises the lack of maturity, impulse control and general development of these offenders and seeks to manage them in a positive manner.

Local government

For most of us, our local council provides many of the community services and amenities that we enjoy. They also play a major role in administering a range of laws that regulate our daily lives. Often, people turn to the council when things in their neighbourhood go wrong. Over the many years we have dealt with council complaints, we have maintained a primary focus on effective, consistent, transparent and accountable regulation.

Effective complaint-handling and proper regulation fit well together, as it is often through complaints that councils learn about problems that need a regulatory solution. Our interventions in these two processes enable us to help improve standards of administration in local government.

Complaint trends and outcomes

We received 20% more formal complaints this year than last year (see figure 49) and there was a small rise of 2.5% in overall complaints. It was pleasing to see 17% fewer complaints about community services and corporate and customer service issues in councils and a 9% decrease in complaints about misconduct. This outcome was, however, offset by some concerning increases in complaints about rates, charges and fees (54%), development (43%), enforcement (42%), environmental services (32%) and engineering services (19%).

Figure 49: Formal and informal matters received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------|-------|-------|-------|-------|-------|
| Formal received | 744 | 841 | 768 | 702 | 843 |
| Formal finalised | 720 | 837 | 788 | 672 | 875 |
| Informal dealt with | 1,891 | 1,992 | 1,965 | 1,795 | 1,720 |

Figure 50: What people complained about

This figure shows the complaints we received in 2009–2010 about local government, broken down by the primary issue in each complaint. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

| Issue | Formal | Informal | Total |
|--------------------------------|------------|--------------|--------------|
| Community services | 19 | 12 | 31 |
| Corporate/customer service | 231 | 283 | 514 |
| Development | 93 | 290 | 383 |
| Enforcement | 132 | 240 | 372 |
| Engineering services | 74 | 179 | 253 |
| Environmental services | 54 | 194 | 248 |
| Management | 4 | 16 | 20 |
| Misconduct | 40 | 64 | 104 |
| Issue outside our jurisdiction | 27 | 32 | 59 |
| Objection to decision | 78 | 100 | 178 |
| Rates, charges and fees | 79 | 209 | 288 |
| Strategic planning | 10 | 33 | 43 |
| Uncategorised | 1 | 68 | 69 |
| Wrong procedure | 1 | 0 | 1 |
| Total | 843 | 1,720 | 2,563 |

The past year saw a three-fold increase in people objecting to the decisions made by councils. See figure 50 for the issues people complained about.

Our reduced resources, combined with a 20% increase in formal complaints, impacted on our capacity to help as many members of the public with their problems with councils as we would have liked. We have however completed three formal investigations and have five formal investigations still underway. We completed 302 preliminary investigations (see figure 51) which is 37 less than last year.

In 2008–2009 we conducted preliminary investigations into a little over 50% of complaints, whereas this year we were only able to conduct preliminary investigations into 35% of complaints. This is because we have less staff available to deal with local government complaints.

We were able to obtain 143 positive outcomes in the matters we formally investigated or made inquiries into during 2009–2010. These positive outcomes included councils:

- changing policies and procedures
- making an apology
- providing further information
- providing reasons for decisions
- mitigating the consequences of their actions or decisions
- changing their decisions
- implementing a variety of specific remedies for problems brought to our attention.

Towards better regulation

The Regulations that councils administer can be a burden and a blessing, depending on where you stand. They aim to create a harmonious community – whether through planning controls or the prevention of harm. Complaints about the exercise of regulatory powers make up more than a third of all the local government matters raised with us.

Failing to deal adequately with these complaints can seriously undermine a council's credibility in the eyes of their community.

Not all complaints require regulatory action, and it is important for councils to manage the expectations of complainants and explain the reasons for their decisions. When we review complaints we look at the council's processes for complaint-handling, how they assess relevant issues and materials, investigate and gather evidence, keep records and supervise staff, as well as their internal communications and the written guidance they provide to assist decision-making.

Having good complaint-handling and enforcement policies and procedures is an important way for a council to ensure they competently, fairly and consistently enforce the law.

Figure 51: Formal complaints finalised



- Preliminary or informal investigation 302 (35%)
- Assessment only 537 (61%)
- Conduct outside our jurisdiction 33 (4%)
- Formal investigation 3 (0%)

Current investigations at 30 June 2010

| | No. |
|---|-----------|
| Under preliminary or informal investigation | 30 |
| Under formal investigation | 5 |
| Total | 35 |

Over the past year, we have investigated where councils:

- › Inconsistently and ineffectively applied planning controls when processing development applications.
- › Failed to properly investigate and keep appropriate records of decisions.
- › Advised people to mediate when council had a responsibility as a regulator to make an appropriate decision.
- › Acted without proper authority.
- › Took enforcement action on the basis of personal perceptions about complainants and property owners.
- › Gave contradictory and incorrect advice to complainants.
- › Shopped around for or ignored legal advice that did not confirm their own views.
- › Had no written policies, procedures or guidelines to assist staff exercise regulatory powers.

Pages 101–104 illustrate how our intervention made a difference.

Failure to take appropriate enforcement action

Manly Council's poor administrative practices and decision-making were key issues in a major investigation into two complaints.

Three couples lodged development applications around the same time for very similar new homes on adjacent blocks of land. One of the couples complained to us that their council planner assessed their application inflexibly and offered them little assistance. However, at the same time, a different planner smoothed the way for both their neighbours' homes to be built quickly. The couple said they had further problems during construction as the council pursued them for allegedly breaching consent. When they complained about the conduct of the regulatory manager, council dismissed their complaints with a warning not to defame their staff.

Shortly after we received this complaint, the owner corporation of an apartment block complained that when they contacted Manly Council about illegal works being built on the roof of an adjacent building, council failed to properly investigate their concerns.

They told us council had assured them the developer could not construct the items on the roof, but were then unable to prevent the work proceeding. They were concerned because council's records were inadequate and did not provide any certainty about approvals for the site.

We investigated council's complaint-handling and record-keeping, and their policies and processes for assessing development applications, investigating non-compliance with consent, and dealing with code of conduct complaints.

We found that planning staff were inadequately supervised and – in the absence of any adopted guidelines – were left to interpret development controls according to their own views about particular developments. Information provided by applicants was not thoroughly checked, planning reports and consents were poorly drafted, and an inconsistent format and approach was used to assess the requirements of planning instruments.

Routine failures to check details before determinations were issued, or to securely store copies of approved plans, hampered council's ability to deal competently with any later compliance issues that arose.

The problems that both complainants raised were not isolated incidents. Even though the general manager made changes to DA processing in 2003, by mid-2005 the Department of Local Government's Promoting Better Practice Review still saw the need for improvement in DA processing.

An external consultant's comprehensive review of DA processing in late 2006 also identified community dissatisfaction with council's systems and the need for a significant overhaul. There were no written procedures to guide assessment decisions, and no business rules for ensuring DA information was correctly entered into council's systems or obligations under the State Records Act were met.

Council's investigation of alleged breaches of consent reflected similar deficiencies in administration. Compliance staff, like planning staff, were inadequately supervised and there were no policies and procedures to guide enforcement action.

After our intervention, an enforcement policy and a revised complaints management policy were drafted – but, in our opinion, both documents were inadequate for ensuring effective, consistent, transparent and accountable decision-making.

We also found examples where staff had ignored advice from council's legal advisers and incurred significant legal costs with little or no regard for the public interest, council's budget, or their obligations under council's code of conduct and the *Local Government Act 1993*.

Of further concern, was council's management of allegations that the regulatory manager involved in both these matters had fraudulently made an affidavit to the court that he had legal qualifications, had presented evidence to the court that had been withdrawn when it was claimed the signature was false, and had withheld email documents required by notice of the court.

Council did not conduct a proper investigation of these complaints and had no procedures to guide the handling of complaints about breaches of council's code of conduct. After our intervention, council required the regulatory manager to produce his legal qualifications. However when he was unable to do so, he was allowed to resign from council and given good references that helped him obtain a position as a compliance officer in two other councils.

We made 24 recommendations. We issued our report under section 26 of the Ombudsman Act in early September and will include information about the final outcome of the investigation in the next annual report.

Opportunities for proper enforcement missed

A resident complained to Sutherland Shire Council about a structure that was being built in his neighbour's back yard. The neighbour had lodged a complying development application for two retaining walls, but subsequently built a third wall. He also filled and turfed the area between the walls which increased the ground level of the backyard to within approximately 40 cm of the top of the boundary standard height fence. This also gave the neighbour extraordinary visual access into the resident's property. The resident questioned the structural adequacy of the retaining wall along the boundary fence and the redirection of stormwater runoff onto his property.

We became involved because it appeared to us that council had not taken appropriate action to resolve the matter. We identified inadequacies in council's processing of complying development applications, complaint-handling, record-keeping, and investigative practices and decision-making.

The complying development certificate should not have been issued because the neighbour's application was incorrect and incomplete. When the retaining walls were being built, council did not conduct the mandatory critical stage inspections that would have detected the problems early on. After the resident complained about the structure, council's advice that it could not take any action was based on an inadequate investigation and misinterpretation of internal legal advice which indicated the illegal wall did not comply with planning controls.

Council's Internal Ombudsman's office intervened as a result of our inquiries. We discovered that the Internal Ombudsman had expressed concern that we had correctly identified problems and if council responded to us they could not successfully explain their inconsistent decision-making. The Internal Ombudsman 'took over' the complaint and told us council would arrange mediation between the resident and neighbour and, if that failed, consider ordering the illegal structure to be demolished.

The resident and the neighbour reached an agreement at the mediation, but serious issues for the resident were unable to be resolved. The engineering opinion supplied by the neighbour inadequately dealt with the soundness of the structure and the drainage problems, a survey report revealed the retaining wall encroached onto the resident's property and the suggested privacy screen that was to be built was ultimately rejected by council.

The resident continued to complain to the council and to us. When the inadequacy of the mediated outcome was raised, council made undertakings about enforcement action but they failed to carry this through. When council finally did a proper assessment and obtained external legal advice, they were told they could not successfully take enforcement action – the opportunity to properly enforce planning controls had been missed. If council had done a timely and competent investigation when the resident first complained, the complying development certificate could have been invalidated and the illegal work rectified.

In response to our proposed recommendations, council agreed to apologise to the resident for their poor handling of the matter, write to the neighbour about mandatory inspections of the structure, and require the neighbour to plant trees to reduce visual access to the resident's property. Council also agreed to:

- › train all compliance staff in the statutory requirements for complying development
- › review all their procedures for processing complying development applications
- › prepare guidelines for using mediation in compliance matters
- › develop a record-keeping policy to help staff comply with the State Records Act
- › revise their customer response policy to improve their complaint-handling processes.

On this basis we decided to discontinue our investigation. Following the finalisation of our investigation council issued a building certificate for the property, despite having declined to do so in 2008 because the retaining wall encroached onto the neighbouring property and the engineer's opinion was inadequate. The encroachment is clearly disclosed in a survey report that is identified in the building certificate. The grounds upon which council has now decided to issue the building certificate for the structure are not clear.

A significant issue for us arising in this investigation was the role played by council's Internal Ombudsman Office in the handling of the resident's complaints.

We have long-held concerns about Internal Ombudsman positions in councils being promoted as impartial and independent. Because of our belief that Sutherland Shire Council's Internal Ombudsman's Office was acting to protect the council during our inquiries, we released a discussion paper on the role of Internal Ombudsman seeking comments from local government and other interested bodies about this issue. See page 104 in this chapter for more details about our discussion paper.

In 1975, we received 2,381 formal written complaints and 3,600 telephone inquiries. This year we received 8,712 formal complaints and notifications and 23,797 informal complaints and inquiries to our office.

Highlighting
35 years

CS 58: Conflicting advice and lack of coordinated action

A man complained about Canterbury City Council's handling of his complaints. His mother owned a cliff top house and a portion of a 20 metre high cliff face that had been formed by quarry excavations at the turn of the 20th century. The cliff face required stabilisation after a series of rock falls, but council denied liability as the cliff was private land. Owners of another portion of the cliff took legal action against the man's mother in the Supreme Court, where liability for the stabilisation work was apportioned between the land owners.

The man wrote numerous times to council about the large debt his mother had acquired, the safety risks from the rock falls, and the need for council to take responsibility for the stabilisation. He claimed staff had not properly informed council of important facts about unacceptable risk to people and property in the geotechnical reports prepared for the court. He said council lost the file on the matter for nearly six months and did not keep records of meetings and inspections. After the court decision, council told his mother it was going to issue an order to rectify drainage issues discussed by the judge, but the order never arrived and council did not explain why. Although some staff had advised the complainant's family the cliff stabilisation works required a development application, other staff later told them it was not required and would hold up the work. When the man complained of illegal works on his mother's neighbour's property on the cliff top and how his mother was being treated, council responded in such a way as to discredit his concerns.

We made extensive inquiries about the handling of the man's complaints. Council was unable to explain their inaction on the matter for nearly six months or the actions taken after the other family members contacted senior management about the rock falls from the cliff face. There were few records of phone calls and no records of meetings, site visits or inspections.

Directions were issued by senior managers for an investigation and legal advice, but cross-divisional referrals were not acted on and senior managers failed to follow up on their own directions. No one took a coordinating role to ensure the required actions were completed and explanations given to the complainant.

Even though the complainant raised the issue of an illegal retaining wall and fill on a neighbour's land that might have been affecting the stability of the cliff face, it was not investigated. Council told the complainant that a building certificate was issued for the wall which we discovered was not true. Although the geotechnical reports were sent to council after the rock falls, the safety issues were not assessed.

When the Supreme Court reviewed the geotechnical reports they identified the need for stormwater drainage issues at the cliff top to be addressed within two years. After three years, council had still not finalised their technical assessments of the drainage matter, even though their own legal adviser had urged them to expedite this task not long after the court case.

Council responded positively to the deficiencies we identified. They apologised to the man and his family for the poor handling of their complaints and wrote to them after investigating the illegal work on the neighbour's property, the drainage issues at the cliff top, and the legal status of the stabilisation work. They also agreed to:

- review the workload of the regulatory manager to ensure statutory and other obligations could be met
- audit their records management processes
- review their policies and internal procedures for conducting inspections and for better managing cross-divisional complaints
- provide training for staff to improve investigation work and properly implement council's enforcement and prosecutions policy and complaint management policy
- remind staff of their obligations under council's code of conduct and the State Records Act.

CS 59: Unauthorised spraying destroys trees

Castlereagh-Macquarie County Council employed a contractor to spray a residential mining lease as part of a Hudson pear eradication program. In the process, most of the plants on the property – including a 50 year-old Kurrajong tree and many valuable cacti – were destroyed. The resident complained to us after council refused to clean up the unsightly mess left at his property and denied their contractor was even on the resident's land at the time.

Before using their regulatory powers, council did not inspect the property to find out if Hudson pear was present – and then did not know if any of the noxious weed had in fact been eradicated by spraying the property. Although they advertised in the local media that they would be spraying, council had not notified private land owners or occupiers of their intention to spray their property – this was contrary to the requirements of the legislation. In addition, they did not keep records of who carried out spraying and lent spraying equipment to individuals who were not licensed to use the chemicals. The contractor's denial that he had been on the resident's land was a hand written note in his diary.

We established that council's contractor had in fact sprayed the resident's property, even though council was not authorised to spray land that was not under its control. We also discovered that the contractor had received a previous caution from the Environment Protection Authority about his failure to keep adequate records, as required by law.

Council responded positively to our intervention – they paid for the resident's land to be cleaned up and for 20 Kurrajong trees to be planted. They sought legal advice about their obligations when spraying land not controlled by council and sent two staff for training on implementing the Noxious Weeds Act and the Pesticide Act. They also agreed to review their pesticide notification plan.

CS 60: Mediation not the best option

Residents in a rural residential area complained numerous times to Lake Macquarie City Council about noise from six to eight German shepherds and the use of kennels on a property for breeding. Initially, council raised the expectations of the residents by issuing a notice of intention to impose a nuisance dog order and advising they would take action on the kennels being used for breeding. When the residents complained that they had not heard anything further from council, they were told to mediate with the owner of the dogs.

We advised council that asking complainants and dog owners to mediate in circumstances where there was ongoing nuisance barking and strained relationships was not appropriate. These matters required council to make an informed decision about the use of their regulatory powers. Public sector agencies and their staff should be prepared to make decisions even when the matter is contentious – not just tell complainants to try and sort it out themselves.

After our intervention, council investigated the issues raised again. In the end they decided not to exercise their regulatory powers, but they did inform the complainants of the reasons for their decision.

CS 61: Unfair fine waived

A resident complained that Pittwater Council had unfairly issued a fine and order for the rectification of unauthorised earthworks on a driveway without having any communication with her about the matter. The resident, who was a former council employee, claimed that the staff involved chose that course of action because of previous problems in the workplace and dismissed her complaints without proper explanation.

After we intervened, council admitted there were workplace relationship issues that were being addressed and that staff had not discussed the matter with the resident before issuing the fine and order as would normally be the case. They also had no complaint-handling policy, enforcement policy or written investigation procedures to assist staff.

Because the complaint involved different sections of council, no one had taken responsibility for coordinating a comprehensive response to the resident. Council reviewed the way they had handled the complaint and waived the fine. They apologised to the resident and provided a more detailed explanation as a result of their review. They also adopted a compliance and enforcement orders policy, a new investigations procedure and new complaint-handling procedures and guidelines.

The role of councils' Internal Ombudsman Office

Through our handling of complaints about councils, we have observed a number of issues about the role and functioning of councils' Internal Ombudsman Offices. Although they can be an important source of redress for people with grievances against council, there are a number of obstacles – both in terms of perception and reality – to their proper functioning.

Over the years, there have been a number of questions raised about whether an Internal Ombudsman can ever operate independently – given that council Internal Ombudsman report to the general manager, have no protection from dismissal by council, and have no formal protections against breaches of confidence, defamation law, privacy law or freedom of information legislation.

This year we decided to publish an issues paper discussing the role of Internal Ombudsman, which we circulated to councils in NSW and other interested bodies. In the paper we suggested that legislative backing for the role could be one means of assuring it operates independently. If there was no support for amending this legislative backing, we recommended that the office have a different title – such as a 'Complaints Commissioner'.

We received submissions from 14 councils as well as individual submissions from the Division of Local Government and the ICAC. The seven Internal Ombudsman chose to submit a joint submission. There was little support for providing legislative backing for the role – except from Internal Ombudsman themselves – and some strong views were expressed by councils about the independence of their Internal Ombudsman. There was, however, recognition that such offices can strengthen internal complaint-handling and other governance mechanisms in councils. We will publish a final paper with our recommendations later in the year.

Freedom of information

End of an era

This year marked the 21st anniversary of the *Freedom of Information Act 1989* and also its last year of operation. On 1 July the *Government Information (Public Access) Act 2009* (the GIPA Act) commenced. Earlier in the year, the NSW Government appointed an Information Commissioner whose role is to ensure compliance with the new regime for accessing government held information.

Our long standing role in dealing with freedom of information (FOI) complaints and reviews has come to an end, although we will continue to receive FOI complaints in the coming months – under the transitional provisions of the GIPA Act – about applications that were lodged before the start of GIPA.

The GIPA Act brings some major changes in how government held information can be accessed. It gives people the right to obtain access to information held by NSW government authorities, Ministers, councils and other public agencies unless there is an overriding public interest against its release.

The GIPA Act also requires government agencies to make certain information easily available to the public, without an application having to be made. This is known as open access information and includes:

- › an agency's current publication guide
- › information about the agency in any document tabled in Parliament by or on behalf of the agency
- › policy documents
- › disclosure logs of all the information released in response to applications
- › a register of government contracts.

Agencies must also make a record of a decision not to make any open access information publicly available.

This requirement for proactive release of information is one of the major reforms of the GIPA Act. We welcome the appointment of the new Information Commissioner and have started building strong ties between our two offices.

We have signed information sharing agreements that will enable us to refer complaints to the Information Commissioner and also receive complaint referrals from them. In our FOI review role, we have traditionally been able to review complaints with 'two hats' – also identifying any possible broader administrative issues revealed in the documents that are the subject of the FOI application.

We are confident that the provision in the GIPA Act authorising liaison between the Ombudsman and the Information Commissioner, the information sharing agreement with the Information Commissioner's Office, as well as regular liaison meetings between our staff, will enable us to continue to deal with any broader administrative matters that may arise out of access to information complaints.

FOI Complaints

This year we received 145 formal complaints about the handling of FOI applications by agencies and local councils (see figure 52). This compares to 186 complaints received last year and 225 the year before. The downward trend in FOI complaints continues.

As predicted last year, we think this trend can be attributed to greater openness by agencies following memoranda by the Premier encouraging proactive release of information by government agencies. Another reason is the consistent decrease in complaints about the NSW Police Force (NSWPF) due to it having substantially reduced its backlog in processing FOI applications.

As is usual, the majority of complaints were about refusal of access to documents. We also received complaints about wrong procedures, failure to make a determination, delays, excessive charges as well as failure to identify documents the subject of applications (see figure 53).

Figure 52: Formal and informal matters received and finalised

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|---------------------|-------|-------|-------|-------|-------|
| Formal received | 188 | 208 | 225 | 186 | 145 |
| Formal finalised | 198 | 205 | 197 | 224 | 136 |
| Informal dealt with | 294 | 316 | 422 | 407 | 263 |

Figure 53: What people complained about

This figure shows the complaints we received in 2009–2010 about freedom of information, broken down by the primary issue in each complaint. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

| Issue | Formal | Informal | Total |
|--------------------------------|------------|------------|------------|
| Access refused | 90 | 36 | 126 |
| Agency inquiry | 0 | 33 | 33 |
| Amendments | 3 | 5 | 8 |
| Charges | 2 | 6 | 8 |
| Documents not held | 10 | 11 | 21 |
| Documents concealed | 0 | 2 | 2 |
| Documents destroyed | 0 | 0 | 0 |
| General FOI inquiry | 0 | 63 | 63 |
| Information | 1 | 1 | 2 |
| Issue outside our jurisdiction | 1 | 6 | 7 |
| Other | 0 | 1 | 1 |
| Pre-application inquiry | 0 | 35 | 35 |
| Pre-internal review inquiry | 0 | 47 | 47 |
| Third party objection | 8 | 7 | 15 |
| Wrong procedure | 30 | 10 | 40 |
| Total | 145 | 263 | 408 |

Figure 54: Significant outcomes achieved in relation to complaints about FOI finalised in 2009–2010

| Outcome | No. |
|--|-----------|
| Policy/procedure change | 3 |
| Training implemented | 2 |
| Authority pays compensation | 1 |
| Authority makes apology | 5 |
| Other remedy | 1 |
| Authority reviews case | 8 |
| Further information provided | 14 |
| Authority admitted and corrected errors | 4 |
| Authority reviewed and changed decision | 6 |
| Authority provides reasons | 5 |
| Agreement reached through informal means | 1 |
| FOI documents released | 23 |
| FOI refund/remission of fees | 1 |
| FOI search made and documents found | 4 |
| Total | 78 |

We finalised 136 complaints achieving 78 positive outcomes (see figure 54). The reduction in our overall funding in the last few years has had a very real impact on the work we can do. In order to use our decreasing resources more efficiently, this year we restructured the public administration division, where our staff who deal with FOI complaints are located.

The division has been organised into an assessment and resolution stream and an investigation stream. While the restructure has improved the overall efficiency of the division, it has continued the unfortunate trend over many years of fewer resources being available to deal with FOI complaints. For this reason we have finalised less complaints than in previous years.

As a result of our involvement, agencies released many documents previously held exempt and in some cases carried out further searches resulting in more documents being found. We also caused policy and procedure changes, provision of training to staff and in some cases persuaded agencies to apologise to complainants for errors. We formally investigated three complaints. All other complaints were dealt with through preliminary inquiries and making informal suggestions under the FOI Act.

University executives' pay and performance

Last year we reported that, following an investigation, we had recommended that the Department of Premier and Cabinet (DPC) consider amending the annual reporting regulations to require disclosure of the pay and performance information of senior university executives.

In July 2010, the Director General of DPC advised us that the annual reporting regulation is due to be repealed on 1 September 2010. When the regulation is re-drafted the Government proposes to include provisions that will give effect to our recommendation.

CS 62: Caught in a 'catch 22' situation

A member of the public complained about Blacktown City Council's handling of his request for information about the owner of a dog that had attacked his dog. The complainant attempted to report the dog attack to both council and the police. However, council advised him that he could not lodge a formal complaint unless it was about a specific individual. As the complainant did not know the name of the dog's owner but wanted to take civil action against him, he followed council's advice and made an FOI application to obtain the owner's name and address.

Council in turn refused to provide any information due to privacy considerations under the *Companion Animals Act 1998* which treats certain information relating to the administration of the Act as confidential. The Act allows the disclosure of the name of the owner of a companion animal to a person to bring legal proceedings if the animal's behaviour had been reported to a police officer or a council. However council said that the name could not be disclosed as no official complaint had been received by either the pound or the police. Quite obviously, the complainant found himself in an impossible situation.

It appeared the complainant had made a verbal complaint to council but, in a 'catch 22' type situation, couldn't lodge a formal complaint because he did not have the name of the dog's owner. However, there was no reason why council staff could not treat the complainant's attendance at council to report the attack as a formal complaint for the purposes of the Companion Animals Act and give him access to the dog owner's name under that Act. We wrote to council and suggested that the complainant should have been given access to the information free of charge under the Companion Animals Act. As a result of our suggestion, council decided that all future reports about alleged dog attacks, including verbal ones, would be formally recorded by council. The names of the owners will be given to people who ask for the information in writing, without resort to the FOI Act. Council also agreed to refund the FOI application fee in this case.

FOI and other ways of accessing information

FOI is not always the only way to provide information to a member of the public. It is sometimes inappropriate to make people submit FOI applications for information that could be provided informally or through other means. This is now an important element of the new GIPA Act.

In case study 63, we found that it was inappropriate to refuse to process an application under the FOI Act and direct people to a more costly access to information scheme instead.

CS 63: Incident reports too expensive

A Legal Aid solicitor complained that the NSWPF had declined to process his client's application for access to an incident report under the FOI Act. The FOI Unit advised his client to redirect the application to the Police Insurance Services Unit. The cost of obtaining the relevant document from the Insurance Services Unit was \$73, substantially higher than the cost under the FOI Act. This would have been only \$15 as the client was a pensioner. This frustrates the objects of the FOI Act as it means less people, particularly those suffering financial hardship, would be able to afford the cost of accessing documents held by the police.

We suggested that the Insurance Services Unit should process applications from individuals using the same fee structure as the FOI Act. We felt that people who could otherwise have obtained the information under the FOI Act should be charged \$30 for applications for their personal information. They should also be eligible for a discount if they could demonstrate that they were suffering financial hardship.

The NSWPF refused to comply with this suggestion. They said that the Insurance Services Unit fee structure reflected the cost recovery and user charges guidelines established by the NSW Treasury, and adopting the FOI Act fee structure would not adequately recover the costs associated with processing applications. It would also affect the NSWPF's capacity to maintain the service. They advised us that they recognise that applicants may be suffering financial hardship and so the Insurance Services Unit does not charge for applications received from Legal Aid. We have significant concerns about this response from the NSWPF and will be actively pursuing this issue.

FOI and business

Agencies are usually reluctant to release documents that contain information about a private business, regardless of whether they are legitimately exempt under the FOI Act. Case studies 63 to 67 show that a fear of offending business customers may exist among several government agencies.

CS 64: Is information about water usage confidential?

A journalist applied to Sydney Water under the FOI Act for documents about the amount of water used by the top 50 commercial users in past financial years. Sydney Water released information about aggregate data, but maintained that the documents disclosing the names of the companies were exempt as they concerned the business affairs of the companies and were therefore confidential.

Sydney Water argued that its customer contract obliged it to keep confidential information about the water use of its commercial customers, and – although information about water usage was not confidential in itself – in combination with the names of the users it ‘could provide an opportunity to other competitors.’ They did not consult the affected businesses before making this decision.

Although the release of the documents may provide a ‘window of information’ to competitors, the fact that information is disclosed is not sufficient to make the documents exempt from release. The release of the documents must have an adverse effect on the business affairs of the company involved or lead to a diminution in the commercial value of information. Many of the companies listed in the documents regularly publish information about their water use on their websites and in their annual corporate social responsibility or environmental reports, as well as in Sydney Water’s own publication, *The Conserver*. It is unlikely that any of these businesses would have published this information if it could have alerted competitors to operational factors that might give them a substantial competitive advantage. Our review of the Customer Contract also showed that it contained no undertakings of confidentiality to Sydney Water customers regarding information about water usage.

In recent years, private water consumers have been subjected to increasing restrictions on their water usage and have been encouraged to undertake water-saving initiatives. The water consumption of businesses and any initiatives that businesses are taking to reduce their water consumption are therefore matters of public interest. In our view, members of the public have a right to know which businesses are consuming the most water in NSW and whether or not those businesses are taking action to reduce their water consumption.

We suggested to Sydney Water that the release of the documents was in the public interest. They declined to take up our suggestion so we started a formal investigation into their conduct. After an initial meeting, the CEO advised us that Sydney Water was now consulting with some of its top 50 customers and seeking their views about our arguments in favour of releasing the information.

We received submissions from a law firm representing one of the commercial water users and several organisations representing the interests of businesses in NSW. The submission did not, in our view, establish that the documents sought by the journalist were exempt. We subsequently recommended that Sydney Water release the documents.

CS 65: The right to know about council contracts

A former Greens councillor from Shellharbour City Council complained about council’s handling of her FOI application for documents about a large development known as the Shell Cove Marina. Council signed a development contract with the Australand Corporation in 1993. The development, which is to be completed by 2016, includes a large marina, golf course and a shopping centre.

Council gave the former councillor access to some information about the development, but refused access to reports that had been created in the last seven years because they contained sensitive business information about negotiations with Australand.

At an initial meeting with council, they told us that they were prepared to release monthly and annual reports about the marina that had been created more than three years ago but nothing more recent. We disagreed and pointed council to section 15A of the FOI Act, which sets out information that needs to be made public in contracts between government agencies and the private sector.

We also referred to the public interest in the release of the information in the reports, particularly as council receives revenue from the development and will receive half the profits made once it is complete. Council agreed to review their original decision and release further documents to the complainant.

CS 66: Rally conditions not released

We received a complaint from an environmental organisation about a decision by the Department of Industry and Investment to refuse access to a document containing conditions imposed on the holding of the World Rally Championship North Coast Event. The department argued that the rally organiser had provided the information in the notice of conditions in confidential circumstances. They also argued that the conditions of the event were the proprietary information of the rally organiser, so their release would have an unreasonable adverse effect on their business affairs.

We considered there was nothing in the notice of conditions that indicated it was a confidential document. It merely set out the conditions under which the rally was to be held and did not contain proprietary information of the rally organiser as claimed by the department. The department agreed with our suggestion to release the document.

CS 67: Claims for exemption not substantiated

In November 2006, the NSW Government announced a decision to build Tillegra Dam in the Hunter Valley. In late 2008 the No Tillegra Dam Group, which was opposed to the construction of the dam, applied for documents about decisions relating to its construction. The Hunter Water Corporation claimed that all documents were exempt because they were either internal working documents or cabinet documents. It was unclear how many documents had been identified as Hunter Water did not prepare a schedule of documents.

In response to our investigation, Hunter Water provided a certificate from the Department of Premier and Cabinet that showed only five of the documents were in fact cabinet documents.

They claimed 23 other documents should also remain exempt because they contained sensitive business or confidential information or their release would undermine Hunter Water’s financial or property interests.

We could see no good reason for any of the documents to be exempt as they were created in late 2006 and many were from before the NSW Government decided to build Tillegra Dam.

After considering our suggestion to redetermine the application, Hunter Water agreed to release virtually all the information in the 23 documents.

When should information be collated?

Agencies occasionally receive applications, typically from journalists, that require them to collate information that they do not normally collate in order to satisfy the inquiry. If the information is easily put together, agencies are normally happy to oblige.

However, from time to time, agencies argue that it would take an unreasonable amount of resources to collate the information requested. The challenge for us in those cases is to gain an understanding of the agency's systems so we can test the veracity of their claim, and then decide whether the information requested is in the public interest and should therefore be collated by the agency. Case studies 68 and 69 illustrate this dilemma.

CS 68: Data unreliable so not released

A journalist complained about the Roads and Traffic Authority's (RTA) determination of his FOI application for documents about the top ten locations of vehicle collisions or incidents with pedestrians. The journalist wanted the information to identify and publish a list of black spots in NSW. The RTA advised him that it did not hold documents disclosing such information although, according to the journalist, they had published similar lists in the past.

Through our inquiries, we found that the RTA does not compile crash statistics listing locations with the greatest number of crashes because this information of itself is not helpful in determining the areas that need the most attention. In most cases, the total number of crashes simply signifies that an area is busy and has high traffic volumes. According to the RTA, the crashes may be relatively minor and so would not indicate that there is a 'black spot'.

The RTA also told us that the information they had provided to the media in the past (up until 1997) was an annual listing of black spot intersections in NSW, ranked on the total number of crashes over the most recent two year period and then by a severity index. The severity index included various weightings for fatal, serious injury, minor injury and non-casualty crashes – but only for the most recent year of crash data. This was possible in the past as a distinction was able to be made between serious and minor injuries.

However the recording of data on injury severity was found to be unreliable and attempts to distinguish between serious and minor injuries were abandoned in the mid 1990s. According to the RTA, the list of black spot intersections became defunct once the severity of the crashes could no longer be analysed. We wrote to the journalist advising him that we were satisfied that the RTA did not hold the documents he had requested.

After we concluded our inquiries the Daily Telegraph published a list of the state's top ten accident 'hotspots'. It had obtained the information from a list showing where the RTA had determined to place its new mobile speed cameras. We made further inquiries with the RTA as this appeared to be a list of 'black spot' locations.

The RTA advised us that the analysis performed in order to determine the appropriate locations of the mobile speed cameras was not based upon 'black spots' but rather on locations that had been previously used by the NSW Police Force for their own mobile speed cameras. The RTA had used this as a starting point in assessing the suitability of the sites. The RTA confirmed that it did not hold data regarding 'black spot' locations in NSW.

CS 69: Collating hoax calls too hard to do

A journalist made an FOI application to the NSW Ambulance Service for copies of examples of hoax calls made to the triple-0 line. The service had refused the application on the basis that processing it would be an unreasonable diversion of its resources.

After making detailed inquiries and viewing the systems used for tracking calls made to the triple-0 line, including the computer-assisted dispatch system used to locate and respond to calls from members of the public, we were satisfied that collating information on hoax calls would be an unreasonable diversion of resources.

The service explained to us that they generally cannot identify if a call is a hoax call until the ambulance has been dispatched to the site. If the attending paramedics attend the site of the call and are able to determine that the call was a hoax, they will enter an 'unable to locate' outcome on their mobile unit. It is worth noting that this 'unable to locate' outcome does not necessarily mean the call was a hoax.

For example, a passer-by may call an ambulance for an individual who appears to be injured by the side of the road but by the time the ambulance arrives the person may have recovered and moved on. The paramedics will record any details of a hoax on the paper patient record, but no specific details about the hoax are required to be captured in the electronic system.

FOI and legal professional privilege

Every year we receive complaints that appear to us to involve an unreasonable refusal to allow access to documents based on legal professional privilege.

Alternatively, in cases where privilege can appropriately be claimed, there appears to often be an unreasonable reluctance to exercise discretion to release documents. Case studies 70 and 71 show examples of the inappropriate use of legal privilege to prevent access to information.

CS 70: Photo of car released, but with a proviso

A man who received a parking fine from the Hills Shire Council applied under FOI for a copy of the photo of the car taken by the council ranger as proof of the offence.

Council refused access on the basis that the document was exempt because it 'contained matter that would be privileged from production in legal proceedings on the ground of legal professional privilege'.

In fact, the photograph was not exempt. If the man chose to challenge the fine in court it would have formed part of the brief of evidence and would have had to be shown to the defendant. We also noted that the Roads and Traffic Authority and many councils provide photographs of vehicles on request for a small fee.

Following our inquiries, council's general manager wrote to the complainant releasing the photograph. However he noted that he was not convinced the photograph was anything but an exempt document.

CS 71: Using legal professional privilege as an excuse

A serving police officer applied for documents from two legal files concerning litigation he had been involved in with the NSWPF. The NSWPF claimed legal professional privilege over the entire contents of the files, arguing that all the documents were either copied or gathered for legal proceedings or providing legal advice.

Some of the documents claimed as privileged were not even copies of documents supplied to legal advisers to obtain advice or use in litigation. Invoices, correspondence with Treasury Managed Fund, transcripts of judgments, publicly available documents as well as documents created by the applicant and his advisors were found to be in this category.

For a number of other documents, we considered that – even if it could be shown that they were copied for a privileged purpose – it was difficult to see what the public interest in maintaining such privilege was. Both cases had been finalised and there appeared to be no indication of further pending litigation, the matter related to the affairs of the applicant, and the information in the documents was largely innocuous and otherwise able to be accessed from other files within the same agency. In the circumstances, we considered the NSWPF should have used their discretion to release the documents even if privilege could be argued.

We were also concerned that the exemption had been applied in what appeared to be a wholesale approach to several files of documents, simply because they were located in legal files and without regard to the content and purpose of each individual document. This approach has the potential to be seen as frustrating the objects of the FOI Act. Access to documents should not be prevented by placing copies of the documents in a 'legal file' and then claiming privilege. Although access to the original documents was still possible, the agency did not provide a schedule of documents to the applicant – so he could not make an informed decision about whether and how to request access to non-privileged original documents. Following our investigation, the NSWPF agreed to review their determination.

FOI and law enforcement

This year the NSWPF's decision to arm all frontline police officers with tasers or stun guns has continued to receive public and media attention. Case study 72 shows that despite the heightened public interest in this issue, the NSWPF appears reluctant to release information about the use of these weapons.

CS 72: Releasing videos of taser use

A journalist applied to the NSWPF for copies of five videos of police officers using tasers to subdue offenders. Every taser has a built-in video that films its use. The NSWPF identified five videos and then determined that all five were exempt because their release would be an unreasonable disclosure of the personal affairs of the people who were filmed. They also claimed that release of the taser videos may lead to an unfair trial for any of the people charged as a result of the incident for which they had been tasered.

We wrote to the NSWPF asking for copies of the videos. For several weeks they refused to provide the videos, even though we regularly review and access taser videos as part of our policing oversight role. Regrettably, it was only after advising that we could compel the NSWPF to produce the videos by using our Royal Commission powers, they sent them to us.

After reviewing the videos we considered they could and should be released as long as the identity of the people who were tasered could be obscured. The NSWPF refused to comply with our suggestion because they feared that it would result in them being inundated with applications for videos of taser use. The NSWPF then wrote to the journalist with a two line letter saying it refused to agree to our suggestion. The letter set out no reasons at all to support its decision. They claimed to us they did not have the resources needed to obscure the images of the people appearing in videos.

Because the release of taser videos could well have implications for applications made for the videos under the new GIPA Act, we discussed this case with the Information Commissioner, who will review any future complaints about the determination of GIPA applications made for taser videos. We determined that it was in the public interest for the videos in this case to be released and therefore commenced a formal investigation into the NSWPF's handling of this matter. We recommended that the NSWPF release the taser videos to the journalist and in doing so, obscure the faces of the people who were tasered.

Protected disclosures

The *Protected Disclosures Act 1994* (the PD Act) aims to encourage the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector. Our office is one of the investigating authorities, along with the Independent Commission Against Corruption (ICAC), the Auditor-General and the Police Integrity Commission, to which a public official can make a protected disclosure.

We also provide advice to those thinking about making a disclosure, as well as helping public authorities to implement the PD Act effectively and fairly. We provide practical training, in partnership with the ICAC, to staff from public authorities across the NSW.

Parliamentary review of whistleblower legislation

Since its enactment in 1994, the *Protected Disclosures Act 1994* (PD Act) has been reviewed by a parliamentary committee four times. The latest review was conducted by the committee on the Independent Commission Against Corruption in 2008-2009 and their report was published in November 2009. As we reported in last year's annual report, we made written submissions to the committee and the Deputy Ombudsman gave evidence at a public hearing.

One of the central recommendations in the committee's final report was the need for greater ownership of the protected disclosures legislation by a central agency. In recognition of the active role that we have taken since the Act came into operation – for example, producing guidelines and providing advice to public sector staff and agencies about protected disclosures – the committee recommended that we should be funded to provide monitoring, auditing, education and advisory functions in this area.

On our estimation, the resources we would need to do this would be similar to those recently provided to the Information Commissioner to perform similar functions in relation to the new access to government information scheme.

The committee's intentions were to give one agency the responsibility for ensuring that the scheme was achieving its central purpose – that is, giving the public sector more opportunities to identify and fix problems by encouraging public sector staff to report wrongdoing without fear of reprisal. At present, nobody is in a position to know if that purpose is being effectively achieved.

As previous committees have done, this committee also recommended that stricter legal requirements be placed on agencies to properly deal with protected disclosures and provide adequate protection to those who come forward. Currently agencies are under no such obligation.

We are hopeful that the NSW Government will seriously consider the committee's report as a template for reform in this area. In December 2008, they indicated to us that they were open to considering comprehensive reform of the current Act. We have therefore delayed updating the 6th edition of our Protected Disclosures Guidelines until we know what, if any, reforms may be made to the current system. These guidelines continue to be in high demand, being downloaded over 16,000 times this year, an average of 1,380 times per month.

Super departments

One of the pitfalls for public sector staff wanting to make a disclosure is the possibility of making it to the wrong person. Under the PD Act, protections will only apply if certain conditions are met. These conditions include making the disclosure to one of the people specifically authorised by the Act to receive them – such as the 'principal officer of a public authority'.

In July 2009, the NSW Government restructured the public service and placed all existing government departments under the umbrella of 12 super departments. Some have remained largely separate agencies with an extra level of management (the Director-General of the super department), while others have been substantially merged into other entities.

This year we answered an inquiry from an agency that is part of the super department called the Department of Human Services NSW. There are seven separate agencies within that super department, each with their own Chief Executive.

Before the creation of super departments, it seemed clear that the 'principal officer of a public authority' was the person who headed that organisation – whatever their official title. The question now is whether this 'principal officer' is the Director-General of the super department to which an agency belongs or the agency's own Chief Executive.

As the actual legal position is not entirely clear, our advice to agencies is that they should ensure that their internal reporting policies provide that both the Director-General and the Chief Executive may receive protected disclosures, and make it clear that each policy is effectively a policy of the super department. That way, a member of staff wanting to report wrongdoing will not unintentionally miss out on the protections of the Act because they made the disclosure to the wrong 'boss'.

We are concerned that people who work in agencies without such an internal reporting policy may miss out on the protections of the Act through no fault of their own. We hope that some clarity can be brought to this issue if the Act is reformed as recommended by the Parliamentary Committee. We have written to the Department of Premier and Cabinet to bring their attention to this issue.

Changes made by the Government (Information Access) Act 2009

The *Government Information (Public Access) Act 2009* (GIPA Act) made changes to the PD Act to provide that a public official may make a disclosure to the Information Commissioner about a 'failure to exercise functions properly' in accordance with the GIPA Act. Unfortunately, the Act did not make a number of consequential amendments to the PD Act that would provide protection for a disclosure about this issue made internally to an agency (as is the case with other categories of conduct covered by the Act).

We are concerned that anyone who tries to bring to light a failure by their agency to exercise their GIPA functions properly, by reporting the problem internally, will not receive protection.

Together with the Information Commissioner, we have suggested that the Department of Premier and Cabinet make the appropriate legislative changes or encourage agencies to adopt or amend their existing internal reporting policies to ensure that they advise their staff to report these kinds of concerns directly to the Information Commissioner – or take steps to properly manage these disclosures and provide protection from reprisals.

Training workshops

This year the Deputy Ombudsman continued his work in providing training to management and staff in agencies who handle protected disclosures. In conjunction with the ICAC, he presented six workshops in Sydney and regional centres such as Orange.

These workshops also provide us with an opportunity to gauge the current issues facing practitioners in this area. One continuing area of confusion concerns the implementation of confidentiality in relation to whistleblowing. For a number of years, we have challenged the traditional view that keeping the identity of the whistleblower secret always provides the best outcome. Our experience has been that, often despite the best efforts of agencies, these kinds of secrets are in practice badly kept.

We therefore advocate a risk management approach. The aim is to ensure that people feel safe coming forward and that when they do report wrongdoing they will remain safe and genuine problems will be fixed.

We have found that the best practical outcomes result when agencies assess the circumstances of each particular case. They then need to decide:

- If confidentiality can be maintained, given the nature of the allegations and the practical steps that would be required to investigate them. For example, there may be a way of investigating the allegations – such as a routine audit – without disclosing that a complaint is the reason for the investigation.

- If not, whether with a more open approach – that would send a clear message to staff that retribution against the whistleblower will not be tolerated – that retribution is less likely.

The agency can then take realistic and practical measures to ensure the person is supported and protected. For more details, see our information sheet called 'Confidentiality – Practical alternatives for the protection of whistleblowers'.

Complaints

This year the number of complaints and inquiries we received about protected disclosure issues has dropped compared to the last two reporting years. As highlighted in the latest review of the Act, there is currently no database of information that would allow us to explain fluctuations in our complaint numbers. If we were given the responsibility for monitoring the implementation of the PD system, we would be in a better position to understand trends in both complaint numbers and the outcomes of complaints.

It is important that agencies are responsive to those who complain to them. When those complainants are also employees, clear and regular communication becomes absolutely critical. This year we attempted to resolve a long-standing dispute between an academic and the university where he worked. This dispute had been partly caused by the University's failure to recognise that the academic had made an official complaint and properly process and communicate with him about the outcome. This led to a perception that the University was actively taking detrimental action against the academic for having made the complaint in the first place (see case study 73).

CS 73: Complaints about plagiarism poorly handled

An academic at a university complained to us that the university had mishandled a situation of systemic plagiarism by international students studying a Masters course. The academic first brought his concerns to the attention of the University's Vice-Chancellor in November 2006, but almost three years later he continued to be dissatisfied with their response and claimed that he had suffered detrimental action for coming forward.

After making informal inquiries, it appeared to us that the university had treated the plagiarism allegations very seriously. They had convened a panel of senior university administrators, including two former Vice-Chancellors, to look into the matter and make recommendations. In addition to considering complicated issues – such as what to do with Masters degrees that had already been conferred on past students who had submitted plagiarised work – the panel recommended a wider investigation into the course and those responsible for running it. Over the three years, the course was dismantled and certain staff were the subject of formal disciplinary investigations and misconduct processes.

Unfortunately, it also appeared that the university had not processed the academic's complaint in accordance with any formal complaints policy. No assessment was made about whether or not it was technically a 'protected disclosure' so no process was put in place to ensure that he was advised of the progress or the outcome of his complaint. The result was that for two years the only correspondence the academic received was a letter advising that he was to be the subject of an investigation. Someone had made allegations that he failed to report the plagiarism as soon as he became aware of it. The academic saw this as retribution and became increasingly frustrated and disillusioned. He felt that the university had deliberately dragged its heels rather than deal with the plagiarism issue promptly, allowing further cohorts of students to complete their degrees with possibly plagiarised work.

By 2009, he had made further complaints – essentially about his 2006 complaint being ignored by the university. The university's response was, in part, to argue about whether or not his original complaint was technically a 'protected disclosure'. By July 2009, the academic was fed up and shared his frustrations with a national newspaper. The university clarified that he did this under that part of the PD Act that provides protection for whistleblowers who disclose to the media.

The Vice-Chancellor finally met with the academic late in 2009 but was unable to address his concerns. After our involvement, and with the appointment of a new Vice-Chancellor, the university acknowledged that the 2006 complaint should have been handled better. They agreed to apologise to the academic and communicate to him that he had done the right thing in bringing the plagiarism to light. The university also agreed to review its policies relating to protected disclosures and disseminate a communication from the Vice-Chancellor about the importance of protected disclosures and ensuring those who make them are protected from retribution.

Figure 55: Protected disclosures received

| Matters | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|--------------|------------|-----------|-----------|-----------|-----------|
| Informal | 68 | 42 | 53 | 47 | 43 |
| Formal | 52 | 34 | 43 | 42 | 35 |
| Total | 120 | 76 | 96 | 89 | 78 |

In our first year, we received complaints about 138 different public authorities. This year, we dealt with complaints about almost 1,000 agencies and organisations. These included both public and private sector bodies, providing a broad range of services. This number may well increase with future changes to our jurisdiction.

Highlighting
35 years

Removing nine words

In June, the Ombudsman tabled a special report to Parliament entitled: *Removing Nine Words: Legal Professional Privilege and the NSW Ombudsman*. The New South Wales Ombudsman Act is the only Parliamentary Ombudsman Act in Australia that permits agencies to refuse to provide us with information on the grounds of a claim of legal professional privilege. In NSW, the Police Integrity Commission and the Independent Commission Against Corruption do not operate under such a restriction. Former Commonwealth Ombudsman John McMillan commented that:

We have found that information of this kind, especially requests for legal advice and the advice itself is a source of high quality investigation information. It commonly provides, in a considered and researched way, a reliable statement of an agency's understanding of a matter.

The report outlined the basic amendment needed. Nine words, 'other than a claim based on legal professional privilege', which are repeated twice in the Ombudsman Act, would need to be removed. This would bring the Act into line with other Ombudsman Acts and watchdog legislation in NSW.

The report also documented the Ombudsman's attempts to get this amendment made to the Act over the last two years. The issue has been raised repeatedly in correspondence from the Ombudsman and our Parliamentary Committee to the Premier. The Ombudsman noted in the report that it was 'unclear why there is such reluctance to put forward this simple but important amendment.'

After the report was tabled, the Independent Member for Port Macquarie, Mr Peter Besseling, introduced a private member's bill making the necessary amendment to the Ombudsman Act. The Bill passed the Legislative Assembly on 2 September. At the time of writing, the Bill was yet to be considered by the Legislative Council.



NSW Ombudsman

Removing nine words

Legal professional privilege and the NSW Ombudsman

A special report to Parliament under section 31 of the Ombudsman Act 1974.

June 2010

The need for a strong integrity framework

On 9 September this year, the Ombudsman delivered one of the keynote addresses at the annual Corruption Prevention Network Conference. In his speech, entitled *Keeping up the Standards*, the Ombudsman outlined the importance of ethics and integrity, supported by a strong integrity framework for the public sector.

The Ombudsman explained why maintaining strong ethical standards is important:

As public servants, we have a unique relationship with the community. We provide them with most of the essential services they need to go about their lives. We get them to and from work, we treat them when they are sick, we protect them from crime, we educate their kids, we provide some with housing, and so on. Our actions and decisions have a real impact on people's everyday lives.

These relationships have in common the fact that they are built around trust. If that trust is eroded, it leads to cynicism, and suspicion.

He stressed the need for such an integrity framework to be built around ethical leadership, a clear public sector wide code of conduct, supported by public sector ethics legislation, and strong, independent watchdog bodies.



Financial management

Highlights

- › Received an unqualified audit report from the NSW Audit Office for our financial records and systems. See page 118
- › Established an audit and risk committee that will strengthen our governance framework and provide additional assurance to the Ombudsman on our financial processes. [SEE PAGE 114](#)
- › Generated \$436,000 in revenue, mostly through our training courses such as managing unreasonable complainant conduct, and used this revenue to support our complaint-handling and other core work. [SEE PAGE 114](#)
- › Paid 100% of our accounts on time, an improvement on 2008–2009. [SEE PAGE 115](#)
- › We used our capital funding to replace our desktops and to upgrade our case management system. [SEE PAGE 114](#)
- › We continued to proactively manage our leave liabilities, reducing the value of untaken recreation leave. [SEE PAGE 115](#)

- › Our financials 114
- › Audited financial statements 116

The financial statements provide an overview of our financial activities during 2009–2010. These statements, our supporting documentation, and our systems and processes have all been reviewed by our own auditors and the NSW Audit Office. We received an unqualified audit report.

This year we established an audit and risk committee to support our governance systems. This committee, which is required under the NSW Treasury policy on internal audit and risk management, provides an independent review of our financial and business activities. The committee will oversight the development of an internal audit plan as well as our review of our risk management program.

We focused on generating more revenue from sources other than the government, receiving \$436,000. We will continue to identify opportunities to generate revenue from training and publications sales to support our core work.

Our financials

The cumulative effect of ongoing efficiency dividends – cuts to public sector agency budgets of 1% each year – as well as a further round of public sector pay increases, of which 1.5% per year for three years is unfunded, is having a significant impact on us.

During the year we implemented a comprehensive structural change, with the major imperative being to cut costs. As over 80% of our expenses are employee-related, our cost cutting will inevitably mean a reduction in staffing levels – and this will have an impact on the services we can provide to the community. The Ombudsman has raised the ongoing funding issue with the government, Members of Parliament, the Parliamentary Joint Committee on the Ombudsman and Police Integrity Commission and with NSW Treasury.

As mentioned last year, we had reviewed our internal budgeting and reporting to make sure that the information that we provide to our managers was comprehensive, relevant and timely. Our review looked at staffing projections, leave management and capturing commitments as well as the format of our expenditure reports. We also considered training and other ongoing professional development for managers on interpreting financial information, acknowledging the importance of our senior staff being able to use financial information in their business planning and for decision-making. During the year we refined these changes and included financial management training in our executive leadership training program.

During the year we established an audit and risk committee, as required under the NSW Treasury policy for internal audit and risk management in the public sector. This committee, through our internal audit program, will strengthen our governance systems and provide some further assurance to the Ombudsman that our financial processes comply with legislative and office requirements. See corporate governance on page 13 for more details on our audit and risk committee.

The Ombudsman receives funding from the NSW Government. Although we account for these funds on an office-wide basis, as reflected in our financials, internally we allocate them between our three business branches and our corporate team.

For NSW state budget purposes, we also report against service groups. As we do not budget internally this way, the figures reported for service groups are estimates only and can vary depending on workload, priorities and staffing levels. Figure 56 shows the net cost of services by service group for the last five years. Following a review of our service groups by NSW Treasury, the Ombudsman will only be reporting on one service group – which will be called 'Complaint Advice, Referral, Resolution or Investigation' – from the 2010–2011 financial year.

Figure 56: Net cost of services by service group

| Service groups | 05/06 \$'000 | 06/07 \$'000 | 07/08 \$'000 | 08/09 \$'000 | 09/10 \$'000 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| Complaint advice, referral, resolution or investigation | 8,675 | 9,263 | 9,755 | 10,405 | 9,447 |
| Oversight of agency investigation of complaints | 3,863 | 4,124 | 4,344 | 4,633 | 4,206 |
| Scrutiny of complaint-handling systems | 5,873 | 6,272 | 6,604 | 7,043 | 6,814 |
| Review of the implementation of legislation | 613 | 1,194 | 1,087 | 273 | 233 |
| Total | 19,024 | 20,853 | 21,790 | 22,354 | 20,700 |

Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditure. Consolidated funds are accounted for on the statement of comprehensive income, after the net cost of service is calculated to allow for the movement in accumulated funds to be determined for the year. The government also makes provision for certain employee entitlements such as long service leave.

Our initial 2009–2010 recurrent consolidated fund allocation was \$19.827 million and our final allocation was \$19.833 million. Included in the Ombudsman's allocation is funding for our review of the implementation of new police powers. Details of these reviews can be found in the Policing chapter. Figure 57 shows the amount provided for the legislative reviews over the last five years. \$233,000 was provided for our legislative review work in 2009–2010, which represents 1.17% of the Ombudsman's total recurrent allocation.

Figure 57: Legislative reviews

| Year | Revenue \$'000 |
|-------|-------------------|
| 09/10 | 233 |
| 08/09 | 273 |
| 07/08 | 1,085 |
| 06/07 | 1,073 |
| 05/06 | 633 |
| 04/05 | 433 |

In 2009–2010 we budgeted that the Crown Entity would accept \$860,000 of employee benefits and other entitlements. However, the actual acceptance was about \$948,000. This variance is primarily due to adjustments to our long service leave liability after actuarial advice in June 2010.

We were allocated \$785,000 for our capital program but spent \$34,000 less than the allocation. Our capital program included replacing our desktops and laptops, upgrading hardware, purchasing new office equipment, and updating and improving our fit-out.

We generated \$436,000 through sales of our publications, bank interest, fee-for-service training courses and our consultancy services we provide to other Ombudsman's offices through AusAid programs (see figure 58). Figure 59 provides a breakdown of our revenue, including capital funding and acceptance of employee entitlements.

Figure 58: Other revenue sources

| Revenue from other sources | Revenue \$'000 |
|---------------------------------|-------------------|
| Workshops and publication sales | 317 |
| Bank interest | 50 |
| Other revenue | 69 |
| Total | 436 |

Figure 59: Total revenue 2009–2010

| Government | Revenue '000 |
|---|-----------------|
| Recurrent appropriation | 19,833 |
| Capital appropriation | 751 |
| Acceptance of certain employee entitlements | 948 |
| Total government | 21,532 |
| From other sources | 436 |
| Total | 21,968 |

Expenses

Most of our revenue is spent on employee-related expenses such as salaries, superannuation entitlements, long service leave and payroll tax. Our statement of comprehensive income shows that this year we spent more than \$16.9 million, or 80.42% of our total expenses, on employee-related items.

Salary payments to staff were 3.8% less than the previous year. As a result, our superannuation expenses also decreased as did our payroll tax-related items. Our long service leave expenses decreased by \$365,000 – this was partly due to adjustments requested after an actuarial review. After a higher than anticipated adjustment in 2008-2009, our workers compensation costs were back to a reasonable level of \$80,000.

The day-to-day running of our office costs us over \$3.8 million a year. Our significant operating items are rent (\$1.8 million), fees such as contractor costs (\$654,000), travel (\$415,000), maintenance (\$173,000) and stores (\$113,000). There were no consultants engaged during 2009–2010.

The financial statements show that \$330,000 was expensed for depreciation and amortisation. As we spent \$751,000 on our capital program, we had an increase in our non-current asset base.

Although capital funding is shown on the statement of comprehensive income, capital expenditure is not treated as an expense – it is reflected on the statement of financial position.

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. However, there are some instances where this may not be possible – for example, if we dispute an invoice or don't receive it with enough time to pay within the specified timeframe. We therefore aim to pay all our accounts within the specified timeframe 98% of the time. During 2009–2010 we paid 100% of our accounts on time. This exceeded our target and is a slight improvement in our performance from last year. We have not had to pay any penalty interest on outstanding accounts.

Assets

Our statement of financial position shows that we had \$3.363 million in assets at 30 June 2010. The value of our current assets increased by \$1,083,000 from the previous year, while the value of our non-current asset base increased by \$418,000.

Just over 50% of our assets are current assets, which are categorised as cash or receivables. Receivables are amounts owing to us and include bank interest that has accrued but not been received, fees for services that we have provided on a cost recovery basis, and GST to be recovered from the Australian Taxation Office. Also included in receivables are amounts that we have prepaid. We had \$427,000 in prepayments at 30 June 2010. The most significant prepayments were for rent and maintenance renewals for our office equipment and software support.

Our cash balance includes a \$43,000 advance payment from the New Zealand, Commonwealth and other state Ombudsman to cover costs for developing guidelines and training Ombudsman staff in dealing with unreasonable complainant conduct. We also had a liability to the consolidated fund of \$519,000. We cannot use these funds for any other purpose so it is classified as a 'restricted asset'.

Our non-current assets, which are valued at \$1.651 million, are categorised as:

- plant and equipment – this includes our network infrastructure, computers and laptops, fit-out and office equipment
- intangible assets – these include our network operating and case management software.

We were allocated \$785,000 in 2009–2010 for asset purchases and spent \$751,000. This is reflected in our capital consolidated fund appropriation. We used this money to buy new desktops and laptops, other computer hardware and office equipment as well as undertaking some fit-out modifications. We also upgraded our case management system Resolve, as well as starting a project to enhance its functionality, which will be completed in early 2010–2011.

We also piloted desktop virtualisation to streamline IT processes and reduce IT costs. The pilot was successful and we are now implementing a virtual desktop environment. We upgraded our internal intranet, making it more user friendly, and also continued our project to redesign our website. We will receive \$314,000 capital funding in 2010–2011.

Liabilities

Our total liabilities at 30 June 2010 are \$2.675 million, an increase of \$669,000 over the previous year. Over 55% of this amount is the provision that we make for employee benefits and related on-costs, including accounting for untaken recreation (annual) leave which is valued at \$836,000. The Crown Entity accepts the liability for long service leave. We also had a liability to the consolidated fund of \$519,000. This liability is due to funds being drawn down against the appropriation but not needed.

Figure 60: Total expenses 2009–2010

| Expenses category | Total \$'000 |
|-------------------------------|---------------|
| Employee-related | 16,997 |
| Depreciation and amortisation | 330 |
| Other operating expenses | 3,808 |
| Total | 21,135 |

Performance indicator: Accounts paid on time

| Quarter | Paid \$'000 | Paid on time \$'000 | Target % | Result % |
|--------------|--------------|---------------------|-----------|------------|
| Sep 2009 | 1,573 | 1,573 | 98 | 100 |
| Dec 2009 | 1,740 | 1,740 | 98 | 100 |
| Mar 2010 | 2,154 | 2,154 | 98 | 100 |
| Jun 2010 | 2,637 | 2,637 | 98 | 100 |
| Total | 8,104 | 8,104 | 98 | 100 |

Note: this table does not include direct salary payments to staff, but includes some Employee-related payments such as payments to superannuation funds.

We owe about \$291,000 for goods or services that we have received but have not yet been invoiced. The value of accounts on hand at 30 June 2010 was \$93,195. Please see figure 61. We monitor the amounts that we owe on a regular basis to make sure that we are paying accounts within terms.

Audited financial statements

Our financial statements are prepared in accordance with legislative provisions and accounting standards. They are audited by the NSW Auditor-General (or delegate), who is required to express an opinion as to whether the statements fairly represent the financial position of our office. The audit report as well as the financial statements follow.

Figure 61: Analysis of accounts on hand at the end of each quarter

| | Sep 2009 | Dec 2009 | Mar 2010 | Jun 2010 |
|-------------------------------------|----------------|---------------|---------------|---------------|
| | \$ | \$ | \$ | \$ |
| Current (ie within due date) | 157,281 | 23,685 | 95,524 | 93,195 |
| Less than 30 days overdue | — | 3,976 | — | — |
| Between 30 days and 60 days overdue | — | — | — | — |
| Between 60 days and 90 days overdue | — | — | — | — |
| More than 90 days overdue | — | — | — | — |
| Total accounts on hand | 157,281 | 27,661 | 95,524 | 93,195 |



GPO BOX 12
Sydney NSW 200

INDEPENDENT AUDITOR'S REPORT

OMBUDSMAN'S OFFICE

To Members of the New South Wales Parliament

I have audited the accompanying financial statements of the Ombudsman's Office (the Department), which comprise the statement of financial position as at 30 June 2010, the statement of comprehensive income, statement of changes in equity, statement of cash flows, service group statements and a summary of compliance with financial directives for the year then ended, a summary of significant accounting policies and other explanatory notes.

Auditor's Opinion

In my opinion, the financial statements:

- present fairly, in all material respects, the financial position of the Department as at 30 June 2010, and its financial performance for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the *Public Finance and Audit Regulation 2010*

My opinion should be read in conjunction with the rest of this report.

Department Head's Responsibility 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 the Australian Accounting Interpretations) and the PF&A 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 on my audit. I conducted my audit 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 whether the financial statements are free from 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 the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Department's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Department Head, as well as evaluating the overall presentation of the financial statements.

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

My opinion does not provide assurance:

- about the future viability of the Department
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal controls
- about the assumptions used in formulating the budget figures disclosed in the financial statements.

Independence

In conducting this audit, the Audit Office of New South Wales has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PFBA Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.



Peter Archersdale
Auditor-General

22 September 2010
SYDNEY



NSW Ombudsman

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16 September 2010

Statement by the Ombudsman

Pursuant to section 45F of the *Public Finance and Audit Act 1983* and to the best of my knowledge and belief I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), the *Public Finance and Audit Act 1983*, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit Regulation 2010 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2010, and transactions for the year then ended; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

Bruce Barbour
Ombudsman

Start of the audited financial statements

Ombudsman's Office

Statement of comprehensive income for the year ended 30 June 2010

| | Notes | Actual 2010 \$'000 | Budget 2010 \$'000 | Actual 2009 \$'000 |
|---|-------|--------------------------|--------------------------|--------------------------|
| Expenses excluding losses | | | | |
| Operating expenses | | | | |
| Employee-related | 2(a) | 16,997 | 17,661 | 18,020 |
| Other operating expenses | 2(b) | 3,808 | 3,656 | 4,079 |
| Depreciation and amortisation | 2(c) | 330 | 364 | 506 |
| Total expenses excluding losses | | 21,135 | 21,681 | 22,605 |
| Revenue | | | | |
| Sale of goods and services | 3(a) | 317 | 82 | 162 |
| Investment revenue | 3(b) | 50 | 9 | 27 |
| Grants and contributions | 3(c) | – | – | 54 |
| Other revenue | 3(d) | 69 | 40 | 8 |
| Total revenue | | 436 | 131 | 251 |
| (Gain)/loss on disposal | 4 | 1 | – | – |
| Net cost of services | 17 | 20,700 | 21,550 | 22,354 |
| Government contributions | | | | |
| Recurrent appropriation | 5(a) | 19,833 | 19,827 | 19,969 |
| Capital appropriation | 5(b) | 751 | 785 | 543 |
| Acceptance by the Crown Entity of employee benefits and other liabilities | 6 | 948 | 860 | 1,333 |
| Total government contributions | | 21,532 | 21,472 | 21,845 |
| Surplus/(deficit) for the year | | 832 | (78) | (509) |
| Other comprehensive income | | | | |
| Other comprehensive income for the year | | – | – | – |
| Total comprehensive income for the year | | 832 | (78) | (509) |

Statement of changes in equity for the year ended 30 June 2010

| | Notes | Accumulated funds \$'000 | Asset revaluation surplus \$'000 | Other reserves \$'000 | Total \$'000 |
|---|-------|--------------------------------|---|-----------------------------|-----------------|
| Balance at 1 July 2009 | | (144) | – | – | (144) |
| Surplus/(deficit) for the year | | 832 | – | – | 832 |
| Other comprehensive income | | | | | |
| Total other comprehensive income | | – | – | – | – |
| Total comprehensive income for the year | | 832 | – | – | 832 |
| Balance at 30 June 2010 | | 688 | – | – | 688 |
| Balance at 1 July 2008 | | 365 | – | – | 365 |
| Surplus/(deficit) for the year | | (509) | – | – | (509) |
| Other comprehensive income | | | | | |
| Total other comprehensive income | | – | – | – | – |
| Total comprehensive income for the year | | (509) | – | – | (509) |
| Balance at 30 June 2009 | | (144) | – | – | (144) |

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of financial position as at 30 June 2010

| | Notes | Actual 2010 \$'000 | Budget 2010 \$'000 | Actual 2009 \$'000 |
|--------------------------------------|-------|--------------------------|--------------------------|--------------------------|
| Assets | | | | |
| Current assets | | | | |
| Cash and cash equivalents | 8 | 1,084 | 185 | 194 |
| Receivables | 10 | 628 | 241 | 435 |
| Total current assets | | 1,712 | 426 | 629 |
| Non-current assets | | | | |
| Plant and equipment | 11 | 1,173 | 1,338 | 873 |
| Intangible assets | 12 | 478 | 316 | 360 |
| Total non-current assets | | 1,651 | 1,654 | 1,233 |
| Total assets | | 3,363 | 2,080 | 1,862 |
| Liabilities | | | | |
| Current liabilities | | | | |
| Payables | 13 | 585 | 716 | 457 |
| Provisions | 14 | 1,482 | 1,529 | 1,468 |
| Other | 15 | 590 | 36 | 63 |
| Total current liabilities | | 2,657 | 2,281 | 1,988 |
| Non-current liabilities | | | | |
| Provisions | 14 | 18 | 26 | 18 |
| Other | | – | (5) | – |
| Total non-current liabilities | | 18 | 21 | 18 |
| Total liabilities | | 2,675 | 2,302 | 2,006 |
| Net assets/(net liabilities) | | 688 | (222) | (144) |
| Equity | | | | |
| Accumulated funds | | 688 | (222) | (144) |
| Total equity | | 688 | (222) | (144) |

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of cash flows for the year ended 30 June 2010

| | Notes | Actual 2010 \$'000 | Budget 2010 \$'000 | Actual 2009 \$'000 |
|---|-------|--------------------------|--------------------------|--------------------------|
| Cash flows from operating activities | | | | |
| Payments | | | | |
| Employee-related | | (15,950) | (16,635) | (16,525) |
| Other | | (4,368) | (3,396) | (4,728) |
| Total payments | | (20,318) | (20,031) | (21,253) |
| Receipts | | | | |
| Sale of goods and services | | 358 | 82 | 177 |
| Interest received | | 23 | 18 | 56 |
| Other | | 475 | 95 | 543 |
| Total receipts | | 856 | 195 | 776 |
| Cash flows from Government | | | | |
| Recurrent appropriation | | 20,352 | 19,827 | 19,969 |
| Capital appropriation (excluding equity appropriations) | | 751 | 785 | 543 |
| Net cash flows from Government | 17 | 21,103 | 20,612 | 20,512 |
| Net cash flows from operating activities | | 1,641 | 776 | 35 |
| Cash flows from investing activities | | | | |
| Purchases of leasehold improvements, plant and equipment and infrastructure systems | | (751) | (785) | (548) |
| Net cash flows from investing activities | | (751) | (785) | (548) |
| Net increase/(decrease) in cash | | 890 | (9) | (513) |
| Opening cash and cash equivalents | | 194 | 194 | 707 |
| Closing cash and cash equivalents | 8 | 1,084 | 185 | 194 |

The accompanying notes form part of these financial statements.

Ombudsman's Office

Supplementary financial statements – Service group statements for the year ended 30 June 2010

| | Service group 1* | | Service group 2* | | Service group 3* | | Service group 4* | | Not attributable* | | Total | |
|--|------------------|----------------|------------------|----------------|------------------|----------------|------------------|----------------|-------------------|-----------------|----------------|----------------|
| | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 |
| Agency's expenses and revenues | | | | | | | | | | | | |
| Expenses excluding losses | | | | | | | | | | | | |
| Operating expenses | | | | | | | | | | | | |
| Employee-related | 7,727 | 8,363 | 3,440 | 3,723 | 5,600 | 5,661 | 230 | 273 | – | – | 16,997 | 18,020 |
| Other operating expenses | 1,770 | 1,922 | 788 | 856 | 1,247 | 1,301 | 3 | – | – | – | 3,808 | 4,079 |
| Depreciation and amortisation | 155 | 239 | 69 | 106 | 106 | 161 | – | – | – | – | 330 | 506 |
| Total expenses excluding losses | 9,652 | 10,524 | 4,297 | 4,685 | 6,953 | 7,123 | 233 | 273 | – | – | 21,135 | 22,605 |
| Revenue | | | | | | | | | | | | |
| Sale of goods and services | (149) | (76) | (67) | (34) | (101) | (52) | – | – | – | – | (317) | (162) |
| Investment revenue | (24) | (13) | (10) | (5) | (16) | (9) | – | – | – | – | (50) | (27) |
| Grants and contributions | – | (26) | – | (11) | – | (17) | – | – | – | – | – | (54) |
| Other revenue | (33) | (4) | (14) | (2) | (22) | (2) | – | – | – | – | (69) | (8) |
| Total revenue | (206) | (119) | (91) | (52) | (139) | (80) | – | – | – | – | (436) | (251) |
| Loss on disposal | 1 | – | – | – | – | – | – | – | – | – | 1 | – |
| Net cost of services | 9,447 | 10,405 | 4,206 | 4,633 | 6,814 | 7,043 | 233 | 273 | – | – | 20,700 | 22,354 |
| Government contributions** | – | – | – | – | – | – | – | – | (21,532) | (21,845) | (21,532) | (21,845) |
| (Surplus)/deficit for the year | 9,447 | 10,405 | 4,206 | 4,633 | 6,814 | 7,043 | 233 | 273 | (21,532) | (21,845) | (832) | 509 |
| Total comprehensive income | 9,447 | 10,405 | 4,206 | 4,633 | 6,814 | 7,043 | 233 | 273 | (21,532) | (21,845) | (832) | 509 |

Ombudsman's Office

Supplementary financial statements – Service group statements cont'd.

| | Service group 1* | | | | Service group 2* | | | | Service group 3* | | | | Service group 4* | | | | Not attributable* | | | | Total | |
|-------------------------------|------------------|----------------|----------------|----------------|------------------|----------------|----------------|----------------|------------------|----------------|----------------|----------------|------------------|----------------|----------------|----------------|-------------------|----------------|----------------|----------------|-------|--|
| | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | 2010 \$'000 | 2009 \$'000 | | |
| Agency's assets & liabilities | | | | | | | | | | | | | | | | | | | | | | |
| Current assets | | | | | | | | | | | | | | | | | | | | | | |
| Cash and cash equivalents | 511 | 91 | 227 | 41 | 346 | 62 | | | | | | | | | | | | | | | | |
| Receivables | 296 | 205 | 132 | 91 | 200 | 139 | | | | | | | | | | | | | | | | |
| Total current assets | 807 | 296 | 359 | 132 | 546 | 201 | | | | | | | | | | | | | | | | |
| Non-current assets | | | | | | | | | | | | | | | | | | | | | | |
| Plant and equipment | 553 | 412 | 246 | 183 | 374 | 278 | | | | | | | | | | | | | | | | |
| Intangibles | 226 | 170 | 100 | 75 | 152 | 115 | | | | | | | | | | | | | | | | |
| Total non-current assets | 779 | 582 | 346 | 258 | 526 | 393 | | | | | | | | | | | | | | | | |
| Total assets | 1,586 | 878 | 705 | 390 | 1,072 | 594 | | | | | | | | | | | | | | | | |
| Current liabilities | | | | | | | | | | | | | | | | | | | | | | |
| Payables | 276 | 215 | 123 | 96 | 186 | 146 | | | | | | | | | | | | | | | | |
| Provisions | 698 | 692 | 311 | 308 | 473 | 468 | | | | | | | | | | | | | | | | |
| Other | 278 | 30 | 124 | 13 | 188 | 20 | | | | | | | | | | | | | | | | |
| Total current liabilities | 1,252 | 937 | 558 | 417 | 847 | 634 | | | | | | | | | | | | | | | | |
| Non-current liabilities | | | | | | | | | | | | | | | | | | | | | | |
| Provisions | 8 | 8 | 4 | 4 | 6 | 6 | | | | | | | | | | | | | | | | |
| Total non-current liabilities | 8 | 8 | 4 | 4 | 6 | 6 | | | | | | | | | | | | | | | | |
| Total liabilities | 1,260 | 945 | 562 | 421 | 853 | 640 | | | | | | | | | | | | | | | | |
| Net assets/(liabilities) | 326 | (67) | 143 | (31) | 219 | (46) | | | | | | | | | | | | | | | | |

* The names and purposes of each service group are summarised in Note 7.

** Appropriations are made on an agency basis and not to individual service groups. Consequently, government contributions must be included in the 'Not attributable' column. The office does not budget internally around service groups, so the figure reported are estimates only and can vary depending on work load, priorities and staffing levels.

Ombudsman's Office

Summary of compliance with financial directives for the year ended 30 June 2010

| | 2010 | | | 2009 | | |
|--|------------------------|--|----------------------|--|------------------------|----------------------|
| | Recurrent app'n \$'000 | Expenditure/ net claim on consolidated fund \$'000 | Capital app'n \$'000 | Expenditure/ net claim on consolidated fund \$'000 | Recurrent app'n \$'000 | Capital app'n \$'000 |
| Original budget appropriation/expenditure | | | | | | |
| > Appropriation Act | 19,827 | 19,827 | 785 | 751 | 19,986 | 559 |
| > Additional appropriations | - | - | - | - | - | - |
| > Section 21A PF&AA – special appropriation | - | - | - | - | - | - |
| > Section 24 PF&AA – transfers of functions between departments | - | - | - | - | - | - |
| > Section 26 PF&AA – Commonwealth specific purpose payments | - | - | - | - | - | - |
| | 19,827 | 19,827 | 785 | 751 | 19,986 | 559 |
| Other appropriations/expenditure | | | | | | |
| > Treasurer's advance | 763 | 525 | - | - | - | - |
| > Section 22 – expenditure for certain works and services | - | - | - | - | - | - |
| > Transfers to/from another agency (s.31 of the Appropriation Act) | - | - | - | - | 2 | - |
| > Other (payroll tax adjustments) | - | - | - | - | (19) | - |
| | 763 | 525 | - | - | (17) | - |
| Total appropriations/expenditure/net claim on consolidated fund | 20,590 | 19,833 | 785 | 751 | 19,969 | 543 |
| Amount drawn down against appropriation | | 20,352 | | 751 | 19,969 | 543 |
| Liability to consolidated fund* | | 519 | | - | - | - |

The Summary of compliance is based on the assumption that Consolidated fund monies are spent first (except where otherwise identified or prescribed).

* If there is a 'Liability to consolidated fund', this represents the difference between the 'Amount drawn down against appropriation' and the 'Total expenditure/net claim on consolidated fund'.

1 Summary of significant accounting policies

(a) Reporting entity

The Ombudsman's Office is a NSW Government Department. Our role is to make sure that public and private sector agencies and employees within our jurisdiction fulfill their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

The office is a not-for-profit entity (as profit is not its principal objective) and we have no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial statements for the year ended 30 June 2010 has been authorised for issue by the NSW Ombudsman on 16 September 2010.

(b) Basis of preparation

Our financial statement is a general purpose financial report, which has been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and Regulations; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

The financial statements have been prepared in accordance with the historical cost convention.

Judgments, key assumptions and estimations made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

The accrual basis of accounting and applicable accounting standards have been adopted.

(c) Statement of compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Insurance

Our insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund Manager, and is calculated by our past claims experience, overall public sector experience and ongoing actuarial advice.

(e) Accounting for the Goods and Services Tax (GST)

Incomes, expenses and assets are recognised net of GST, except that:

- the amount of GST incurred by us as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the acquisition of an asset or as part of an item of expense, and
- receivables and payables are stated with GST included.

Cash flows are included in the statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(f) Income recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

(i) Parliamentary appropriations and contributions

Parliamentary appropriations and contributions from other bodies (including grants) are generally recognised as income when we obtain control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to this is when appropriations remain unspent at year end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are accounted for as liabilities rather than revenue. The liability is disclosed in Note 15 as part of 'Other current liabilities'.

(ii) Sale of goods

Revenue from the sale of goods such as publications are recognised as revenue when we transfer the significant risks and rewards of ownership of the assets.

(iii) Rendering of services

Revenue from the rendering of services such as conducting training programs, is recognised when the service is provided or by reference to the stage of completion, for instance based on labour hours incurred to date.

(iv) Investment revenue

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

(g) Assets**(i) Acquisitions of assets**

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by us.

Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

(ii) Capitalisation thresholds

Individual plant and equipment and intangible assets costing \$5,000 and above are capitalised. For those items that form part of our IT network, the threshold is \$1,000 individually.

(iii) Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-1). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment*.

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative uses, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market buying price, the best indicator of which is depreciated replacement cost.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against each other within a class of non-current assets, but not otherwise.

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset revaluation reserve in respect of that asset is transferred to accumulated funds.

Our assets are short-lived and their costs approximate their fair values.

(iv) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, we are effectively exempted from AASB 136 *Impairment of Assets* and impairment testing. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

(v) Depreciation of plant and equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

Depreciation rates used:

| | |
|------------------------|-----|
| ‣ Computer hardware | 25% |
| ‣ Office equipment | 20% |
| ‣ Furniture & fittings | 10% |

Amortisation rates used:

| | |
|--------------------------|---|
| ‣ Leasehold improvements | Useful life of 10 years (or to the end of the lease, if shorter). |
|--------------------------|---|

(vi) Restoration costs

Whenever applicable, the estimated cost of dismantling and removing an asset and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

(vii) Maintenance

The costs of day-to-day servicing or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.

(viii) Leased assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Operating lease payments are charged to the statement of comprehensive income in the periods in which they are incurred.

Lease incentives received on entering non-cancellable operating leases are recognised as a lease liability. This liability is reduced on a straight line basis over the lease term.

(ix) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation.

Our intangible assets are amortised using the straight-line method over a period of 5 years.

The amortisation rates used are:

- Computer software 20%.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss. However, as a not-for-profit entity, the office is effectively exempted from impairment testing (refer to Note 1(g)(iv)).

(x) Receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets are recognised initially at fair value, usually based on the transaction cost or face value.

Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are recognised in the surplus/(deficit) for the year when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(h) Liabilities**(i) Payables**

These amounts represent liabilities for goods and services provided to us as well as other amounts. Payables are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(ii) Employee benefits and other provisions**(a) Salaries and wages, annual leave, sick leave and on-costs**

Liabilities for salaries and wages (including non-monetary benefits), and annual leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Long-term annual leave that is not expected to be taken within 12 months is measured at the present value in accordance with AASB119 *Employee Benefits*. Market yields on government bonds rates of 5.095% are used to discount long-term annual leave.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

The outstanding amounts of payroll tax, workers' compensation, insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised.

(b) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. We account for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities'.

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits*. This is based on the application of certain factors (specified in NSWTC 09/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for defined contribution superannuation schemes (Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For defined benefit superannuation schemes (State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(i) Equity**(i) Accumulated Funds**

The category accumulated funds includes all current and prior period retained funds.

(ii) Separate reserve accounts are recognised in the financial statements only if such accounts are required by specific legislation or Australian Accounting Standards (asset revaluation reserve and foreign currency translation reserve).

(j) Budgeted amounts

The budgeted amounts are drawn from the budgets formulated at the beginning of the financial year with any adjustments for the effects of additional appropriations approved under s.21A, s.24 and s.26 of the *Public Finance and Audit Act 1983*.

The budgeted amounts in the statement of comprehensive income and statement of cash flow are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the statement of financial position, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; that is per audited financial report (rather than carried forward estimates).

(k) Comparative information

Except when an Accounting Standard permits or requires otherwise, comparative information is disclosed in respect of the previous period for all amounts reported in the financial statements.

(l) New Australian Accounting Standards issued but not effective

At the reporting date, the following new Accounting Standards (which include Australian Accounting Interpretations) have not been applied and are not yet effective as per Treasury mandate:

- AASB 7 Financial Instruments: Disclosure – February 2010;
- AASB 139 Financial instruments: Recognition and measurement October 2009;
- Interpretation 14 AASB 119 – The limit on a Defined Benefit Asset, minimum funding requirements and their interaction June 2009;
- Interpretation 19 Extinguished financial liabilities with Equity Instruments December 2009;
- Withdrawal of AAS 29 Financial Reporting by Government Departments – AASB undertook a short-term review of the Australian-specific standards, including AAS 29 and decided to relocate the requirement (where necessary) substantively unamended (with some exceptions), into topic-based statements.

The office had adopted AASB 2009–6 amendments to Australian Accounting Standards which make changes to financial statements terminology to better align with IFRS requirements. Our primary financial statements have been replaced with 'statement of comprehensive income', 'statement of financial position' and 'statement of changes in equity'.

(m) Going concern

The Ombudsman's Office is a 'going concern' public sector agency. We will receive Parliamentary appropriation as outlined in the NSW Budget Papers for 2010–2011 in fortnightly instalments from the Crown Entity.

As at 30 June 2010 our total assets exceeded our total liabilities, although our current liabilities were more than our current assets.

Current liabilities include provision for leave of \$1.4 million of which \$1,112,000 is expected to be payable within the next 12 months.

Also refer to Note 14.

2 Expenses excluding losses**(a) Employee-related expenses**

Salaries and wages (including recreation leave)
Maintenance – Employee-related*
Superannuation – defined benefit plans
Superannuation – defined contribution plans
Long service leave
Workers' compensation insurance
Payroll tax and fringe benefit tax
Payroll tax on superannuation
Payroll tax on long service leave

| | 2010 \$'000 | 2009 \$'000 |
|---|----------------|----------------|
| Salaries and wages (including recreation leave) | 13,961 | 14,512 |
| Maintenance – Employee-related* | 82 | 76 |
| Superannuation – defined benefit plans | 425 | 445 |
| Superannuation – defined contribution plans | 1,042 | 1,031 |
| Long service leave | 500 | 865 |
| Workers' compensation insurance | 80 | 128 |
| Payroll tax and fringe benefit tax | 798 | 846 |
| Payroll tax on superannuation | 80 | 82 |
| Payroll tax on long service leave | 29 | 35 |
| | 16,997 | 18,020 |

* Reconciliation – Total maintenance

| | 2010 \$'000 | 2009 \$'000 |
|---|----------------|----------------|
| (b) Other operating expenses include the following: | | |
| Auditor's remuneration – audit of the financial statements | 25 | 25 |
| Operating lease rental expense – minimum lease payments | 1,873 | 1,824 |
| Insurance | 12 | 12 |
| Fees | 654 | 812 |
| Telephones | 97 | 142 |
| Stores | 113 | 104 |
| Training | 101 | 125 |
| Printing | 107 | 135 |
| Travel | 415 | 412 |
| Books, periodicals & subscriptions | 49 | 56 |
| Advertising | 3 | 20 |
| Energy | 53 | 52 |
| Motor vehicle | 25 | 30 |
| Postal and courier | 26 | 31 |
| Maintenance – non-Employee-related* | 173 | 206 |
| Other | 82 | 93 |
| | 3,808 | 4,079 |
| * Reconciliation – Total maintenance | | |
| Maintenance expenses – contracted labour and other | 173 | 206 |
| Employee-related maintenance expense included in Note 2(a) | 82 | 76 |
| Total maintenance expenses included in Notes 2(a) and 2(b) | 255 | 282 |
| (c) Depreciation and amortisation expense | | |
| Depreciation | | |
| Plant, equipment and leasehold improvements | 209 | 320 |
| Total depreciation expense | 209 | 320 |
| Amortisation | | |
| Intangible assets | 121 | 186 |
| Total amortisation expense | 121 | 186 |
| Total depreciation and amortisation expenses | 330 | 506 |
| 3 Revenue | | |
| (a) Sale of goods and services | | |
| Sale of publications | 1 | 1 |
| Rendering of services | 316 | 161 |
| | 317 | 162 |
| (b) Investment revenue | | |
| Interest | 50 | 27 |
| | 50 | 27 |
| (c) Grants and contributions | | |
| Unreasonable Complainants Conduct Project | – | 19 |
| Young People and Internet Project | – | 35 |
| | – | 54 |
| (d) Other revenue | | |
| Miscellaneous | 69 | 8 |
| | 69 | 8 |

4 Gain/(loss) on disposal

Loss on disposal

The office incurred a \$2,000 loss when a laptop was lost during transit.
A gain of \$770 was made on the disposal of a photocopier.

5 Appropriations**(a) Recurrent appropriation**

Total recurrent draw-downs from Treasury (per Summary of compliance)
Less: Liability to Consolidated Fund (per Summary of compliance)

Comprising: Recurrent appropriations (per Statement of comprehensive income)

(b) Capital appropriation

Total capital draw-downs from Treasury (per Summary of compliance)

Comprising: Capital appropriations (per Statement of comprehensive income)

6 Acceptance by the Crown Entity of employee benefits and other liabilities

The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:

- Superannuation – defined benefit
- Long service leave
- Payroll tax on superannuation

7 Service groups of the agency**(a) Service group 1: complaint advice, referral, resolution or investigation**

Objectives: This service group covers providing independent complaint advice and referral, handling complaints and dealing with protected disclosures. It also includes hearing witness protection appeals and conducting information and education programs for agencies and the community.

(b) Service group 2: oversight of agency investigation of complaints

Objectives: This service group covers oversight of the NSW Police Force's handling of complaints about police and oversight of agency handling of allegations of child abuse.

(c) Service group 3: scrutiny of complaint-handling and other systems

Objectives: This service group covers scrutiny of systems to prevent child abuse, dealing with police complaints and certain systems in the community services sector. It also includes review of the situation of vulnerable people, review of compliance with certain legislation and coordination of the official community visitor program.

(d) Service group 4: review of implementation of legislation

Objectives: This service group reviews implementation of legislation that expands the powers of NSW Police Force.

| | 2010 \$'000 | 2009 \$'000 |
|--|----------------|----------------|
| | 1 | – |
| | 1 | – |
| | | |
| | 20,352 | 19,969 |
| | 519 | – |
| | 19,833 | 19,969 |
| | | |
| | 19,833 | 19,969 |
| | 19,833 | 19,969 |
| | | |
| | 751 | 543 |
| | 751 | 543 |
| | | |
| | 751 | 543 |
| | 751 | 543 |
| | | |
| | 425 | 445 |
| | 500 | 865 |
| | 23 | 23 |
| | 948 | 1,333 |

| | 2010 \$'000 | 2009 \$'000 |
|--|----------------|----------------|
| 8 Current assets – cash and cash equivalents | | |
| Cash at bank and on hand | 1,084 | 194 |
| | 1,084 | 194 |
| For the purposes of the statement of cash flows, cash and cash equivalents include cash at bank and on hand. | | |
| Cash and cash equivalent assets recognised in the statement of financial position are reconciled at the end of the year to the statement of cash flows as follows: | | |
| ‣ Cash and cash equivalents (per statement of financial position) | 1,084 | 194 |
| ‣ Closing cash and cash equivalents (per statement of cash flows). | 1,084 | 194 |
| Refer Note 19 for details regarding credit risk, liquidity risk and market risk arising from financial instruments. | | |
| 9 Restricted assets – cash | | |
| Unreasonable Complainants Conduct Project | 43 | 43 |
| Liability to Consolidated Fund | 519 | – |
| | 562 | 43 |
| As discussed in previous years, the Ombudsman received funding from the Commonwealth and other State Ombudsman offices as well as the New Zealand Ombudsman for the Unreasonable Complainant Conduct project. This project has now commenced phase 2. Amounts not expensed at 30 June 2010 are treated as a restricted asset for use in future year. | | |
| 10 Current assets – receivables | | |
| Transfer of leave | – | 3 |
| Workshops | 34 | 7 |
| Bank interest | 34 | 7 |
| GST receivable | 97 | 82 |
| Legal fees | 36 | 36 |
| Prepayments | 427 | 300 |
| | 628 | 435 |
| We consider all amounts to be collectible and as such, no allowance for impairment was established. | | |
| Details regarding credit risk, liquidity risk and market risk, including financial assets that are either past due or impaired, are disclosed in Note 19. | | |
| Prepayments | | |
| Salaries and wages | 18 | 5 |
| Maintenance | 96 | 103 |
| Prepaid rent | 157 | 162 |
| Worker's compensation insurance | 81 | – |
| Subscription/membership | 12 | 14 |
| Training | 19 | – |
| Motor vehicle | 1 | 2 |
| Employee assistance program | 6 | 6 |
| Insurance | 16 | – |
| Cleaning | 8 | – |
| Travel | 3 | – |
| Other | 10 | 8 |
| | 427 | 300 |

11 Non-current assets – plant and equipment

| | Plant and equipment \$'000 | Leasehold improvement \$'000 | Furniture and fitting \$'000 | Total \$'000 |
|-------------------------------------|----------------------------------|------------------------------------|------------------------------------|-----------------|
| At 1 July 2009 – fair value | | | | |
| Gross carrying amount | 1,572 | 1,285 | 554 | 3,411 |
| Accumulated depreciation | (1,339) | (881) | (318) | (2,538) |
| Net carrying amount | 233 | 404 | 236 | 873 |
| At 30 June 2010 – fair value | | | | |
| Gross carrying amount | 1,781 | 1,356 | 737 | 3,874 |
| Accumulated depreciation | (1,401) | (928) | (372) | (2,701) |
| Net carrying amount | 380 | 428 | 365 | 1,173 |

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

Year ended 30 June 2010

| | | | | |
|---|------------|------------|------------|--------------|
| Net carrying amount at start of year | 233 | 404 | 236 | 873 |
| Additions | 258 | 71 | 183 | 512 |
| Disposals | (49) | – | – | (49) |
| Depreciation write back on disposal | 46 | – | – | 46 |
| Depreciation expense | (108) | (47) | (54) | (209) |
| Net carrying amount at end of year | 380 | 428 | 365 | 1,173 |

We disposed of nine printers, two laptops and other office equipment at an original cost of \$48,552 but which had a written down values of \$2,222 at the time of disposal.

At 1 July 2008 – fair value

| | | | | |
|----------------------------|------------|------------|------------|------------|
| Gross carrying amount | 1,605 | 1,092 | 512 | 3,209 |
| Accumulated depreciation | (1,280) | (809) | (270) | (2,359) |
| Net carrying amount | 325 | 283 | 242 | 850 |

At 30 June 2009 – fair value

| | | | | |
|----------------------------|------------|------------|------------|------------|
| Gross carrying amount | 1,572 | 1,285 | 554 | 3,411 |
| Accumulated depreciation | (1,339) | (881) | (318) | (2,538) |
| Net carrying amount | 233 | 404 | 236 | 873 |

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

Year ended 30 June 2009

| | | | | |
|---|------------|------------|------------|------------|
| Net carrying amount at start of year | 325 | 283 | 242 | 850 |
| Additions | 108 | 193 | 42 | 343 |
| Disposals | (141) | – | – | (141) |
| Depreciation write back on disposal | 141 | – | – | 141 |
| Depreciation expense | (200) | (72) | (48) | (320) |
| Net carrying amount at end of year | 233 | 404 | 236 | 873 |

12 Non-current assets – intangible assets

| | 1 July 2009 \$'000 | 1 July 2008 \$'000 | 30 June 2010 \$'000 | 30 June 2009 \$'000 |
|----------------------------|--------------------------|--------------------------|---------------------------|---------------------------|
| Software | | | | |
| Gross carrying amount | 3,080 | 2,875 | 3,116 | 3,080 |
| Accumulated amortisation | (2,720) | (2,534) | (2,638) | (2,720) |
| Net carrying amount | 360 | 341 | 478 | 360 |

| | 2010 \$'000 | 2009 \$'000 |
|--|----------------|----------------|
| Reconciliation | | |
| A reconciliation of the carrying amount of software at the beginning of and end of financial years is set out below: | | |
| Net carrying amount at start of year | 360 | 341 |
| Disposals | (203) | – |
| Depreciation write back on disposal | 203 | – |
| Additions | 239 | 205 |
| Amortisation expense | (121) | (186) |
| Net carrying amount at end of year | 478 | 360 |
| In June, we disposed of obsolete software after a consultation with our IT department, the original costs of the software was \$202,635, but had a nil written down value at the time of disposal. | | |
| 13 Current liabilities – payables | | |
| Accrued salaries, wages and on-costs | 294 | 211 |
| Creditors | 291 | 246 |
| | 585 | 457 |
| 14 Current/non-current liabilities – provisions | | |
| Current employee benefits and related on-costs | | |
| Recreation leave | 836 | 899 |
| Annual leave loading | 170 | 167 |
| Payroll tax on recreation leave | 47 | 49 |
| Workers' compensation and superannuation on recreation leave | 69 | 11 |
| Payroll tax on long service leave | 180 | 171 |
| Other on-costs on long service leave | 180 | 171 |
| | 1,482 | 1,468 |
| Non-current employee benefits and related on-costs | | |
| Payroll tax on long service leave | 9 | 9 |
| Other on-costs on long service leave | 9 | 9 |
| | 18 | 18 |
| Aggregate employee benefits and related on-costs | | |
| Provisions – current | 1,482 | 1,468 |
| Provisions – non-current | 18 | 18 |
| Accrued salaries, wages and on-costs (Note 13) | 294 | 211 |
| | 1,794 | 1,697 |

The value of annual leave and associated on-costs expected to be taken within 12 months is \$1,072,000. The office has a proactive annual leave management program, whereby all staff are encouraged to take their full entitlement each year.

The value of long service leave on-costs expected to be settled within 12 months is \$40,000 and \$338,000 after 12 months.

15 Current/non-current liabilities – other

Current

| | | |
|---|------------|-----------|
| Unreasonable Complainants Conduct Project | 43 | 43 |
| Prepaid income | 28 | 11 |
| Liability to Consolidated Fund | 519 | – |
| Lease incentive | – | 9 |
| | 590 | 63 |

16 Commitments for expenditure

(a) Operating lease commitments

Future non-cancellable operating lease rentals not provided for and payable:

| | | |
|---|---------------|--------------|
| Not later than one year | 2,636 | 2,011 |
| Later than one year and not later than five years | 8,812 | 2,014 |
| Total (including GST) | 11,448 | 4,025 |

The leasing arrangements are generally for leasing of property, which is a non-cancellable operating lease with rent payable monthly in advance. During the year, we exercised our option to extend our accommodation lease for a further five-year term. The total operating lease commitments include GST input tax credits of \$1,040,789 (2009: \$365,894) which are expected to be recoverable from the Australian Taxation Office.

16 Commitments for expenditure cont'd.**(b) Commitments for Other Expenditure**

Future expenses not provided for and payable:

Not later than one year

Total (including GST)

| 2010 \$'000 | 2009 \$'000 |
|----------------|----------------|
| | |
| 82 | 12 |
| 82 | 12 |

We have purchase commitments of \$82,000 included GST input tax credits of \$6,941 (2009: \$1,067) which are expected to be recoverable from the Australian Taxation Office.

17 Reconciliation of cash flows from operating activities to net cost of services

| | | |
|---|-----------------|-----------------|
| Net cash from operating activities | 1,641 | 35 |
| Cash flows from Government/Appropriations | (21,103) | (20,512) |
| Acceptance by the Crown Entity of employee benefits and other liabilities | (948) | (1,333) |
| Depreciation and amortisation | (330) | (506) |
| Decrease/(increase) in provisions | (15) | (87) |
| Increase/(decrease) in prepayments | 127 | 148 |
| Increase in payables | (128) | (100) |
| Increase/(decrease) in receivables | 66 | (73) |
| Decrease/(increase) in other liabilities | (8) | 74 |
| Net gain/(loss) on sale of plant and equipment | (2) | — |
| Net cost of services | (20,700) | (22,354) |

18 Budget review**Net Cost of Services**

The actual net cost of services is lower than budget by \$850,000 due to a number of factors. We took a proactive approach to revenue generation during the year, particularly by increasing our external training programs. This resulted in a \$305,000 increase in our revenue, over budget. The benefits of our office restructure also contributed to the lower Net Cost of Service, as did the impact of the public sector recruitment freeze. Our overall Employee-related expenses were \$664,000 less than budget. Our other operating expenses increased by \$152,000 when compared to our budget mainly due to the increases in our rental and associated expenses. The office also received \$525,000 additional funding from NSW Treasury for three new functions.

Assets and Liabilities

Current assets are higher than budget by \$1,286,000 which significantly improved our cash flow this year. Our total liabilities were \$373,000 higher than budget due to a combination of lower leave liabilities and unspent appropriation needing to be returned to the Crown Entity.

Cash flows

Net cash flows from operating activities were higher than budget by \$865,000. Total payments were higher than budget by \$287,000 and total receipts by \$661,000. Government contributions were higher than budget by \$491,000, due to additional funding being provided for three new functions.

19 Financial instruments

The office's principal financial instruments which are outlined below, arise directly from our operations. We do not enter into or trade financial instruments for speculative purposes. We do not use financial derivatives.

(a) Financial instrument categories

| Financial instrument categories | | | Carrying Amount | |
|---------------------------------|------|--|-----------------|----------------|
| Class | Note | Category | 2010 \$'000 | 2009 \$'000 |
| Financial assets | | | | |
| Cash and cash equivalents | 8 | N/A | 1,084 | 194 |
| Receivables ¹ | 10 | Receivables (at amortised cost) | 104 | 53 |
| Financial liabilities | | | | |
| Payables ² | 13 | Financial liabilities measured at amortised cost | 585 | 457 |

Notes

¹ Excludes statutory receivables and prepayments (not within scope of AASB 7).

² Excludes statutory payables and unearned revenue (not within scope of AASB 7).

(b) Credit risk

Credit risk arises when there is the possibility of the Ombudsman's debtors defaulting on their contractual obligations, resulting in a financial loss to the Ombudsman's Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment). Credit risk arises from the financial assets of the Ombudsman's Office, including cash, receivables and authority deposits. No collateral is held by the Ombudsman's Office and the office has not granted any financial guarantees.

Cash

Cash comprises cash on hand and bank balances within the Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate, adjusted for a management fee to Treasury.

Receivables – trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that we will not be able to collect all amounts due. The credit risk is the carrying amount (net of any allowance for impairment, if there is any). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 14-day terms.

Other assets

All other assets are current and are mainly prepaid rent and maintenance agreements. The credit risk is the carrying amount. There is no interest earned on prepayments.

| | Total* \$'000 | Past due but not impaired* \$'000 | Considered impaired* \$'000 |
|-----------------------------|------------------|--------------------------------------|--------------------------------|
| 2010 | | | |
| < 3 months overdue | 26 | 26 | – |
| 3 months – 6 months overdue | – | – | – |
| > 6 months overdue | 36 | 36 | – |
| 2009 | | | |
| < 3 months overdue | 5 | 5 | – |
| 3 months – 6 months overdue | 33 | 33 | – |
| > 6 months overdue | 3 | 3 | – |

* Each column in the table reports 'gross receivables'. The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7 and excludes receivables that are not past due and not impaired. Therefore, the 'total' will not reconcile to the receivables total recognised in the statement of financial position.

(c) Liquidity risk

Liquidity risk is the risk that the Ombudsman's Office will be unable to meet its payment obligations when they fall due. The office continuously manages risk through monitoring future cash flows planning to ensure adequate holding of high quality liquid assets.

Bank overdraft

The office does not have any bank overdraft facility. During the current and prior years, there were no defaults or breaches on any loans payable. No assets have been pledged as collateral. The office exposure to liquidity risk is deemed insignificant based on prior periods data and current assessment of risk.

Trade creditors and accruals

The liabilities are recognised for amounts due to be paid in the future for goods and services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. We did not pay any penalty interest during the year. The table below summarises the maturity profile of the Ombudsman's Office financial liabilities.

| Payables | Weighted average effective interest rate | Nominal amount# \$'000 | Interest rate exposure | | | Maturity dates | | |
|--------------------------------------|--|------------------------------|------------------------|---------------------------|-------------------------|----------------|------------|----------|
| | | | Fixed interest rate | Variable interest rate | Non-interest bearing | < 1 yr | 1–5 yrs | 5 yrs |
| 2010 | | | | | | | | |
| Accrued salaries, wages and on-costs | – | 294 | – | – | 294 | 294 | – | – |
| Creditors | – | 291 | – | – | 291 | 291 | – | – |
| | – | 585 | – | – | 585 | 585 | – | – |
| 2009 | | | | | | | | |
| Accrued salaries, wages and on-costs | – | 211 | – | – | 211 | 211 | – | – |
| Creditors | – | 246 | – | – | 246 | 246 | – | – |
| | – | 457 | – | – | 457 | 457 | – | – |

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earlier date on which the office can be required to pay.

19 Financial instruments cont'd.

(d) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Ombudsman's Office exposure to market risk are primarily through interest rate risk. The Ombudsman's Office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on the result and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Ombudsman's Office operates and the timeframe for the assessment (until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the statement of financial position date. The analysis is performed on the same basis for 2009. The analysis assumes that all other variables remain constant.

| | | -1% | | +1% | |
|---------------------------|------------------------------|-------------------|------------------|-------------------|------------------|
| | Carrying amount \$'000 | Results \$'000 | Equity \$'000 | Results \$'000 | Equity \$'000 |
| 2010 | | | | | |
| Financial assets | | | | | |
| Cash and cash equivalents | 1,084 | (11) | (11) | 11 | 11 |
| Receivables | 104 | N/A | N/A | N/A | N/A |
| Financial liabilities | | | | | |
| Payables | 585 | N/A | N/A | N/A | N/A |
| 2009 | | | | | |
| Financial assets | | | | | |
| Cash and cash equivalents | 194 | (2) | (2) | 2 | 2 |
| Receivables | 53 | N/A | N/A | N/A | N/A |
| Financial liabilities | | | | | |
| Payables | 457 | N/A | N/A | N/A | N/A |

(e) Fair value

Financial instruments are carried at cost. The fair value of all financial instruments approximates their carrying value.

| | 2010 | | 2009 | |
|------------------------------|------------------------------|-------------------------|------------------------------|-------------------------|
| | Carrying amount \$'000 | Fair value \$'000 | Carrying amount \$'000 | Fair value \$'000 |
| Financial assets | | | | |
| Cash | 1,084 | 1,084 | 194 | 194 |
| Account receivables | 104 | 104 | 53 | 53 |
| Financial liabilities | | | | |
| Account payables | 585 | 585 | 457 | 457 |

20 Contingent liabilities

There are no contingent assets or liabilities for the period ended 30 June 2010 (2009: nil).

21 After balance date events

There were no after balance date events (2009: nil).

End of the audited financial statements



Appendices

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The following appendices provide additional information on our activities and compliance reporting, complaint profiles, action taken on formal complaints, updates on legislative reviews and other resource information.

Appendix A

Profile of notifiable police complaints

Figure 62: Action taken on finalised notifiable complaints about police officers in 2009–2010

| Category | Allegations declined | Allegations subject of investigation | Allegations conciliated or informally resolved | Total |
|--|----------------------|--------------------------------------|--|------------|
| Arrest | | | | |
| Improper failure to arrest | 1 | 0 | 1 | 2 |
| Unlawful arrest | 34 | 26 | 10 | 70 |
| Unnecessary use of arrest | 25 | 25 | 12 | 62 |
| Total | 60 | 51 | 23 | 134 |
| Complaint-handling | | | | |
| Deficient complaint investigation | 5 | 9 | 0 | 14 |
| Fail to report misconduct | 3 | 69 | 11 | 83 |
| Fail to take a complaint | 4 | 8 | 3 | 15 |
| Inadequacies in informal resolution | 0 | 1 | 0 | 1 |
| Provide false information in complaint investigation | 2 | 87 | 9 | 98 |
| Total | 14 | 174 | 23 | 211 |
| Corruption/misuse of office | | | | |
| Explicit threats involving use of authority | 4 | 9 | 2 | 15 |
| Improper association | 28 | 72 | 14 | 114 |
| Misuse authority for personal benefit or benefit of an associate | 40 | 64 | 20 | 124 |
| Offer or receipt of bribe/corrupt payment | 10 | 14 | 0 | 24 |
| Protection of person(s) involved in criminal activity (other) | 1 | 0 | 0 | 1 |
| Total | 83 | 159 | 36 | 278 |
| Custody/detention | | | | |
| Death/serious injury in custody | 1 | 0 | 1 | 2 |
| Detained in excess of authorised time | 1 | 5 | 2 | 8 |
| Escape from custody | 0 | 10 | 1 | 11 |
| Fail to allow communication | 4 | 2 | 4 | 10 |
| Fail to caution/give information | 2 | 2 | 3 | 7 |
| Fail to meet requirements for vulnerable persons | 5 | 7 | 6 | 18 |
| Improper refusal to grant bail | 0 | 0 | 0 | 0 |
| Improper treatment | 16 | 35 | 17 | 68 |
| Inadequate monitoring of persons in custody | 0 | 0 | 3 | 3 |
| Unauthorised detention | 9 | 11 | 6 | 26 |
| Total | 38 | 72 | 43 | 153 |
| Driving-related offences/misconduct | | | | |
| Breach pursuit guidelines | 1 | 15 | 2 | 18 |
| Dangerous driving causing grievous bodily harm/death | 1 | 0 | 0 | 1 |
| Drink driving offence | 6 | 26 | 3 | 35 |
| Fail to conduct breath test/analysis | 1 | 0 | 0 | 1 |
| Negligent/dangerous driving | 6 | 19 | 7 | 32 |
| Unnecessary speeding | 4 | 13 | 3 | 20 |
| Total | 19 | 73 | 15 | 107 |
| Drug-related offences/misconduct | | | | |
| Cultivate/manufacture prohibited drug | 1 | 2 | 0 | 3 |
| Drinking/under the influence on duty | 0 | 8 | 2 | 10 |
| Protection of person(s) involved in drug activity | 31 | 18 | 7 | 56 |
| Supply prohibited drug | 15 | 32 | 5 | 52 |
| Use/possess restricted substance | 1 | 4 | 1 | 6 |
| Use/possession of prohibited drug | 10 | 35 | 6 | 51 |
| Total | 58 | 99 | 21 | 178 |

| Category | Allegations declined | Allegations subject of investigation | Allegations conciliated or informally resolved | Total |
|---|----------------------|--------------------------------------|--|-------|
| Excessive use of force | | | | |
| Assault | 238 | 303 | 142 | 683 |
| Firearm discharged | 2 | 2 | 1 | 5 |
| Firearm drawn | 3 | 10 | 3 | 16 |
| Improper use of handcuffs | 6 | 6 | 7 | 19 |
| Total | 249 | 321 | 153 | 723 |
| Information | | | | |
| Fail to create/maintain records | 10 | 61 | 19 | 90 |
| Falsify official records | 14 | 65 | 6 | 85 |
| Misuse email/internet | 2 | 25 | 10 | 37 |
| Provide incorrect or misleading information | 24 | 58 | 12 | 94 |
| Unauthorised access/disclosure/alteration of information/data | 1 | 9 | 2 | 12 |
| Unreasonable refusal to provide information | 1 | 2 | 0 | 3 |
| Unauthorised access to information/data | 12 | 136 | 16 | 164 |
| Unauthorised alteration to information/data | 0 | 3 | 0 | 3 |
| Unauthorised disclosure of information/data | 47 | 102 | 41 | 190 |
| Total | 111 | 461 | 106 | 678 |
| Inadequate/improper investigation | | | | |
| Delay in investigation | 13 | 18 | 12 | 43 |
| Fail to advise outcome of investigation | 5 | 0 | 2 | 7 |
| Fail to advise progress of investigation | 8 | 3 | 4 | 15 |
| Fail to investigate (customer service) | 153 | 84 | 57 | 294 |
| Improper/unauthorised forensic procedure | 0 | 0 | 1 | 1 |
| Improperly fail to investigate offence committed by another officer | 3 | 1 | 0 | 4 |
| Improperly interfere in investigation by another police officer | 5 | 26 | 5 | 36 |
| Inadequate investigation | 117 | 98 | 62 | 277 |
| Total | 304 | 230 | 143 | 677 |
| Misconduct | | | | |
| Allow unauthorised use of weapon | 1 | 1 | 0 | 2 |
| Conflict of interest | 9 | 43 | 11 | 63 |
| Detrimental action against a whistleblower | 1 | 1 | 1 | 3 |
| Dishonesty in recruitment/promotion | 2 | 5 | 0 | 7 |
| Disobey reasonable direction | 0 | 83 | 8 | 91 |
| Fail performance/conduct plan | 0 | 1 | 0 | 1 |
| Failure to comply with code of conduct (other) | 58 | 282 | 88 | 428 |
| Failure to comply with statutory obligation/procedure (other) | 22 | 223 | 48 | 293 |
| False claiming for duties/allowances | 2 | 19 | 2 | 23 |
| Inadequate management/maladministration | 14 | 79 | 18 | 111 |
| Inadequate security of weapon/appointments | 2 | 34 | 6 | 42 |
| Inappropriate intervention in civil dispute | 0 | 4 | 0 | 4 |
| Minor workplace-related misconduct | 3 | 40 | 7 | 50 |
| Other improper use of discretion | 7 | 7 | 4 | 18 |
| Unauthorised secondary employment | 2 | 41 | 4 | 47 |
| Unauthorised use of vehicle/facilities/equipment | 7 | 48 | 12 | 67 |
| Workplace harassment/victimisation/discrimination | 54 | 97 | 13 | 164 |
| Total | 184 | 1,008 | 222 | 1,414 |
| Other criminal conduct | | | | |
| Conspiracy to commit offence | 2 | 1 | 0 | 3 |
| Fraud | 4 | 7 | 1 | 12 |
| Murder/manslaughter | 1 | 1 | 0 | 2 |
| Officer in breach of domestic violence order | 2 | 1 | 0 | 3 |
| Officer perpetrator of domestic violence | 5 | 13 | 2 | 20 |
| Officer subject of application for domestic violence order | 4 | 26 | 3 | 33 |
| Other indictable offence | 54 | 68 | 3 | 125 |
| Other summary offence | 16 | 132 | 10 | 158 |
| Sexual assault/indecent assault | 14 | 26 | 2 | 42 |
| Total | 102 | 275 | 21 | 398 |

| Category | Allegations declined | Allegations subject of investigation | Allegations conciliated or informally resolved | Total |
|---|----------------------|--------------------------------------|--|--------------|
| Property/exhibits/theft | | | | |
| Damage to | 5 | 9 | 11 | 25 |
| Failure or delay in returning to owner | 20 | 6 | 9 | 35 |
| Loss of | 4 | 21 | 16 | 41 |
| Theft | 16 | 29 | 7 | 52 |
| Unauthorised removal/destruction/use of | 5 | 28 | 14 | 47 |
| Total | 50 | 93 | 57 | 200 |
| Prosecution-related inadequacies/misconduct | | | | |
| Adverse comment by Court/costs awarded | 3 | 12 | 7 | 22 |
| Fail to attend Court | 2 | 17 | 14 | 33 |
| Fail to check brief/inadequate preparation of brief | 1 | 16 | 20 | 37 |
| Fail to notify witness | 5 | 7 | 12 | 24 |
| Fail to serve brief of evidence | 2 | 16 | 10 | 28 |
| Failure to charge/prosecute | 14 | 2 | 13 | 29 |
| Failure to use Young Offenders Act | 0 | 1 | 0 | 1 |
| Improper prosecution | 35 | 12 | 9 | 56 |
| Mislead the Court | 9 | 6 | 3 | 18 |
| PIN/TIN inappropriately/wrongly issued | 16 | 0 | 1 | 17 |
| Total | 87 | 89 | 89 | 265 |
| Public justice offences | | | | |
| Fabrication of evidence (other than perjury) | 17 | 13 | 1 | 31 |
| Involuntary confession by accused | 1 | 2 | 0 | 3 |
| Make false statement | 21 | 19 | 6 | 46 |
| Other pervert the course of justice | 20 | 30 | 6 | 56 |
| Perjury | 7 | 2 | 4 | 13 |
| Withholding or suppression of evidence | 8 | 7 | 3 | 18 |
| Total | 74 | 73 | 20 | 167 |
| Search/entry | | | | |
| Failure to conduct search | 0 | 3 | 4 | 7 |
| Property missing after search | 1 | 1 | 1 | 3 |
| Unlawful entry | 9 | 7 | 0 | 16 |
| Unlawful search | 23 | 31 | 32 | 86 |
| Unreasonable/inappropriate conditions/damage | 11 | 11 | 10 | 32 |
| Wrongful seizure of property during search | 2 | 1 | 2 | 5 |
| Total | 46 | 54 | 49 | 149 |
| Service delivery | | | | |
| Breach domestic violence SOPs | 9 | 14 | 0 | 23 |
| Fail to provide victim support | 16 | 14 | 16 | 46 |
| Fail/delay attendance to incident/'000' | 13 | 5 | 8 | 26 |
| Harassment/intimidation | 138 | 42 | 84 | 264 |
| Improper failure to WIPE | 11 | 12 | 15 | 38 |
| Improper use of move on powers | 2 | 2 | 1 | 5 |
| Neglect of duty (not specified elsewhere) | 16 | 40 | 21 | 77 |
| Other (customer service) | 192 | 67 | 73 | 332 |
| Rudeness/verbal abuse | 86 | 71 | 78 | 235 |
| Threats | 35 | 38 | 29 | 102 |
| Total | 518 | 305 | 325 | 1,148 |
| Total summary of allegations | 1,997 | 3,537 | 1,346 | 6,880 |

The number of allegations is larger than the number of complaints received because a complaint may contain more than one allegation about a single incident or involve a series of incidents.

Appendix B

Status of legislative reviews – as at 30 June 2010

| Review report | Date provided to responsible Minister | Date tabled | Time taken to table |
|--|---------------------------------------|----------------|---------------------|
| Review of the <i>Police Powers (Vehicles) Amendment Act 2001</i> | September 2003 | November 2005 | 26 months |
| Review of the <i>Police Powers (Drug Detection in Border Areas Trial) Act 2003</i> | January 2005 | November 2006 | 22 months |
| <i>Police Powers (Drug Premises) Act 2001</i> | January 2005 | September 2005 | 8 months |
| On the Spot Justice? The Trial of Criminal Infringement Notices by NSW Police | April 2005 | November 2005 | 7 months |
| Review of the Child Protection Register | May 2005 | November 2005 | 6 months |
| Review of the <i>Police Powers (Internally Concealed Drugs) Act 2001</i> | July 2005 | May 2007 | 22 months |
| Review of the <i>Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001</i> | November 2005 | October 2006 | 11 months |
| Review of the <i>Crimes (Administration of Sentences) Amendment Act 2002</i> | December 2005 | February 2006 | 2 months |
| Firearm and Explosive Detection Dogs – a review of the <i>Firearms Amendment (Public Safety) Act 2002</i> | April 2006 | October 2006 | 6 months |
| <i>Police Powers (Drug Detection Dogs) Act 2001</i> | June 2006 | September 2006 | 3 months |
| DNA sampling and other forensic procedures conducted on suspects and volunteers under the <i>Crimes (Forensic Procedures) Act 2000</i> | October 2006 | January 2007 | 3 months |
| Review of the <i>Justice Legislation Amendment (Non-association and Place Restriction) Act 2001</i> | December 2006 | December 2008 | 24 months |
| Review of emergency powers to prevent or control public disorder | September 2007 | November 2007 | 2 months |
| <i>Police Powers (Drug Detection Trial) Act 2003</i> | June 2008 | August 2008 | 2 months |
| Review of Parts 2A and 3 of the <i>Terrorism (Police Powers) Act 2002</i> | September 2008 | October 2008 | 1 month |
| Review of certain functions conferred under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> | February 2009 | May 2009 | 3 months |
| Review of the impact of Criminal Infringement Notices on Aboriginal Communities | August 2009 | July 2010 | 11 months |

Current legislative reviews

| Legislation | Brief description |
|---|--|
| <i>Terrorism (Police Powers) Act 2002</i> – Part 2A | Allows police to hold people suspected of involvement in terrorist-related activities in preventive detention. |
| <i>Law Enforcement Legislation Amendment (Public Safety) Act 2005</i> | Additional powers for police to prevent or control large-scale public disorder. We have an ongoing role to review any use of this legislation. The police are required to report to us every six months about the use of the powers. |
| <i>Crimes (Criminal Organisations Control) Act 2009</i> | Allows the Commissioner of Police to seek a declaration from a Supreme Court judge that a criminal gang or organisation is a declared criminal organisation, and then apply for control orders against members of the declared organisation. |

Appendix C

Child and family services

Figure 63: Complaints issues for child and family services received in 2009–2010

Figure 63 shows the issues that were complained about in 2009–2010 in relation to child and family services. Please note that each complaint we received may have more than one issue.

| Program area Issue | Child protection | | Out-of-home care | | Children's services | | Family support | | Adoption | | Total |
|--------------------------------------|------------------|------------|------------------|------------|---------------------|-----------|----------------|-----------|----------|----------|--------------|
| | Formal | Informal | Formal | Informal | Formal | Informal | Formal | Informal | Formal | Informal | |
| Casework | 97 | 79 | 110 | 144 | 0 | 1 | 0 | 4 | 0 | 0 | 435 |
| Meeting individual needs | 29 | 26 | 134 | 142 | 4 | 3 | 2 | 2 | 0 | 0 | 342 |
| Object to decision | 35 | 43 | 25 | 104 | 1 | 1 | 0 | 2 | 0 | 1 | 212 |
| Case management | 19 | 17 | 66 | 70 | 5 | 5 | 2 | 2 | 0 | 0 | 186 |
| Customer service | 13 | 21 | 37 | 36 | 2 | 6 | 0 | 3 | 1 | 0 | 119 |
| Complaints | 21 | 28 | 31 | 36 | 6 | 3 | 0 | 1 | 0 | 0 | 126 |
| Information | 22 | 20 | 29 | 41 | 4 | 4 | 2 | 0 | 0 | 0 | 122 |
| Assault/abuse in care | 15 | 22 | 27 | 26 | 1 | 3 | 0 | 1 | 0 | 0 | 95 |
| Investigation | 11 | 16 | 3 | 2 | 1 | 2 | 0 | 1 | 0 | 0 | 36 |
| Professional conduct | 19 | 31 | 17 | 17 | 5 | 5 | 3 | 5 | 0 | 0 | 102 |
| Allowances/fees | 7 | 6 | 26 | 27 | 5 | 6 | 2 | 1 | 0 | 0 | 80 |
| Clients rights/choice/participation | 4 | 1 | 4 | 7 | 1 | 2 | 0 | 0 | 0 | 0 | 19 |
| Policy/procedure/law | 2 | 6 | 6 | 5 | 5 | 4 | 0 | 1 | 0 | 0 | 29 |
| Legal problems | 9 | 15 | 2 | 5 | 0 | 0 | 0 | 1 | 0 | 0 | 32 |
| Service management | 2 | 1 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 11 |
| Access to service | 4 | 5 | 1 | 0 | 5 | 4 | 1 | 3 | 0 | 0 | 23 |
| File/record management | 0 | 4 | 4 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 12 |
| Safety | 2 | 0 | 1 | 5 | 1 | 3 | 0 | 0 | 0 | 0 | 12 |
| Client finances and property | 1 | 0 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 5 |
| Service funding/licensing/monitoring | 0 | 0 | 0 | 1 | 2 | 5 | 2 | 0 | 0 | 0 | 10 |
| Outside our jurisdiction | 10 | 30 | 3 | 11 | 3 | 7 | 0 | 0 | 0 | 0 | 64 |
| Not applicable | 1 | 10 | 1 | 18 | 0 | 9 | 0 | 1 | 0 | 0 | 40 |
| Total | 323 | 381 | 530 | 703 | 55 | 75 | 15 | 28 | 1 | 1 | 2,112 |

Figure 64: Formal complaints finalised for child and family services in 2009–2010

Figure 64 shows the outcomes of formal complaints finalised about child and family services this year.

| Program area | A | B | C | D | E | F | G | Total |
|---------------------------|------------|------------|------------|-----------|----------|----------|-----------|------------|
| Child protection services | 56 | 72 | 53 | 8 | 0 | 1 | 14 | 204 |
| Out-of-home care | 68 | 82 | 123 | 3 | 1 | 2 | 4 | 283 |
| Children's services | 6 | 14 | 10 | 0 | 0 | 0 | 4 | 34 |
| Family support services | 1 | 3 | 4 | 0 | 0 | 0 | 1 | 9 |
| Adoption | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 131 | 171 | 190 | 11 | 1 | 3 | 23 | 530 |

Description

- A** Complaint declined at outset
- B** Complaint declined after inquiries
- C** Complaint resolved after inquiries, including local resolution by the agency concerned
- D** Service improvement comments or suggestions to agency
- E** Referred to agency concerned or other body for investigation
- F** Direct investigation
- G** Complaint outside jurisdiction

Appendix D

Disability services

Figure 65: Complaints issues for disability services received in 2009–2010

Figure 65 shows the issues that were complained about in 2009–2010 in relation to disability services. Please note that each complaint we received may have more than one issue.

| Program area Issue | Disability accommodation | | Disability support | | Total |
|--------------------------------------|--------------------------|------------|--------------------|------------|------------|
| | Formal | Informal | Formal | Informal | |
| Meeting individual needs | 79 | 37 | 22 | 13 | 151 |
| Case management | 42 | 15 | 15 | 0 | 72 |
| Assault/abuse in care | 31 | 18 | 3 | 6 | 58 |
| Service management | 12 | 4 | 1 | 3 | 20 |
| Customer service | 4 | 6 | 4 | 13 | 27 |
| Professional conduct | 21 | 7 | 6 | 4 | 38 |
| Access to service | 4 | 3 | 7 | 14 | 28 |
| Complaints | 17 | 6 | 6 | 7 | 36 |
| Client rights/choice/participation | 5 | 5 | 3 | 3 | 16 |
| Object to decision | 7 | 6 | 1 | 8 | 22 |
| Safety | 8 | 2 | 0 | 0 | 10 |
| Casework | 6 | 1 | 5 | 5 | 17 |
| Information | 8 | 7 | 4 | 4 | 23 |
| Investigation | 1 | 0 | 1 | 1 | 3 |
| Service funding/licensing/monitoring | 5 | 3 | 2 | 2 | 12 |
| Client finances and property | 4 | 0 | 1 | 1 | 6 |
| Policy/procedure/law | 5 | 1 | 2 | 3 | 11 |
| File/record management | 2 | 1 | 2 | 1 | 6 |
| Allowances/fees | 0 | 2 | 2 | 2 | 6 |
| Legal problems | 0 | 1 | 0 | 0 | 1 |
| Outside our jurisdiction | 3 | 5 | 1 | 8 | 17 |
| Not applicable | 0 | 7 | 0 | 5 | 12 |
| Total | 264 | 137 | 88 | 103 | 592 |

Figure 66: Formal complaints finalised for disability services in 2009–2010

Figure 66 shows the outcomes of formal complaints we received about disability services this year.

| Program area | A | B | C | D | E | F | G | Total |
|-----------------------------------|-----------|-----------|-----------|----------|----------|----------|----------|------------|
| Disability accommodation services | 8 | 31 | 46 | 3 | 4 | 0 | 2 | 94 |
| Disability support services | 2 | 19 | 26 | 1 | 0 | 0 | 1 | 49 |
| Total | 10 | 50 | 72 | 4 | 4 | 0 | 3 | 143 |

Description

- A** Complaint declined at outset
- B** Complaint declined after inquiries
- C** Complaint resolved after inquiries, including local resolution by the agency concerned
- D** Service improvement comments or suggestions to agency
- E** Referred to agency concerned or other body for investigation
- F** Direct investigation
- G** Complaint outside jurisdiction

Appendix E

Other community services

Figure 67: Number of formal and informal matters about other community services received in 2009–2010

Some complaints about supported accommodation and general community services may involve complaints about child and family and disability services.

| Agency category | Formal | Informal | Total |
|---|-----------|------------|------------|
| > Community Services | | | |
| Supported accommodation and assistance program services | 4 | 1 | 5 |
| General community services | 0 | 1 | 1 |
| Aged services | 0 | 0 | 0 |
| Disaster welfare services | 0 | 0 | 0 |
| Other | 5 | 19 | 24 |
| Sub-total | 9 | 21 | 30 |
| > ADHC | | | |
| Supported accommodation and assistance program services | 0 | 0 | 0 |
| General community services | 0 | 1 | 1 |
| Aged services | 8 | 22 | 30 |
| Disaster welfare services | 0 | 0 | 0 |
| Other | 2 | 6 | 8 |
| Sub-total | 10 | 29 | 39 |
| > Other government agencies | | | |
| Supported accommodation and assistance program services | 1 | 0 | 1 |
| General community services | 0 | 0 | 0 |
| Aged services | 0 | 2 | 2 |
| Other | 0 | 2 | 2 |
| Disaster welfare services | 0 | 0 | 0 |
| Sub-total | 1 | 4 | 5 |
| > Non-government funded or licensed services | | | |
| Supported accommodation and assistance program services | 16 | 14 | 30 |
| General community services | 2 | 3 | 5 |
| Aged services | 4 | 10 | 14 |
| Other | 1 | 4 | 5 |
| Disaster welfare services | 0 | 0 | 0 |
| Sub-total | 23 | 31 | 54 |
| Other (general inquiries) | 0 | 7 | 7 |
| Agency unknown | 0 | 22 | 22 |
| Outside our jurisdiction | 12 | 12 | 24 |
| Sub-total | 12 | 41 | 53 |
| Total | 55 | 126 | 181 |

Some complaints about supported accommodation and general community services may involve complaints about child and family and disability services.

Figure 68: Complaints issues for other community services received in 2009–2010

Figure 68 shows the issues that were complained about in 2009–2010 in relation to general community services. Please note that each complaint we received may have more than one issue.

| Program area Issue | Other community services | | Total |
|--------------------------------------|--------------------------|----------|-------|
| | Formal | Informal | |
| Access to service | 11 | 12 | 23 |
| Customer service | 7 | 10 | 17 |
| Professional conduct | 2 | 8 | 10 |
| Complaints | 3 | 5 | 8 |
| Meeting individual needs | 12 | 10 | 22 |
| Object to decision | 3 | 7 | 10 |
| Allowances/fees | 5 | 4 | 9 |
| Information | 2 | 1 | 3 |
| Clients rights/choice/participation | 1 | 1 | 2 |
| Case management | 2 | 0 | 2 |
| Service funding/licensing/monitoring | 0 | 4 | 4 |
| Files/record management | 1 | 1 | 2 |
| Assault/abuse in care | 1 | 1 | 2 |
| Casework | 5 | 3 | 8 |
| Service management | 6 | 6 | 12 |
| Policy/procedure/law | 4 | 1 | 5 |
| Investigation | 1 | 1 | 2 |
| Safety | 1 | 0 | 1 |
| Legal problems | 1 | 1 | 2 |
| Client finances and property | 1 | 1 | 2 |
| Outside our jurisdiction | 7 | 17 | 24 |
| Not applicable | 0 | 12 | 12 |
| Total | 76 | 106 | 182 |

Figure 69: Formal complaints finalised for other community services in 2009–2010

Figure 69 shows the outcomes of formal complaints finalised about general community services this year.

| Program area | A | B | C | D | E | F | G | Total |
|---|----|----|----|---|---|---|---|-------|
| Supported accommodation and assistance program services | 6 | 7 | 2 | 2 | 0 | 0 | 0 | 17 |
| General community services | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Aged services | 3 | 3 | 7 | 0 | 0 | 0 | 1 | 14 |
| Other | 5 | 1 | 1 | 0 | 0 | 0 | 8 | 15 |
| Total | 14 | 11 | 11 | 2 | 0 | 0 | 9 | 47 |

Description

| | |
|----------|--|
| A | Complaint declined at outset |
| B | Complaint declined after inquiries |
| C | Complaint resolved after inquiries, including local resolution by the agency concerned |
| D | Service improvement comments or suggestions to agency |
| E | Referred to agency concerned or other body for investigation |
| F | Direct investigation |
| G | Complaint outside jurisdiction |

Appendix F

Public sector agencies

Figure 70: Action taken on formal complaints about public sector agencies finalised in 2009–2010

Figure 70 shows the action we took on each of the written complaints that we finalised this year about public sector agencies (except the NSW Police Force, CS and ADHC and those relating to child protection notifications), broken down into agency groups. See Appendices G, H, I and J for a further breakdown into specific agencies in those groups.

| Complaint about | Assessment only | Preliminary or informal investigation | | | | | | | | Formal investigation | | | | | Total |
|--------------------------------|-----------------|---------------------------------------|-----|----|-----|-----|----|----|---|----------------------|---|---|---|-------|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | |
| Bodies outside jurisdiction | 276 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 276 | |
| Departments and authorities | 763 | 16 | 318 | 20 | 218 | 35 | 34 | 2 | 3 | 0 | 3 | 1 | 1 | 1,414 | |
| Freedom of information | 33 | 1 | 13 | 0 | 73 | 4 | 6 | 0 | 0 | 3 | 2 | 0 | 1 | 136 | |
| Local government | 570 | 3 | 183 | 3 | 71 | 26 | 15 | 1 | 0 | 1 | 1 | 0 | 1 | 875 | |
| Corrections and Justice Health | 148 | 10 | 284 | 10 | 199 | 43 | 19 | 8 | 0 | 0 | 0 | 0 | 1 | 722 | |
| Total | 1,790 | 30 | 798 | 33 | 561 | 108 | 74 | 11 | 3 | 4 | 6 | 1 | 4 | 3,423 | |

Description

A Decline after assessment only, including:

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

- B** Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction
- F** Resolved by agency prior to our intervention
- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated

Formal investigation:

- J** Resolved during investigation
- K** Investigation discontinued
- L** No adverse finding
- M** Adverse finding

Recognising
35 years of
accountability

Appendix G

Departments and authorities

Figure 71: Action taken on formal complaints about departments and authorities finalised in 2009–2010

| Agency | Assessment only | | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|---|-----------------|---|----|---------------------------------------|----|----|---|---|---|---|----------------------|---|---|-----|--|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | | |
| Aboriginal Housing Office | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | | |
| Administrative Decisions Tribunal | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | | |
| Amaroo Local Aboriginal Land Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Ambulance Service of NSW | 6 | 0 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | | |
| Anti-Discrimination Board | 3 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | | |
| Arts, Sport and Recreation | 5 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | | |
| Board of Studies NSW | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | | |
| Board of Surveying and Spatial Information | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Bureau of Crime Statistics and Research | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Casino, Liquor and Gaming Control Authority | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Charles Sturt University | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Consumer, Trader & Tenancy Tribunal | 22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22 | | |
| Country Energy | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Court officer/jury/judge | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Crown Solicitor's Office | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Dental Board of New South Wales | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Department of Education and Training | 59 | 2 | 30 | 2 | 12 | 1 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 111 | | |
| Department of Environment, Climate Change and Water | 10 | 1 | 10 | 1 | 3 | 2 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 31 | | |
| Department of Health | 14 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | | |
| Department of Justice and Attorney-General | 4 | 0 | 0 | 0 | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | | |
| Department of Planning | 7 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Department of Premier and Cabinet | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Department of Services, Technology and Administration | 18 | 1 | 13 | 1 | 4 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 40 | | |
| District Court of NSW | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Electoral Commission NSW | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Energy Australia | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| First State Superannuation Trustee Corporation | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Game Council of NSW | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Greater Southern Area Health Service | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | | |
| Greater Western Area Health Service | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Guardianship Tribunal | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | | |
| Heritage Branch | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Housing Appeals Committee | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Housing NSW | 94 | 1 | 36 | 3 | 72 | 11 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 223 | | |
| Hunter and New England Area Health Service | 3 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Hunter Water Corporation | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Independent Pricing and Regulatory Tribunal | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Integral Energy | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Land and Property Management Authority | 17 | 2 | 6 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29 | | |
| Landcom | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Lands Board | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Legal Aid Commission of NSW | 19 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | | |

| Agency | Assessment only | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|--|-----------------|---|---------------------------------------|---|----|---|---|---|---|----------------------|---|---|---|-----|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | |
| Livestock Health and Pest Authorities | 1 | 0 | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| Local Government Boundaries Commission | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Local Government Division | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Long Service Payments Corporation | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Macquarie University | 6 | 0 | 1 | 5 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | |
| Marine Parks Authority | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Mental Health Review Tribunal (and Psychosurgery Review Board) | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| MidCoast Water | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Mine Subsidence Board | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Motor Accidents Authority | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| North Coast Area Health Service | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Northern Region Joint Regional Planning Panel | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Northern Sydney Central Coast Area Health Service | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| NSW Board of Vocational Education and Training | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| NSW Fire Brigades | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| NSW Maritime | 9 | 1 | 5 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 16 | |
| NSW Medical Board | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| NSW Office of Liquor, Gaming and Racing | 3 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| NSW Trustee and Guardian | 24 | 1 | 17 | 1 | 20 | 2 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 70 | |
| NSW Veterinary Practitioners Board | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Office of Energy | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Office of State Revenue | 101 | 1 | 48 | 0 | 28 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 182 | |
| Office of the Director of Public Prosecutions | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Office of the Health Care Complaints Commission | 10 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | |
| Office of the Legal Services Commissioner | 4 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Office of Water | 1 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Parliament of New South Wales – Legislative Assembly | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Pharmacy Board of NSW | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Pillar Administration | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Primary Industries | 8 | 0 | 8 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | |
| Rail Corporation New South Wales | 41 | 0 | 5 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 51 | |
| Registry of Births, Deaths and Marriages | 7 | 1 | 3 | 0 | 6 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 19 | |
| Rental Bond Board | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Roads and Traffic Authority | 93 | 0 | 42 | 1 | 28 | 6 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 177 | |
| Rural Assistance Authority | 2 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Rural Fire Service NSW | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Sheriff's Office | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| South Eastern Sydney and Illawarra Area Health Service | 5 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 8 | |
| Southern Cross University | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| State and Regional Development and Tourism | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| State Authorities Superannuation Trustee Corporation | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| State Emergency Service | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| State Transit Authority of New South Wales | 6 | 0 | 0 | 0 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| State Water | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |

| Agency | Assessment only | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|---------------------------------------|-----------------|----|---------------------------------------|----|-----|----|----|---|---|----------------------|---|---|---|-------|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | |
| Sydney Metro | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 3 | |
| Sydney Olympic Park Authority | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Sydney South West Area Health Service | 10 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | |
| Sydney Water Corporation | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Sydney West Area Health Service | 4 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | |
| Teacher Housing Authority | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Transport NSW | 14 | 0 | 3 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | |
| University of New England | 3 | 0 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| University of New South Wales | 5 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| University of Newcastle | 8 | 0 | 3 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | |
| University of Sydney | 2 | 0 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | |
| University of Technology | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| University of Western Sydney | 5 | 1 | 8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | |
| University of Wollongong | 4 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 9 | |
| Unnamed agency | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Valuer General | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| WorkCover Authority | 10 | 0 | 10 | 0 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 27 | |
| Total | 763 | 16 | 318 | 20 | 218 | 35 | 34 | 2 | 3 | 0 | 3 | 1 | 1 | 1,414 | |

Description

A Decline after assessment only, including:

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

- B** Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction
- F** Resolved by agency prior to our intervention
- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated

Formal investigation:

- J** Resolved during investigation
- K** Investigation discontinued
- L** No adverse finding
- M** Adverse finding

Appendix H

Local government

Figure 72: Action taken on formal complaints about local government finalised in 2009–2010

Figure 72 shows the action we took on each of the written complaints finalised this year about individual councils.

| Council | Assessment only | Preliminary or informal investigation | | | | | | | | | Formal investigation | | | | | Total |
|--------------------------------------|-----------------|---------------------------------------|---|---|---|---|---|---|---|---|----------------------|---|---|----|--|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | | |
| Accredited certifier | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Albury City Council | 3 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | | |
| Armidale Dumaresq Council | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Auburn Council | 4 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Ballina Shire Council | 5 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Bankstown City Council | 6 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Bathurst Regional Council | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Bega Valley Shire Council | 6 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Bellingen Shire Council | 3 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Berrigan Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Blacktown City Council | 4 | 0 | 5 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Blayney Shire Council | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Blue Mountains City Council | 6 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Bogan Shire Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Boorowa Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Botany Bay City Council | 5 | 0 | 5 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | | |
| Byron Shire Council | 10 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | | |
| Cabonne Shire Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Campbelltown City Council | 6 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Canterbury City Council | 9 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 14 | | |
| Castlereagh-Macquarie County Council | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Central Darling Shire Council | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Cessnock City Council | 1 | 0 | 2 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| City of Canada Bay Council | 4 | 0 | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Clarence Valley Council | 9 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Cobar Shire Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Coffs Harbour City Council | 5 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Cooma-Monaro Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Coonamble Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Cootamundra Shire Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Corowa Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Council not named | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Cowra Shire Council | 2 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Dubbo City Council | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Dungog Shire Council | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Eurobodalla Shire Council | 10 | 0 | 2 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 14 | | |
| Fairfield City Council | 9 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | | |
| Forbes Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Glen Innes Severn Shire Council | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Gloucester Shire Council | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Goldenfields Water County Council | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Gosford City Council | 14 | 0 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | | |
| Goulburn Mulwaree Shire Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Great Lakes Council | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | | |
| Greater Hume Shire Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Greater Taree City Council | 12 | 0 | 4 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | | |
| Gunnedah Shire Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |

| Council | Assessment only | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|---------------------------------|-----------------|---|---------------------------------------|---|---|---|---|---|---|----------------------|---|---|---|----|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | |
| Gwydir Shire Council | 2 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Hawkesbury City Council | 7 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | |
| Hay Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Holroyd City Council | 3 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Hornsby Shire Council | 9 | 0 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | |
| Hunters Hill Municipal Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Hurstville City Council | 4 | 0 | 0 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | |
| Inverell Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Jerilderie Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Kempsey Shire Council | 8 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | |
| Kiama Municipal Council | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Kogarah Municipal Council | 5 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | |
| Ku-ring-gai Municipal Council | 10 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 14 | |
| Ku-ring-gai Planning Panel | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Lake Macquarie City Council | 5 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| Lane Cove Municipal Council | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Leichhardt Municipal Council | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Lismore City Council | 7 | 0 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | |
| Lithgow City Council | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Liverpool City Council | 11 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | |
| Lockhart Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Maitland City Council | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Manly Council | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Marrickville Council | 4 | 0 | 3 | 0 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | |
| Mid-Western Regional Council | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Mid Coast Water | 4 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| Moree Plains Shire Council | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Mosman Municipal Council | 7 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| Murray Shire Council | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Muswellbrook Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Nambucca Shire Council | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Narrabri Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Narrandera Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Narromine Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Newcastle City Council | 13 | 0 | 3 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | |
| North Sydney Council | 3 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Orange City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Palerang Council | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | |
| Parkes Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Parramatta City Council | 4 | 0 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| Penrith City Council | 6 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | |
| Pittwater Council | 11 | 0 | 1 | 0 | 3 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | |
| Port Macquarie-Hastings Council | 7 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | |
| Port Stephens Shire Council | 14 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | |
| Queanbeyan City Council | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | |
| Randwick City Council | 9 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | |
| Richmond Valley Council | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | |
| Riverina Water County Council | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Rockdale City Council | 2 | 1 | 5 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | |
| Rous County Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Ryde City Council | 6 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | |
| Shellharbour City Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Shoalhaven City Council | 8 | 0 | 6 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | |
| Singleton Shire Council | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |

| Council | Assessment only | | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|--|-----------------|---|-----|---------------------------------------|----|----|----|---|---|---|----------------------|---|---|-----|--|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | | |
| Snowy River Shire Council | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | | |
| Strathfield Municipal Council | 12 | 0 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | | |
| Sutherland Shire Council | 10 | 0 | 3 | 0 | 2 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 19 | | |
| Sydney City Council | 27 | 0 | 4 | 0 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 36 | | |
| Tamworth City Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Tenterfield Shire Council | 6 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | | |
| The Hills Shire Council | 6 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | | |
| Tumut Shire Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Tweed Shire Council | 14 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | | |
| Upper Hunter Shire Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Upper Lachlan Shire Council | 5 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Uralla Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Wagga Wagga City Council | 6 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Wagga Wagga Interim Joint Planning Panel | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Wakool Shire Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Walcha Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Walgett Shire Council | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Warringah Council | 10 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | | |
| Warrumbungle Shire Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Waverley Council | 11 | 0 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | | |
| Wellington Council | 2 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 6 | | |
| Willoughby City Council | 5 | 0 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | | |
| Wingecarribee Shire Council | 6 | 0 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 13 | | |
| Wollondilly Shire Council | 4 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Wollongong City Council | 34 | 0 | 2 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 40 | | |
| Woollahra Municipal Council | 5 | 0 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | | |
| Wyong Shire Council | 6 | 0 | 7 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 16 | | |
| Yass Valley Council | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Young Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Total | 570 | 3 | 183 | 3 | 71 | 26 | 15 | 1 | 0 | 1 | 1 | 0 | 1 | 875 | | |

Description

A Decline after assessment only, including:

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Appendix I

Corrections

Figure 73: Action taken on formal complaints about people in custody finalised in 2009–2010

Figure 73 shows the action we took on each of the formal complaints finalised this year concerning people in custody.

| Agency | Assessment only | | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|----------------------------------|-----------------|----|-----|---------------------------------------|-----|----|----|---|---|---|----------------------|---|---|-----|--|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | | |
| Corrective Services NSW | 123 | 8 | 227 | 9 | 157 | 37 | 17 | 8 | 0 | 0 | 0 | 0 | 1 | 587 | | |
| GEO Australia | 13 | 2 | 39 | 1 | 23 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 82 | | |
| Justice Health | 10 | 0 | 18 | 0 | 19 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 51 | | |
| Serious Offenders Review Council | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Total | 148 | 10 | 284 | 10 | 199 | 43 | 19 | 8 | 0 | 0 | 0 | 0 | 1 | 722 | | |

Description

A **Decline after assessment only, including:**

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

- B** Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated

Formal investigation:

- J** Resolved during investigation
- K** Investigation discontinued
- L** No adverse finding
- M** Adverse finding

Figure 74: Number of formal and informal complaints about correctional centres, DCS and GEO received in 2009–2010

| Institution | Formal | Informal | Total |
|--|--------|----------|-------|
| Bathurst Correctional Centre | 24 | 113 | 137 |
| Berrima Correctional Centre | 1 | 16 | 17 |
| Broken Hill Correctional Centre | 3 | 20 | 23 |
| Cessnock Correctional Centre | 5 | 33 | 38 |
| Community Offender Services | 15 | 42 | 57 |
| Cooma Correctional Centre | 3 | 21 | 24 |
| Corrective Services NSW | 116 | 255 | 371 |
| Court Escort/Security Unit | 13 | 17 | 30 |
| Dawn De Loas Special Purpose Centre | 13 | 66 | 79 |
| Dillwynia Correctional Centre | 6 | 58 | 64 |
| Emu Plains Correctional Centre | 6 | 55 | 61 |
| GEO Australia | 3 | 0 | 3 |
| Glen Innes Correctional Centre | 2 | 6 | 8 |
| Goulburn Correctional Centre | 44 | 207 | 251 |
| Grafton Correctional Centre | 1 | 36 | 37 |
| High Risk Management Correctional Centre | 24 | 36 | 60 |
| John Morony Correctional Centre | 6 | 42 | 48 |
| Junee Correctional Centre | 63 | 293 | 356 |
| Kariong Juvenile Correctional Centre | 25 | 97 | 122 |
| Kirkconnell Correctional Centre | 11 | 42 | 53 |
| Lithgow Correctional Centre | 18 | 69 | 87 |
| Long Bay Hospital | 10 | 107 | 117 |
| Mannus Correctional Centre | 2 | 5 | 7 |
| Metropolitan Remand Reception Centre | 45 | 205 | 250 |
| Metropolitan Special Programs Centre | 57 | 268 | 325 |
| Mid North Coast Correctional Centre | 13 | 157 | 170 |
| Oberon Correctional Centre | 0 | 3 | 3 |

| Institution | Formal | Informal | Total |
|---|------------|--------------|--------------|
| Outer Metropolitan Multi Purpose Centre | 6 | 43 | 49 |
| Parklea Correctional Centre | 35 | 190 | 225 |
| Parramatta Correctional Centre | 6 | 58 | 64 |
| Periodic Detention Centres | 6 | 8 | 14 |
| Silverwater Correctional Centre | 12 | 89 | 101 |
| Silverwater Women's Correctional Centre | 18 | 93 | 111 |
| Special Purpose Prison Long Bay | 6 | 27 | 33 |
| St Heliers Correctional Centre | 4 | 25 | 29 |
| Tamworth Correctional Centre | 4 | 20 | 24 |
| Wellington Correctional Centre | 45 | 273 | 318 |
| Women's Transitional Centres | 0 | 1 | 1 |
| Total | 671 | 3,096 | 3,767 |

*Some complaints may involve more than one centre.

Recognising
35 years of
scrutiny

Appendix J

Freedom of information

Figure 75: Action taken on formal complaints about FOI finalised in 2009–2010

Figure 75 shows the action we took on each of the written complaints finalised this year about individual public sector agencies relating to freedom of information.

| Agency | Assessment only | | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | | Total |
|---|-----------------|---|---|---------------------------------------|----|---|---|---|---|---|----------------------|---|---|----|--|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | | |
| Ageing, Disability and Home Care | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Ambulance Service of NSW | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Arts, Sport and Recreation | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Blacktown City Council | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Board of Studies NSW | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 3 | | |
| Cessnock City Council | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Coffs Harbour City Council | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | | |
| Communities NSW | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Corowa Shire Council | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Corrective Services NSW | 1 | 0 | 2 | 0 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | | |
| Department of Education and Training | 3 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | | |
| Department of Environment, Climate Change and Water | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Department of Health | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Department of Justice and Attorney-General | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Department of Planning | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Department of Premier and Cabinet | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Department of Services, Technology and Administration | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| District Court of NSW | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Gosford City Council | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Government and Related Employees Appeals Tribunal | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Greater Taree City Council | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Greater Western Area Health Service | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Greyhound and Harness Racing Regulatory Authority | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Griffith City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Hunter and New England Area Health Service | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Hunter Water Corporation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | | |
| Junee Shire Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Justice Health | 0 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| Legal Aid Commission of NSW | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Lismore City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Muswellbrook Shire Council | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Narrandera Shire Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| North Coast Area Health Service | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| Northern Sydney Central Coast Area Health Service | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | | |
| NSW Maritime | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | | |
| NSW Medical Board | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| NSW Police Force | 9 | 1 | 3 | 0 | 10 | 1 | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 29 | | |
| NSW Treasury | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| NSW Trustee and Guardian | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |
| Office of Water | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | |

| Agency | Assessment only | | | Preliminary or informal investigation | | | | | | | Formal investigation | | | | Total |
|--|-----------------|---|----|---------------------------------------|----|---|---|---|---|---|----------------------|---|---|-----|-------|
| | A | B | C | D | E | F | G | H | I | J | K | L | M | | |
| Penrith City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Port Macquarie-Hastings Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Roads and Traffic Authority | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Rockdale City Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Shellharbour City Council | 2 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| South Eastern Sydney and Illawarra Area Health Service | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Southern Cross University | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| State and Regional Development and Tourism | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| State Property Authority | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| State Transit Authority of New South Wales | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Sydney City Council | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | |
| Sydney South West Area Health Service | 1 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | |
| Sydney Water | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Sydney West Area Health Service | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| The Hills Shire Council | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Transport NSW | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | |
| Unnamed agency | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | |
| Upper Lachlan Shire Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Uralla Shire Council | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Wagga Wagga City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Willoughby City Council | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| WorkCover Authority | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |
| Total | 33 | 1 | 13 | 0 | 73 | 4 | 6 | 0 | 0 | 3 | 2 | 0 | 1 | 136 | |

Description

A Decline after assessment only, including:

Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds

Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

Appendix K

Report on police use of emergency powers to prevent or control public disorder

This report is provided in accordance with section 87O(5) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). Under LEPRA, the Ombudsman must report annually about the work we do to keep under scrutiny the exercise of powers conferred on police officers to prevent or control public disorder. This report includes information about the:

- ▶ NSWPF's use of the emergency powers in 2009–2010.
- ▶ Implementation of recommendations from our 2007 Report.
- ▶ Implementation of recommendations from the New South Wales Police Force's (NSWPF's) own review of their use of the emergency powers in July 2008.

The NSWPF was given emergency powers to deal with actual or threatened large-scale public disorder. This was against the background of unprecedented public disorder in the southern and eastern suburbs of Sydney in December 2005. The powers were only temporary, and the Ombudsman was required to keep under scrutiny the use of these powers and report to Parliament as soon as practicable after 18 months. The emergency powers were used on only four occasions during the period of review, with some provisions not being used at all.

In December 2007 the NSW Parliament decided to continue the powers, known as Part 6A LEPRA, and also extend the Ombudsman's role in keeping their use under scrutiny. Part 6A provides police with extraordinary powers to establish a cordon or roadblock on a road or around a target area, stop and search vehicles and pedestrians, require identification details of people in a target area, seize and detain items – including mobile phones and vehicles – and direct groups to disperse. The NSWPF can also impose emergency alcohol free zones and prohibitions on the sale or supply of liquor.

Part 6A requires the Commissioner of Police to provide the Ombudsman with a report about any uses of the powers within three months. The Ombudsman may also require the Commissioner or any public authority to provide information about the exercise of those powers. Under a memorandum of understanding, the NSWPF has agreed to provide this office with biannual reports that cover all uses of the Part 6A powers, details of any instances where powers were seriously considered but not used, and advice about training undertaken and amendments to policies and procedures.

Police use of the powers in 2009–2010

The NSWPF did not use the emergency powers at all during the 2009–2010 reporting period.

They seriously considered using them on one occasion, but decided not to. Protests were held over several evenings in June 2009 by members of Sydney's Indian community. The NSWPF received information indicating that there could be clashes between the different groups during the protests, and were prepared to issue an authorisation to use the emergency powers if necessary.

However, as events unfolded, no issues arose that the NSWPF considered would warrant using the emergency powers. They used other strategies to address the situation and ultimately did not seek authorisation to use the emergency powers.

In relation to this considered use of the powers, Assistant Commissioner Dennis Clifford said that Part 6A was:

...a very important policing tool for the holistic strategic management of the situation, had it escalated. It would have enabled police to quickly and adequately address any influx of people in the area, prevent build up of groups and escalation of the situation that would allow them to engage in a public order incident. The ability to have these powers available for the management of Public Order incidents is extremely important in regards to a strategic policing perspective.

Implementing recommendations from our 2007 report

Our report on the initial Part 6A emergency powers was completed in September 2007. We made 14 recommendations in that report, eight relating to the NSWPF and six recommending legislative amendments.

Of the eight recommendations relating to NSWPF procedures, six were implemented. Most related to the guidance needed to ensure the powers are used appropriately, including factors to consider when determining whether to invoke the emergency powers, the directions given to licensees when emergency liquor restrictions are imposed, and the need for a clear statement of reasons to support any authorisation to use the powers and to regularly review whether and when the authorisation should be revoked. Police also supported our recommendations for more consistent recording of the powers used, and a number of training measures.

The remaining two NSWPF recommendations were partly implemented. These related to the emergency prohibition on sale or supply of liquor and the procedures relating to seizure of things including vehicles and mobile phones.

Closing licensed premises

In our 2007 report we considered the emergency power to authorise the closure of any licensed premises and prohibit the sale or supply of liquor on any licensed premises. This power, set out at section 87B of LEPRA, was not used by police during the review period, and it has not been used since. However during the review period a number of licensed premises voluntarily closed for short periods at the request of police. Authorisations to close licensed premises were drafted on a number of occasions, but were not formally issued.

An authorisation or successive authorisations to close licensed premises or prohibit the sale or supply of liquor must not exceed 48 hours. The legislation does not indicate what happens if there is a need to extend a s.87B authorisation beyond that period.

We recommended that directions prohibiting the sale and supply of liquor should be complemented by giving licensees an avenue to have directions reviewed after a certain period. NSWPF indicated that the requirement for the authorising officer to regularly review the authorisations rendered this unnecessary.

However police have now included guidance in their procedures about what should happen if a closure order or some other restriction needs to be extended beyond 48 hours. In those circumstances, police will apply to the Local Court for an extension under the *Liquor Act 2007*.

Seizing vehicles and other items

In our 2007 report, we noted that our analysis of NSWPF records relating to vehicles and other items seized during the operations to prevent public disorder showed significant variations in the use of the seizure powers. We also raised some concerns about the impact of the seizure of vehicles or other items essential for people's work or other responsibilities. Seizure and detention of items such as cars, laptops, mobiles and tools of trade could lead to unjustifiable hardship in relation to work, study or family commitments. The legislation provides that seized items may be held by the NSWPF for seven days and police may apply to the local court for unlimited further 14 day extensions. There is no provision in the legislation for a person to apply to the NSWPF to have their vehicle, phone or other essential items returned before the seven-day period ends.

We recommended that the NSWPF amend Part 6A procedures to:

- › provide officers with factors to consider when deciding whether to seize and detain a vehicle
- › require officers to record in the Computerised Operational Policing System (COPS) the reasons for the seizure and detention of any items
- › provide for an avenue for review of any decision by police to seize and detain items
- › facilitate the prompt return of items seized if the large scale public disorder is no longer occurring or threatened.

These recommendations – apart from the third one about an avenue for review – were supported in the NSW Government response to our 2007 report. However, not all of the remaining parts have been implemented by the NSWPF. They have included provisions in their procedures requiring reasons for decisions to seize items to be recorded in COPS, but the other recommendations have not been adopted. The NSWPF consider that sufficient guidance is already provided to officers to inform their decision to seize and detain items. They have set a time-frame of seven days for the return of seized items and believe this period provided by the legislation is short enough to make a review unnecessary. We still believe that providing police officers with clear guidance on the kinds of factors that might support a decision to seize a vehicle or other item is warranted, and may ensure that there is a strong link between the decision to seize and the likely threat of public disorder. In the absence of an internal review process, members of the community will have to depend on the complaints system to deal with any grievances about unreasonable seizure or unreasonable delay in returning their possessions.

Recommendations for amending legislation

Three of our recommendations for legislative amendments were not accepted or deemed unnecessary. These recommendations related to:

- › Including legislative safeguards in Part 6A to provide an assurance of the right to peaceful assembly.
- › Amendments to ensure that police officers cannot refuse residents or those who work in a target area permission to enter, unless it is reasonably necessary to do so to avoid risk to public safety or the person's own safety.
- › Requiring police to apply an appropriate 'reasonable suspicion' test in relation to searches of people under the Part 6A powers.

Although safeguards relating to the right to peaceful assembly have not been included in the legislation, the NSWPF have included some information in their procedures about the right to protest and outlined the legislative provisions relating to public assemblies and unlawful assemblies.

As to when police might refuse residents or workers permission to enter a target area, the government decided it was sufficient to amend the procedural guidelines for officers making these decisions. In relation to whether a reasonable suspicion test should apply, the government reasoned that changes intended to strengthen the decision-making processes about when emergency powers could be authorised should be enough to safeguard the interests of individuals caught up in such emergencies.

Implementing recommendations from the NSWPF's own review of their use of emergency powers in July 2008

Last year we reported about the NSWPF's use of the Part 6A powers to prevent an anticipated threat of large-scale public disorder that they believed would occur at an environmental protest in Newcastle. After the incident, the NSWPF reviewed the exercise of the powers and recommended that:

- › police officers should be given maps of the authorised target areas
- › incidents relating to the use of Part 6A powers and general operational information should be recorded on COPS as soon as possible
- › records should be more stringently checked.

We supported these recommendations.

Police guidelines for using the Part 6A powers now recommend the target area should be marked on a map or plan that can be annexed to any authorisation for use of the powers and distributed to police. The guidelines also remind police that details relating to the use of Part 6A powers need to be recorded and verified in COPS where possible. However, police have advised us there may be occasions where it would be 'impossible to record details of every member of a large crowd of persons who are being moved out of an area or refused entry into an area, as this would delay the specific intention of moving the persons from the area'.

Our 2007 report recognised that it may well be impractical, inappropriate or unnecessary for police to obtain the details of all persons subject to the emergency powers. For that reason, we recommended that less formal records (eg notes on running sheets or police notebook entries) be considered in certain situations, particularly when members of the public comply with police directions. This office will continue to monitor the way police record information about the exercise of the emergency powers in order to ensure it is reasonable and appropriately documented in the circumstances.

Appendix L

Committees

Significant committees

Our staff members are members of the following inter-organisational committees:

| Staff member | Committee name |
|--|---|
| Ombudsman › Bruce Barbour | Director on the Board of the International Ombudsman Institute (part year), Regional Vice President for the Australasian and Pacific Ombudsman Regional Group (part year), Board Member of Pacific Ombudsman Alliance, Institute of Criminology Advisory Committee, Reviewable Disability Deaths Advisory Committee, and Reviewable Child Deaths Advisory Committee |
| Deputy Ombudsman (Public Administration and Strategic Projects Branch) › Chris Wheeler | Protected Disclosures Act Implementation Steering Committee |
| Deputy Ombudsman and Community and Disability Services Commissioner (Human Services Branch) › Steve Kinmond | Police Aboriginal Strategic Advisory Committee (PASAC), Reviewable Disability Deaths Advisory Committee, Reviewable Child Deaths Advisory Committee |
| Deputy Ombudsman (Police and Compliance Branch) › Greg Andrews | International Network for the Independent Oversight of Police, Early Intervention System Steering Committee |
| Principal Investigation Officer › Sue Phelan | Child Protection and Sex Crimes Squad Advisory Council |
| Director, Strategic Projects Division › Julianna Demetrius | PASAC, NSW Police Force Domestic Violence Steering Committee |
| Manager, Aboriginal Unit › Laurel Russ | PASAC |
| Division Manager (Public Administration Division) › Anne Radford | Complaint Handler's Information Sharing and Liaison Group |
| Inquiries and Resolution Team Manager › Vince Blatch | Complaint Handler's Information Sharing and Liaison Group |
| Senior Investigation Officer › Maxwell Britton | Corruption Prevention Network |
| Division Manager (Strategic Projects Division) › Brendan Delahunty | Network of Government Agencies: Gay, Lesbian, Bisexual and Transgender Issues, PASAC |

Reviewable Disability Deaths Advisory Committee

| | |
|---------------------------------------|--|
| Mr Bruce Barbour | Ombudsman (Chair) |
| Mr Steve Kinmond | Deputy Ombudsman/Community and Disability Services Commissioner |
| Ms Margaret Bail | Human Services Consultant |
| Dr Helen Beange | Clinical Professor, Faculty of Medicine, University of Sydney |
| Ms Linda Goddard Course | Coordinator, Bachelor of Nursing, Charles Sturt University |
| Associate Professor Alvin Ing | Senior Staff Specialist, Respiratory Medicine, Bankstown-Lidcombe Hospital and Senior Visiting Respiratory Physician, Concord Hospital |
| Dr Cheryl McIntyre | General practitioner (Inverell) |
| Dr Ted O'Loughlin | Paediatric Gastroenterologist, The Children's Hospital, Westmead |
| Associate Professor Ernest Somerville | Prince of Wales Clinical School, Neurology |
| Ms Anne Slater | Physiotherapist, Allowah Children's Hospital |
| Associate Professor Julian Troller | Chair, Intellectual Disability Mental Health, School of Psychiatry, University of New South Wales |
| Dr Rosemary Sheehy | Geriatrician/Endocrinologist, Central Sydney Area Health Service |

Reviewable Child Deaths Advisory Committee

| | |
|--------------------------------|--|
| Mr Bruce Barbour | Ombudsman (Chair) |
| Mr Steve Kinmond | Deputy Ombudsman/Community and Disability Services Commissioner |
| Dr Judy Cashmore | Associate Professor, Faculty of Law, University of Sydney; Honorary Research Associate, Social Policy Research Centre, University of New South Wales; Adjunct Professor, Arts, Southern Cross University |
| Dr Ian Cameron | CEO, NSW Rural Doctors Network |
| Dr Michael Fairley | Consultant Psychiatrist, Department of Child and Adolescent Mental Health at Prince of Wales Hospital and Sydney Children's Hospital |
| Dr Jonathan Gillis | State Medical Director, NSW Organ and Tissue Donation Service, former Senior Staff Specialist in Intensive Care, Children's Hospital at Westmead |
| Dr Bronwyn Gould | Child protection consultant and medical practitioner |
| Ms Pam Greer | Community worker, trainer and consultant |
| Dr Ferry Grunseit | Consultant paediatrician, former Chair of the NSW Child Protection Council and NSW Child Advocate Resigned September 2009 |
| Associate Professor Jude Irwin | Associate Professor, Faculty of Education and Social Work, University of Sydney |
| Ms Toni Single | Clinical Psychologist, former Senior Clinical Psychologist, Child Protection Team, John Hunter Hospital, Newcastle |
| Ms Tracy Sheedy | Manager, Children's Court of NSW |

Appendix M

Compliance annual reporting requirements

Under the *Annual Reports (Departments) Act 1985*, the Annual Reports (Departments) Regulation 2010 and various Treasury circulars, our office is required to include in this report information on the following topics:

| Topic | Comment/location |
|--|---|
| Access | Back cover |
| Aims and objectives | Pages 14–15 |
| Charter | Inside front cover and Appendix M |
| Consultants | We used no consultants this year |
| Consumer response | Pages 8–9 |
| Controlled entities | We have no controlled entities |
| Copy of any amendments made to the code of conduct | Code of conduct was reviewed and there were no substantial changes made and is available on our website at www.ombo.nsw.gov.au |
| Credit card certification | The Ombudsman certifies that credit card use in the office has met best practice guidelines in accordance with Premier's memoranda and Treasury directions. |
| <i>Departures from Subordinate Legislation Act 1989</i> | This year we did not depart from the requirements of the Subordinate Legislation Act. |
| Disability plans | Appendix Q |
| Economic or other factors | Pages 10–11 and 114–116 |
| Electronic service delivery | We have an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically. We provide an online complaints form, an online publications order form and a range of information brochures on our website. |
| Energy management | Page 11 and Appendix P |
| Equal Employment Opportunity | Pages 19–21 |
| Ethnic affairs priorities statement and any agreement with the CRC | Appendix Q |
| Evaluation of programs worth at least 10% of expenses and the results | We reviewed our work processes and how we capture and report on data across all our programs. |
| Executive positions | Page 18 |
| Financial statements and identification | Pages 116–136 |
| Funds granted to non-government community organisations | We did not grant any funds of this sort |
| Guarantee of service | Inside front cover |
| Human resources | Pages 17–18 |
| Is the report available in non-printed formats? | Yes |
| Is the report available on the internet? | Yes, at www.ombo.nsw.gov.au |
| Legal change | This appendix |
| Letter of submission | Inside front cover |
| Major works in progress | There were no such works |
| Management and activities | This report details our activities during the reporting period. Specific comments can be found on pages 4–13 and 24–44. |
| Management and structure: names of principal officers, appropriate qualifications; organisational chart indicating functional responsibilities | Pages 4–5 |
| Must distinguish between complaints made directly to our office and those referred to us | There were six complaints referred to us from other agencies. |
| NSW Government Action Plan for Women | Appendix Q |
| Occupational health and safety | Page 21 |

| Topic | Comment/location |
|---|---|
| Particulars of any matter arising since 1 July 2009 that could have a significant effect on our operations or a section of the community we serve | Not applicable |
| Particulars of extensions of time | No extension applied for |
| Payment of accounts | Page 115 |
| Privacy management plan | We have a privacy management plan as required by s.33(3) of the <i>Privacy and Personal Information Protection Act 1988</i> . This also covers our obligations under the <i>Health Records and Information Privacy Act 2002</i> . We had one request for an internal review under part 5 of the Act this year, which was received in June 2010, and at the time of writing was not yet finalised. |
| Promotion – overseas visits | Pages 31–32 |
| Research and development | Pages 83–84, 114 and Appendix B |
| Risk management and insurance activities | Pages 12–13 and 21 |
| Statistical and other information about our compliance with the Freedom of Information Act | Appendix O |
| Summary review of operations | Inside front cover and page 6 |
| Time for payment of accounts | Page 116 |
| Total external costs incurred in the production of the report | \$28,289 (including \$14,595 to print 800 copies) |
| Unaudited financial information to be distinguished by note | Not applicable |
| Waste | Appendix P |

Appendix N

Legislation and legal matters

Legislation relating to Ombudsman functions

- › *Ombudsman Act 1974*
- › *Community Services (Complaints, Reviews and Monitoring) Act 1993*
- › *Police Act 1990*
- › *Freedom of Information Act 1989*
- › *Government (Information Commissioner) Act 2009*
- › *Government Information (Public Access) Act 2009*
- › *Protected Disclosures Act 1994*
- › *Witness Protection Act 1995*
- › *Child Protection (Offenders Registration) Act 2000*
- › *Children and Young Persons (Care and Protection) Act 1998* enabling legislation for NSW universities as amended by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*
- › *Law Enforcement (Controlled Operations) Act 1997*
- › *Telecommunications (Interception and Access) (New South Wales) Act 1987*
- › *Surveillance Devices Act 2007*
- › *Law Enforcement (Powers and Responsibilities) Act 2002*
- › *Terrorism (Police Powers) Act 2002*
- › *Criminal Procedure Act 1986*
- › *Crimes (Criminal Organisations Control) Act 2009*

Legal Changes

› *Public Sector Restructure (Miscellaneous Acts Amendments) Act 2009*

This Act amends the *Ombudsman Act 1974* as a consequence of departmental amalgamations under the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009*. In particular, the amendments enable the Ombudsman to determine, where more than one Minister is responsible for a Department, which Minister is the responsible Minister for the purposes of consultation under the provisions of the Ombudsman Act. The amendments also enable parts of a Department, rather than the entire Department, to be prescribed as a *designated government agency* for the purposes of complying with child protection requirements under Part 3A of the Ombudsman Act. The amendments will commence on proclamation.

› *Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009*

This Act amended the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to provide the NSW Ombudsman with the function of auditing the implementation of the *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*. The Act inserted a new Part 6A into the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and gives the Ombudsman statutory authority to review the implementation of the Interagency Plan by all responsible NSW public authorities, to identify areas in which those public authorities need to take further action and make related recommendations for the more efficient and effective implementation of the Interagency Plan. The Act provides that the NSW Ombudsman must report on the audit by 31 December 2012 to the Minister for Aboriginal Affairs, at which time the NSW Ombudsman's audit function will cease.

> Children Legislation Amendment (Wood Inquiry Recommendation) Act 2009

This amending Act gives effect to the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). The amendment to the NSW Ombudsman's periodic reporting requirement under Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* commenced on 1 July 2009; the amendment introducing Chapter 16A to the *Children and Young Persons (Care and Protection) Act 1998*, which provides for the exchange of information and coordination of services between *prescribed bodies*, which includes the NSW Ombudsman in the exercise of certain functions, commenced on 30 October 2009; the amendment introducing s.8A to the *Community Services (Complaints, Reviews and Monitoring) Act*, which authorises an official community visitor to provide certain information to the Children's Guardian, commenced on 24 January 2010; the amendments providing for the NSW Ombudsman to convene the Child Death Review Team established under the *Commission for Children and Young People Act 1998* and take responsibility for the team's secretariat and research functions, have not to date commenced.

Litigation

This reporting year the Ombudsman has been a party to the following legal action:

- > *Rae v NSW Ombudsman* – Administrative Decisions Tribunal (Equal Opportunity Division) – successful application by NSW Ombudsman for summary dismissal of complaint under s.102 of the *Anti-Discrimination Act 1977* as misconceived, without substance and bound to fail.

External legal advice sought

Mr A Robertson SC with Ms K Stern – advice regarding the scope of the obligation on the Commissioner of Police under s.151 of the *Police Act 1990*.

Appendix O

Freedom of Information report

The following information is provided in accordance with the *Freedom of Information Act 1989* (FOI Act), the Freedom of Information Regulation 2005 and the NSW Ombudsman's FOI Manual. Due to the small number of FOI applications received no tables are provided this year.

We received and processed two FOI applications during 2009–2010.

Both applications requested only information related to the complaint-handling functions of this office. They were both refused on the basis that this office is exempt from the operation of the FOI by virtue of Schedule 2 and section 9 of the FOI Act in relation to applications seeking access to documents that relate to our complaint-handling, investigative and reporting functions.

We received \$30 as an application fee, which was refunded. The other application did not include an application fee because the applicant believed the request was exempt from the fee by virtue of section 43(2) of the *Commission for Children and Young People Act 1998*.

Both applications were determined within the statutory timeframe of 21 days. Both applications were processed within 10 hours.

Appendix P

Environmental program

For an overview of our environmental program, see page 11.

Energy management

Our energy management strategies focus on improving our motor vehicle fleet performance and reducing our electricity consumption.

Fleet management

Although we only have a small fleet of three cars, there are a number of strategies we use to improve our environmental performance. These include:

- > reducing our petrol consumption (see performance indicator below)
- > purchasing fuel efficient vehicles
- > exceeding the government fleet performance score – calculated by a tool from the Department of Environment and Climate Change.

Electricity consumption

Although we have implemented various strategies to reduce our energy use, we had a significant increase in consumption during 2009–2010 (see performance indicator below). This increase in consumption was attributed to a supplementary air conditioning unit which was used more frequently due to increased training courses held in our in-house training room. We are investigating ways to reduce this consumption with various energy saving initiatives.

Performance indicators

| Petrol consumption | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-------------------------|--------|--------|--------|--------|--------|
| Petrol (l) | 5,159 | 4,787 | 4,145 | 3,250 | 2,835 |
| Total (GJ) | 176 | 162 | 142 | 111 | 96.96 |
| Distance travelled (km) | 51,602 | 35,086 | 32,963 | 38,064 | 33,818 |

| Electricity consumption | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 |
|-----------------------------------|---------|---------|---------|---------|---------|
| Electricity (kWh) | 355,301 | 311,713 | 348,358 | 302,172 | 367,273 |
| Kilowatts converted to gigajoules | 1,279 | 1,222 | 1,254 | 1,088 | 1,322 |
| Occupancy (people) | 187 | 191 | 187 | 193 | 197 |
| Area (m ²) | 3,133 | 3,133 | 3,133 | 3,133 | 3,133 |

Waste reduction and purchasing program

Our office has a range of strategies to reduce waste, increase recycling, and use more recycled content products.

Reducing the generation of waste

We are continually looking at ways to improve our waste management practices. We promote email as the preferred internal communication tool and encourage staff to print double-sided. We have an electronic record management system that allows staff to access information such as policies, procedures and internal forms – reducing the need for paper copies. Our publications are available to download from our website, so we print smaller quantities than in the past.

Resource recovery

We have individual paper recycling bins at workstations and larger 240 litre bins throughout the office for secure paper destruction. All office wastepaper, cardboard, glass, plastic and aluminium is collected for recycling. We are also a member of Planet Ark Close the Loop resource recovery program.

Using recycled material

We use Australian 80% recycled paper containing waste fibre diverted from Australian landfills and 20% new fibre from sustainably managed forests. Our stationery and publications are printed on either recycled, acid free or chlorine free paper with vegetable inks. We only use printers that have a certified environmental management plan (ISO 14001). Where possible and cost effective, we use Forest Stewardship Council (FSC) certified stock. The FSC is one of the few independent bodies capable of accurately determining fibre origin by tracking it from forest to printer (see inside back cover for more information).

Appendix Q

Access and equity programs

Disability action plan (DAP)

| Outcomes | Strategies | Progress report |
|---|---|--|
| Identify and remove barriers to services for people with disabilities | Identify barriers to services for people with disabilities including physical, infrastructural, procedural and social barriers. | Our DAP advisory committee participated in a focus group to identify barriers. We engaged a certified building inspector to assess our tenancy for compliance to accessibility standards. We considered barriers that may exist in our general information and in accessing our website. Strategies to rectify/eliminate any barrier have been incorporated into our DAP. |
| | Incorporate disability access issues in the planning process to reflect the needs of people with disabilities. | We established a disability action plan advisory committee made up of representatives from all business areas. We ensured that strategies to address issues relating to people with disabilities are linked to our corporate plan and relevant business plans. We provided senior management with quarterly report on the implementation of our DAP. |
| | Review our complaint-handling practices to remove barriers for people with disabilities. | We have started a review of our complaint-handling practices to identify any gaps in service provision for people with disabilities. We will promote the use of oral complaints where appropriate. |
| | Improve data and data collection in relation to disability issues. | The needs of people with disabilities have been raised with our office stakeholder engagement working party, and they are currently developing an action plan for stakeholder engagement. |
| | Improve disability awareness among all staff. | Disability awareness training forms part of compulsory training for all staff. We continued to support the Don't Dis My Ability campaign and used the opportunity to raise awareness of disability issues and celebrate the achievements by people with disabilities. We are developing an intranet page on issues relating to people with disabilities where staff can find a range of resources. |

| Outcomes | Strategies | Progress report |
|--|--|---|
| Provide information in a range of formats that are accessible to people with disabilities | Improve the accessibility of key information about our services. | We have started a review of our accessible information (currently in large print, Braille, audio and accessible CD formats). We consulted with Vision Australia on effective ways to provide key information to people with disabilities. |
| | Improve the overall usability and accessibility of our website. | We ensure that our website meets the minimum accessibility standards set out in the Web Content Accessibility Guidelines. We have developed an action plan to re-develop our website to improve its overall usability and accessibility. |
| Make government buildings and facilities physically accessible to people with disabilities | Identify physical and infrastructural barriers to access for people with disabilities. | We had an office access audit conducted by professionals against the Building Code of Australia and Australian Standard. We upgraded the disabled toilet and reception area public access door to improve accessibility by people with disabilities. |
| | Develop and implement an improvement plan to reduce the barriers identified. | We are currently reviewing the office access audit report and developing an improvement plan with a priority list. |
| Assist people with disabilities to participate in public consultations and to apply for and participate in government advisory boards and committees | Incorporate consultation with people with disabilities into the office wide stakeholder engagement strategies. | We regularly consult peak disability organisations through our work in the community services area. |
| | Encourage people with disabilities to take part in our consultative process. | In partnership with the Disability Council of NSW, we held a forum attended by close to 300 people including people with disabilities, families, advocates and workers to discuss the provision of options and services for people with disabilities leaving institutional care. We started consultations with families of children with disabilities who live at home about the adequacy and support they receive. So far, we have consulted with more than 300 people. |
| | Ensure that our venues for public consultations are accessible to people with disabilities. | We developed an outreach venue checklist and an accessible venue register to assist staff in booking venues for outreach activities. |
| Increase employment participation of people with disabilities in the NSW public sector | Ensure our recruitment practices for all positions are accessible and non-discriminatory. | We have started a review of our recruitment process to ensure that our advertisements reach the widest number of applicants as possible. We have updated our job pack which includes information for applicants with disabilities. |
| | Promote employment opportunities to people with disabilities. | We have joined the Australian Employers Network on Disabilities and received training on issues relating to the recruitment of people with disabilities. |
| | Take all reasonable steps to increase employment participation for people with disabilities. | We are committed to making reasonable adjustments on request. We have commenced a review of our Reasonable Adjustment Policy and are developing guidelines on the issue. |

Multicultural action plan (MAP)

| Key Priority Area | Planned outcome | Strategies | Progress report |
|----------------------------------|---|--|---|
| Planning and evaluation | Integrate multicultural policy goals into our corporate and business planning and review mechanisms. | Develop a Multicultural action plan (MAP) which includes performance measures, strategies to assess progress and indicators for improved performance. | We developed an initial MAP with performance measures and assigned responsibilities, which was endorsed by the Ombudsman. We are currently finalising this plan to include a monitoring and reporting mechanism. |
| | | Ensure that strategies to address issues relating to culturally and linguistically diverse (CALD) people are reflected in or linked to our corporate plan and relevant business plans. | Through the MAP advisory committee and senior officers meetings we ensure that our MAP strategies are reflected in our office planning process. |
| | | Gather and analyse information about issues affecting CALD people and inform business planning processes. | We are developing a stakeholder engagement strategy that will provide the framework that guides the way we consult and interact with the community, including CALD people. |
| | Policy development and service delivery is informed by our expertise, client feedback and complaints, and participation on advisory boards, significant committees and consultations. | Establish a cross-office MAP advisory committee to ensure that all business areas participate in the multicultural planning process. | We have set up an advisory committee with representatives from all business areas which will provide advice and guidance for developing and implementing our MAP. |
| | | Ensure that the needs of CALD people are reflected in our stakeholder engagement strategy. | The needs of CALD people have been raised with our office stakeholder engagement working party, and they are currently developing an action plan for stakeholder engagement. |
| | | Consult regularly with key multicultural groups to identify gaps in our awareness strategies and service delivery and ensure that issues identified are reflected in our planning process. | We regularly contacted key multicultural groups, including migrant resource centres and migrant workers networks. |
| | | Take all reasonable steps to encourage CALD people to participate in relevant committees, roundtable discussions and public forums. | We continued to consult with key CALD organisations such as the Multicultural Disability Advocacy Association on a range of issues relevant to CALD people. We held an inaugural Domestic Violence Community Stakeholders Forum to provide stakeholders, including CALD representatives, with an opportunity to speak directly to us about their views on the handling of domestic violence complaints by the NSW Police Force and other lead government agencies. |
| Capacity building and resourcing | Senior management actively promote and are accountable for the implementation of the Principles of Multiculturalism within the office and wider community | Multicultural action plan (MAP) endorsed and promoted to staff by Ombudsman. | Our MAP was approved as office policy by the Ombudsman and made available to all staff. |
| | | Ensure that our MAP assigns clear responsibilities to key staff and division management for its implementation and review their performance agreements to ensure accountabilities against the principles of multiculturalism clearly assigned. | We appointed a lead officer for MAP development and implementation. Our MAP assigns clear responsibilities to all relevant staff. When next reviewed, performance agreements of key staff and where relevant, position descriptions will be amended by June 2011. |

| Key Priority Area | Planned outcome | Strategies | Progress report |
|---|---|--|--|
| Capacity building and resourcing cont'd | Our capacity is enhanced by the employment and training of people with linguistic and cultural expertise. | Review the linguistic and intercultural work skills needed by frontline staff and implement recommendations to ensure that business requirements are serviced by appropriate human resources. | We will conduct a needs analysis to identify any gaps in the skills needed by frontline staff by December 2010, and develop and present an improvement plan to management. We aim to ensure that our frontline staff have an appropriate level of linguistic and intercultural skills to provide good service to CALD clients. |
| | | Use the Community Language Allowance Scheme (CLAS), monitor its implementation, and develop a register of staff who have bilingual skills and cultural and community knowledge to assist in our communications with clients. | We have actively promoted the CLAS within the office. We currently have three staff members receiving CLAS and they cover four community languages. |
| | | Develop and deliver cross cultural competence training sessions as part of our compulsory internal skill based training program. | In consultation with the Hills Holroyd Parramatta Migrant Resource Centre, we are developing a series of cultural awareness sessions for our staff. The first session on the small and emerging refugee communities was very well received by those attending. |
| Program and services | Identify barriers to access to our services for CALD communities, and develop programs and services to address issues identified. | Ensure that the needs of CALD people are identified and addressed in our office stakeholder engagement strategies. | The needs of CALD people have been raised with our office stakeholder engagement working party which is currently developing an action plan for ongoing stakeholder engagement. |
| | | Review our guidelines on the use of interpreters and translators and provide training to all staff. | All our frontline staff are trained in the use of interpreters and translators. |
| | | Ensure that our budget for interpreter services and interpreter use is monitored and reviewed. | We have allocated funds for providing interpreting and translation services, and have a register of services to inform our decision-making in developing community language information. |
| | Use a range of communication formats and channels to inform the CALD community about our programs, services and activities. | Review our information in community languages and develop accessible and appropriate information material in a range of formats (written, audio, online etc) to meet the specific needs of CALD communities following consultation with key community organisations. | We have started a review of our current community language information. We are consulting with key migrant services on the development of accessible and appropriate information material for CALD communities. |
| | | Explore and recommend where appropriate the use of a range of technology in targeted community languages to facilitate communication with CALD people and improve access to our services. | The information needs of CALD communities have been raised as part of our website review, which will be completed by December 2010. We are planning to conduct research on the appropriate use of technologies in communicating with CALD communities by June 2011. |
| | | Develop initiatives to raise awareness of, and celebrate the contribution of, CALD people. | We participated in various multicultural events such as the Bankstown Lunar New Year Festival, Holroyd City Carnival, 2010 Youth Harmony Festival, City of Ryde Community Information Expo and the Werrington Festival. We also distributed information about our office in community languages (Vietnamese, Chinese, Indonesian, Nepali and Arabic) at the National Migrant Women Workers Forum. We participated in a community legal education video project that targeted African communities in the Fairfield local government area. |
| | | | |

Action plan for women

| Objective | Outcomes for 2009–2010 |
|---|---|
| Reduce violence against women | <p>We provided feedback to the NSW Police Force (NSWPF) on a draft version of their Domestic and Family Violence Code of Practice. We also accepted an invitation from the NSWPF to sit on a committee convened to consider a proposal to introduce 'on-the-spot' AVOs.</p> <p>We hosted an inaugural Domestic Violence Stakeholders Forum in December 2009 attended by 60 community workers. We also met with the Domestic Violence Coalition, Women's Health NSW and the Women's Domestic Violence Court Advocacy Scheme to discuss a range of issues.</p> <p>We partnered with the Women's Legal Service (WLS) to provide domestic violence advocacy training to workers in the community, health and legal sectors as part of <i>Reaching out for Rights</i> project.</p> |
| Promote safe and equitable workplaces that are responsive to all aspects of women's lives | <p>We promote flexible working conditions such as flexible working hours, part-time, job share, working at home arrangements and leave for family responsibilities to help women to pursue their career while caring for their families.</p> <p>We reviewed and updated our 'Good Working Relationships' policy that sets out procedures for dealing with workplace harassment and grievances.</p> |
| Maximise the interests of women | <p>We distributed information about the role of the office and the complaint system to women at various events. In partnership with the Energy & Water Ombudsman, we held a stall at the International Women's Day celebration at Martin Place and provided face to face advice to many women attending the function. We also included information about our office in community languages (Vietnamese, Chinese, Indonesian, Nepali and Arabic) in the information pack that was distributed at the National Migrant Women Workers Forum.</p> |
| Improve the access of women to educational and training opportunities | <p>We implement government policies on EEO and select and promote staff on merit. We provide our staff with equal educational and training opportunities to further their careers.</p> |
| Promote the position of women | <p>As at 30 June 2010, we had 22 staff at the Grade 11/12 level or above including our SES officers. Of the 22, 12 or 54.5% were women.</p> <p>In addition to the Ombudsman we have three SES officers. None of our SES officers are women.</p> |

Appendix R

Publications list

We produce a range of publications including general information for the public, guidelines for agencies and organisations we oversight, discussion papers seeking information from the public, final reports at the conclusion of legislative reviews, annual reports outlining the work we have done during the financial year and special reports to Parliament about public interest issues.

The following publications were issued during 2009–2010 and are available online (Acrobat PDF format) at www.ombo.nsw.gov.au.

Special reports to Parliament

- › The need to better support children and young people in statutory care who have been victims of crime
- › Removing nine words – Legal professional privilege and the NSW Ombudsman
- › The death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system
- › The death of Ebony: The need for an effective interagency response to children at risk
- › The implementation of the *Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing*

Annual reports

- › NSW Ombudsman Annual Report 2008–2009
- › *Law Enforcement (Controlled Operations) Act 1987* Annual Report 2008–2009
- › Official Community Visitors Annual Report 2008–2009

Reports and submissions

- › Review of the impact of Criminal Infringement Notices on Aboriginal communities
- › Review by the Ombudsman of the planning and support provided by Community Services to a group of young people leaving statutory care
- › Submission to the Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system
- › Report under Section 49(1) of the *Surveillance Devices Act 2007* for the six months ending December 2009
- › Report under Section 49(1) of the *Surveillance Devices Act 2007* for the six months ending June 2009

Fact sheets and guidelines

- › Child protection fact sheet – Practice Update 1/2010: Making a finding
- › Thinking of blowing the whistle? (Agencies) (updated)
- › Thinking of blowing the whistle? (Council) (updated)
- › Protected disclosures fact sheet: Am I dealing with a protected disclosure? (updated)
- › *The Rights Stuff* – Tips for making complaints and solving problems (audio version)

Brochures

- › Training choices
- › Complaint-handling kit for community services (CS-CRAMA)
- › Have you got a problem with a NSW government agency? (poster)

Newsletters

- › *OmbolInfo* Volume 3 Issue 1 (electronic only)
- › *OmbolInfo* Volume 2 Issue 2 (electronic only)

Glossary

| Acronym | Explanation |
|----------|---|
| AAT | Administrative Appeals Tribunal |
| AbSec | Aboriginal Child, Family and Community Care State Secretariat |
| ACS | <i>Aboriginal Consultation Strategy</i> |
| ACSAT | Aboriginal Child Sexual Assault Taskforce |
| ACWP | Aboriginal Community Working Party |
| ADHC | Ageing, Disability and Home Care |
| ADT | Administrative Decisions Tribunal |
| AFP | Australian Federal Police |
| AHO | Aboriginal Housing Office |
| AIS | Association of Independent Schools |
| APF | <i>Aboriginal Policy Framework</i> |
| ASD | <i>Aboriginal Strategic Direction</i> |
| ADVO | Apprehended domestic violence order |
| CALD | Culturally and linguistically diverse |
| CCER | Catholic Commission for Employment Relations |
| CCTV | Closed-circuit television |
| CCYP | Commission for Children and Young People |
| CHD | Community Housing Division |
| CINs | Criminal infringement notices |
| CRC | Community Relations Commission |
| CS-CRAMA | <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i> |
| CTTT | Consumer, Trader and Tenancy Tribunal |
| CWU | Child wellbeing units |
| DAP | Disability Action Plan |
| DPC | Department of Premier and Cabinet |
| DSA | <i>Disability Services Act 1993</i> |
| DVLO | Domestic violence liaison officer |
| DET | Department of Education and Training |
| EEO | Equal employment opportunity |
| ETU | Education and Training Units |
| EWON | Energy & Water Ombudsman (NSW) |
| FOI | Freedom of information |
| GIPA Act | <i>Government Information (Public Access) Act 2009</i> |
| HACC | Home and community care |
| ICAC | Independent Commission Against Corruption |
| ICV | In-car video |

| Acronym | Explanation |
|----------|--|
| JCC | Joint Consultative Committee |
| JGOS | Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing |
| JIRT | Joint Investigation Response Team |
| LEPRA | <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> |
| LG Act | <i>Local Government Act 1993</i> |
| LWB | Life Without Barriers |
| MAP | Multicultural action plan |
| MSPC | Metropolitan Special Programs Centre |
| NSWALC | NSW Aboriginal Land Council |
| NSWPF | NSW Police Force |
| NSWTG | NSW Trustee and Guardian |
| OCVs | Official community visitors |
| OFT | Office of Fair Trading |
| OH&S | Occupational health and safety |
| OOHC | Out-of-home care |
| OPC | Office of the Protective Commissioner |
| OSR | Office of State Revenue |
| PADP | Program of appliances for disabled people |
| PASAC | Police Aboriginal Strategic Advisory Committee |
| PD Act | <i>Protected Disclosures Act 1994</i> |
| PIC | Police Integrity Commission |
| PJC | Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission |
| POA | Pacific Ombudsman Alliance |
| PPIP Act | <i>Privacy and Personal Information Protection Act 1998</i> |
| PSA | Public Service Association |
| PSC | Professional Standards Command |
| RTA | Roads and Traffic Authority |
| SAAP | Supported accommodation assistance program |
| SDRO | State Debt Recovery Office |
| SORC | Serious Offenders Review Council |
| YACS Act | <i>Youth and Community Services Act 1973</i> |
| YLO | Youth liaison officer |
| WWCC | Working With Children Check |

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Complaining to the Ombudsman

Anyone can make a complaint to the Ombudsman. If you do not want to complain yourself, you can ask anyone – a relative, a friend, advocate, lawyer, your local Member of Parliament – to complain for you.

How do I make a complaint?

Start by complaining to the organisation involved. Contact us if you need advice about this. If you are unhappy with the way an organisation has handled your complaint, you can complain to us, preferably in writing. Your complaint can be in any language. If you have difficulty writing a letter, we can help. We can also arrange for translations, interpreters and other services. Our online complaints form also makes it easier for people to lodge a complaint with our office.

What should I include with my complaint?

Briefly explain your concerns in your own words. Include enough information for us to assess your complaint and decide what we will do. For example, describe what happened, who was involved, when and where the events took place. Remember to tell us what action you have already taken and what you would like to see happen. Include copies of all relevant correspondence between you and the organisation concerned.

What happens to my complaint?

A senior investigator will assess your complaint. We may phone the organisation concerned to make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the organisation's response, we may investigate.

We do not have the resources to investigate every complaint, so priority is given to serious matters, especially if it is an issue that is likely to affect other people. If we cannot take up your complaint we will tell you why.

If your complaint is about a police officer, we will refer your complaint to the NSW Police Force for resolution or investigation. They will contact you about any action they have taken as a result of your complaint. We will oversee how they deal with your complaint.

What happens in an investigation?

First we ask the organisation to comment on your complaint and explain their actions. Generally, we will tell you what the organisation has said and what we think about their response. Some matters are resolved at this stage and the investigation is discontinued.

If the investigation continues, it can take several months until a formal report is issued. We will tell you what is likely to happen.

If we find your complaint is justified, the findings are reported to the organisation concerned and the relevant minister. You will be told about our findings. The Ombudsman may make recommendations in the investigation report. We cannot force an organisation to comply with our recommendation; however, most usually do. If the organisation does not comply, the Ombudsman can make a special report to Parliament.

What if I am unhappy with the Ombudsman's actions?

If you are unhappy with our decision you can ask for your complaint to be reviewed. However, a decision will only be reviewed once. A senior staff member who did not originally work on your complaint will conduct the review. To request a review, telephone or write to us.

If you are unhappy with any of our procedures write to:

**Clerk to the Committee
Committee on the Office of the
Ombudsman and the Police
Integrity Commission
Parliament House,
Macquarie Street
SYDNEY NSW 2000.**

The committee monitors and reviews our functions. It cannot review our decisions about individual complaints.

Acknowledgements

Our annual report is a public record of our work and through it we are accountable to the people of NSW. Our report is prepared against criteria set out by NSW Treasury and the Annual Report Awards. It is available from our office or our website at www.ombo.nsw.gov.au.

Many thanks to everyone who contributed to this year's annual report, but particularly our statutory officers, Anita Whittaker and the staff involved in coordinating their division's contribution: Helen Ford, Gareth Robinson, Judith Grant, Justine Simpkins and Tom Millett.

Project Team Project manager & editor: Julianna Demetrius; Project officer: Cathy Ciano; Design: Inhouse studio.

External consultants Editor: Janice McLeod; Proofing & indexing: *indexat*; Photography: Robert Edwards Photographer (p.2, 5); Printing: Green & Gold printing.

ISBN: 978-1-921132-72-8, ISSN 1321 2044





...impartial...service...scrutiny...leadership...accountability...investigation...organisation...administration...operation...oversight...education...fair decision...quality...operation...commitment...good conduct...resolution...training...progress...awareness...protection...development