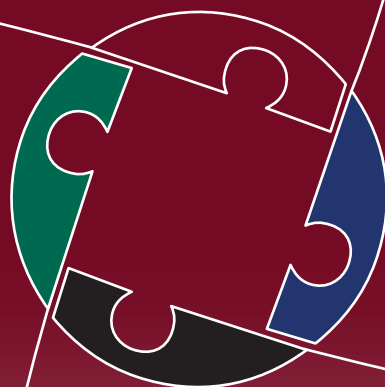


# OMBUDSMAN TASMANIA

ANNUAL REPORT 2010 - 2011



# OMBUDSMAN TASMANIA

## ANNUAL REPORT 2010-11

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# LETTER TO PARLIAMENT

To:

**The Honourable President of the Legislative Council**

and

**The Speaker of the House of Assembly**

Pursuant to section 30 of the *Ombudsman Act 1978*, I present to the Parliament the annual report of the Ombudsman for 2010-2011.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon Allston', written in a cursive style.

**Simon Allston**  
**Ombudsman**

November 2011

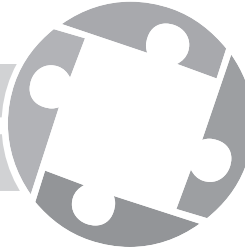
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## HIGHLIGHTS

- Significant increases in the number of new complaints received, and in numbers of complaint files closed, in the Health Complaints and Energy Ombudsman jurisdictions
- Reduction in Freedom of Information and Right to Information applications for review, offset by other work in the Right to Information jurisdiction
- Reduction in Budget allocation for 2011/12 and out years
- Prospective closure of the Launceston office as a result of reduced funding
- Efficiencies being explored to address reduced funding
- Seeking systemic improvements without prior formal investigation, where possible
- A number of major investigations completed
- Introduction of online complaint forms



## FROM THE OMBUDSMAN

TASMANIAN OMBUDSMAN – SIMON ALLSTON

The most striking feature of our Office to outsiders is the number of jurisdictions that we cover. Giving one statutory officer multiple jurisdictions is a very sensible approach for a small State that wishes to provide its citizens with a full range of services as economically as possible, but this creates its own difficulties.

One of these is that we produce three annual reports a year, for each of the Ombudsman, Health Complaints and Energy Ombudsman jurisdictions. Another is that we have four websites, to make sure that the full range of services that we provide is adequately publicised.

As usual, I use my annual report as Ombudsman to give a full picture of the Office. This report therefore contains a chapter on each of the major functions of the Office, including the Health Complaints and Energy Ombudsman jurisdictions. I also publish a separate, more detailed annual report as Health Complaints Commissioner, and that report can be seen at [www.healthcomplaints.tas.gov.au](http://www.healthcomplaints.tas.gov.au). My annual report as Energy Ombudsman, which is not tabled in Parliament, can be seen at - [www.energyombudsman.tas.gov.au](http://www.energyombudsman.tas.gov.au).



## REAPPOINTMENT

I was reappointed as both Ombudsman and Health Complaints Commissioner on 17 December 2010, for a further period of 5 years.

## RESOURCES

The year ended with some publicity about my expressions of concern in Estimates Committee hearings about staffing cuts required of my Office in the State Budget for 2011/12 and subsequent years. Our budget has been reduced by \$60,000 for 2011/12 and a projected \$115,000 for the three ensuing budget years. As discussed with the Department of Treasury and Finance (DOTAF) in the budget process, these savings are to be achieved by the projected closure of our Launceston office in March 2012 and by the termination of the services of our sole staff member in Launceston and a Hobart officer who assists us in the Ombudsman jurisdiction, on a casual contract.

The proposal for the closure of the Launceston office, and for the loss of the two staff members mentioned, arose in my response to a letter from DOTAF sent to me on 31 March 2011. I was told by that letter that savings targets had been identified for each Budget Agency, so as to assist in addressing significant and unsustainable pressures on the State Budget. I was told that my savings target was \$90,000 in 2011/12, rising to \$130,000 in 2012/13 and \$190,000 in 2013/14, and I was asked to develop strategies for achieving the required savings.



I argued against being required to find these savings, and said this in my response –

*Ours is a very small office, which fulfils a multiplicity of functions with a staff which is skeletal already. More than that, we are one of the integrity and accountability agencies within Government. Reducing our services has the capacity to reduce trust in Government, and to increase conflict with it. In straightened times, there may need to be an increase, not a reduction, in activity by such agencies.*

I asked that, if any cuts were to be required of me, they be limited to the closure of the Launceston office and the loss of the two staff members mentioned. Part of the reason for including the closure of the Launceston office in my proposals was that DOTAF had told us much earlier in the budget process that we would not receive the Launceston rental cost of \$36,000, even though this was a new and unexpected expense for us. Until early in 2011, we had always received free office space in Launceston from the Department of Justice.

By the time of the Estimates Committees, I had become aware that the two officers to be lost had between them covered 21.6% of Ombudsman complaints in 2009/10 and 16.4% of Ombudsman complaints in 2010/11. I also had up to date figures on the increased workload in our three main jurisdictions for 2010/11. This is why I replied to the questions put to me by the Committees with expressions of concern at how we would deal with the budget cuts being imposed.

By this time, I was severely disappointed by the Budget process, which was very different from that foreshadowed in the DOTAF letter of 31 March 2011. I had found by then that it was not the case that all Budget Agencies were being required to make savings. This was clear from the Budget papers. I also appeared in the Estimates Committees with two Agencies, the DPP and the Integrity Commission, neither of which had been required to find significant savings. Thus, I considered that my small Office had been inequitably treated. I remain of this view and have since raised these concerns directly with the Secretary of DOTAF.

## EFFICIENCIES

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The only way in which we will be able to absorb such staffing cuts in the face of an increasing workload is through efficiencies. I am not willing, however, to compromise on the standard of the service that we provide, and have recently published Service Standards which give our commitment to high standards of service.

The efficiencies will include –

- making greater use of informal methods for resolving complaints – email, telephone, face-to-face meetings etc.
- seeking to resolve systemic problems by early consultation with agencies, without first proceeding to formal investigation of the issues
- being more ready to refuse to deal with less substantial complaints, and
- using administrative staff to fulfil some minor tasks that have previously been performed by investigation officers.



There has been a steady evolution in the direction of the second of these efficiencies in the last couple of years. Formal investigation of administrative issues can often both delay and impede the introduction of necessary improvements. In the past year, there have been a number of situations in which we have engaged in discussions with agencies with a view to addressing administrative problems, without first embarking on a formal investigation. These include –

- discussions with Aurora Energy to address problems associated with the refusal to read an electricity meter when it is thought that there is an unrestrained dog on the premises
- discussions with Aurora Energy about customers being charged for electricity on the wrong tariff
- discussions with Southern Water, Ben Lomond Water and Cradle Mountain Water about problems associated with their billing systems, and
- discussions with the Tasmania Prison Service about multiple issues affecting prisoners.

This type of work can be of widespread benefit, and is not reflected in our complaint figures.

I have a major concern about improving the timeliness with which we address complaints, and the efficiencies which I have mentioned are directed to this also. We have for some time been working to minimise the number of complaint files which are open for more than 300 days, and at times during the last year have had this number down to nine files in the Ombudsman jurisdiction and none in the Energy Ombudsman jurisdiction. This is a harder task in the Health Complaints jurisdiction, where many files go to conciliation and factors out of our control then start to have an impact.

## COMPLAINT MANAGEMENT

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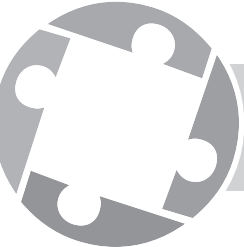
I normally report on changes in workload compared with previous years, and the statistics in the Appendices to this report contain such comparisons.

However, these comparisons are harder to draw this year, because of the effect of the introduction, in July 2010, of online complaint forms in our three main jurisdictions – Ombudsman, Health Complaints and Energy Ombudsman. Two principal consequences arose. One is that the ease of making a complaint led to a rise in out-of-jurisdiction complaints. For instance, we were receiving many complaint forms raising telecommunications issues which are the province of the Telecommunications Industry Ombudsman. This consequence has since been addressed by adjustments to our Ombudsman website, since this was the jurisdiction in which the problem was arising.

The other major consequence is that many approaches to the Office which would previously have been recorded as enquiries have been recorded as complaints. These sorts of approaches would previously have been by phone, email or letter, and were now coming in on complaint forms.

In considering this issue for the purposes of preparing this report, we have found that our administrative processes need to be sharpened, so that the data for future years is properly comparable. We are presently working on a project to fully document these processes and these improvements will be implemented as part of that project.





I emphasise that the distortionary effect of the online complaint forms has principally arisen in our Ombudsman jurisdiction. It is almost unknown for us to receive an online complaint form in the Health Complaints jurisdiction which does not deal with an issue relating to health services, or such a form in the Energy Ombudsman jurisdiction which does not deal with energy services. However, there may have been a few occasions in those two jurisdictions where complaints were lodged by people who might otherwise previously have only contacted us with an enquiry.

With this preamble, I believe that the following comparisons with the complaint figures for 2009/10 are largely accurate in showing significant increases in workload, and output in the Health Complaints and Energy Ombudsman sections during 2010/11 –

<b>Ombudsman</b>	Complaints received	+ 28%	549 to 702
	Complaint files closed	+ 12%	592 to 664
<b>Health Complaints</b>	Complaints received	+ 25%	236 to 295
	Complaint files closed	+ 27%	216 to 275
<b>Energy Ombudsman</b>	Complaints received	+ 12%	414 to 465
	Complaint files closed	+ 8%	422 to 454

The Ombudsman jurisdiction has also been extremely busy; it is just that we are not able to accurately quantify that busyness by reference to statistics which compare with previous years.

I note that our statistics show a drop in enquiries in all jurisdictions. The figures for enquiries opened and closed in the same year dropped by 17% in Ombudsman, 11% in Health Complaints and 22% in Energy Ombudsman. This is explained by the introduction of the online complaint forms, and by the improved information available through the four new websites which went live at the beginning of July 2010.

As for the FOI/RTI jurisdiction, the number of applications for review dropped off sharply during 2010/11. We received 128 applications for review under the *Freedom of Information Act 1991* (FOI Act) in 2009/10. This was an exceptional figure, reflecting heightened activity by one particular applicant. The FOI Act was repealed with effect from 1 July 2010, but it was still possible for a review under that Act to be sought after that repeal. Hence we have received applications for review under both the FOI Act and the replacement legislation, the *Right to Information Act 2009* (RTI Act), during the reporting year. The combined total of these applications was 57, representing 27 applications under the FOI Act and 30 applications under the RTI Act. This is a decrease of 11% on the figure of 64 applications for review received in 2008/9 – a more normal year than 2009/10.

However, as will be apparent from the FOI/RTI chapter, this drop in applications for review has been offset by other activity in the RTI jurisdiction, particularly running workshops and producing Guidelines.

## MAJOR INVESTIGATIONS

Our capacity to conduct major investigations remains limited by resource pressures, which is one of the reasons why we seek to address systemic issues by discussions of the kind mentioned earlier.

I commenced a major own motion investigation in March, into the administration by the Department of Health and Human Services of a particular provision in the *Poisons Act 1971*. This is ongoing.



I have also met with the Minister for Corrections and Consumer Protection, and senior corrections managers, on a number of occasions to follow up on the implementation of the recommendations made in my June 2010 report into the management of the Tamar Unit at Risdon Prison. I am continuing to monitor the implementation of those recommendations, although they have been somewhat overshadowed by those made by Mick Palmer AO APM in the report of his Risdon Prison Complex Inquiry, released publicly in June 2011.

I completed a major own motion investigation in the Health Complaints jurisdiction in January 2011, in relation to allegations that a specialist in one of the State's public hospitals had been permitted to practise in a field for which he had inadequate qualifications. I also completed another major investigation in that jurisdiction just after the end of the financial year, in which I concluded that a patient had been subjected unlawfully to chemical restraint, and examined the adequacy of the State's laws in this respect.

## STAFFING

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During the reporting year, the position of Principal Officer – Ombudsman was reclassified, from Band 8 to Band 9. The title of the new position is Director – Office of the Ombudsman. The role includes deputising for the Ombudsman, and this officer is now the most senior member of my staff. The successful applicant for the position was Richard Connock, who had been the Principal Officer – Ombudsman since early 2007.

At year's end, there were 25 members of staff and a 26<sup>th</sup> member joined us just after the end of the financial year. This larger complement represents 19.6 FTE.

The 26<sup>th</sup> member of staff is a welcome addition of 0.8 FTE to our Health Complaints team, which has been significantly under-resourced during recent years.

I am pleased to report that there is considerable flexibility in the working arrangements in the Office. Amongst the 26 members of staff at the beginning of July 2011, all but five were permanent employees and 17 worked part-time. Three of the positions in the Office also involved job-share arrangements. Flexitime is also available.

As noted earlier, the staffing levels in the Office are due to drop by 1.4 FTE during the current year, because of budgetary restrictions.

## OTHER MATTERS

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As I have said, this report contains a chapter in relation to each of the major functions of the Office. In this part of this preface, I mention matters of interest which are not mentioned elsewhere in the preface or in any of those chapters.

- Funds were allocated in the State Budget for work to be done in 2011/12 to explore the provision of a prison inspectorate service by this Office. I provided a proposal about this to the Department of Justice in November 2010, at the request of the Minister for Corrections. If we are asked to provide a prison inspectorate, this will be the sixth major function that this Office discharges. Care will need to be taken that the inspectorate function does not detract from normal handling of prison work in our Ombudsman, Health Complaints and Official Visitor sections. Care will also have to be taken to make sure that prison issues do not predominate in the work of the Office.



- As Ombudsman, I am an ex officio member of the Board of the Integrity Commission. I attended all of the meetings of the Board during the reporting year, both formal and informal. I estimate that my involvement on the Board has involved more than one full day's work a month, spread across the year. However, I have obtained great benefit from regular engagement with the other accountability officers on the Board, and from participation in the development of the Commission's governance structures.
- Somewhat to my surprise, there has been little occasion for the Commission to refer complaints to me for investigation under the *Ombudsman Act*.
- I did not meet the Joint Standing Committee on Integrity during the reporting year, other than in the setting of a preliminary meeting with the Committee as a member of the Board of the Integrity Commission. That meeting took place on 14 April 2011.
- We continued to improve our IT environment during the year. This involved two principal projects. One of these is the introduction of online complaint forms, and their integration with our case management database, Resolve. This integration, which involves the automatic entry of the complaint into the database, was a first for Resolve, whose database system is used by many Ombudsmen and similar officers throughout Australia.
- The second project has been the introduction of the TRIM document management system, and this is ongoing. This project represents an important improvement to our systems, through which we are seeking a number of benefits, e.g. better management of the documents which fall outside complaint management; better management of email; and better management of the archiving of records.
- Training has also been provided to all staff to improve their use of Microsoft Word and Microsoft Outlook. Introductory training has also been provided to all staff in relation to Microsoft Office 2010, and to a number of staff in the operation of the TRIM document management system.
- We have engaged in a number of significant professional development opportunities. Peter Cantwell, an Assistant Ombudsman with the Queensland Ombudsman, spoke with a large number of our staff over two days last November on the conduct of major investigations. Ten members of staff also did a workshop with the Plain English Foundation in early December, with the result that some 16 members of staff have done this training over the last two years. I also arranged for two of my staff to attend an investigation training course in Melbourne in early July 2011. This training was conducted by the Victorian Ombudsman, for officers from Ombudsman offices throughout Australasia, and arose from agreement amongst the Ombudsmen to trial this type of coordinated training.
- Some major office renovations were conducted in December and January of this year. We now occupy a much larger space on the ground floor of our office building, and the renovations have provided some extra offices, should we need to expand further, for instance because of the prison inspectorate proposal. We also now have a kitchen of our own, which has been a great improvement to the work environment.

It remains to thank all of my staff, past and present, who worked with me in 2010/11 to deliver the many services which our Office provides. I am very grateful for the high quality of your work, and for your dedication.

**Simon Allston**  
**Ombudsman**

November 2011



# THE ROLE OF THE OMBUDSMAN

In addition to the very broad jurisdiction of the Ombudsman under the *Ombudsman Act 1978* to investigate administrative actions by State Government departments, local government bodies, Government Business Enterprises and other public authorities, the Ombudsman has a wide range of other functions and responsibilities.

All the services offered by our Office are free, and all of our functions are carried out, and our responsibilities met, fairly and impartially.

## OMBUDSMAN

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Anybody who is aggrieved by the administrative action of a Tasmanian public authority and who has tried unsuccessfully to resolve their concerns with the authority itself can complain to my office. If the complaint is within jurisdiction and the circumstances warrant it, it will be investigated. I can also investigate such action – particularly where systemic issues are involved – on my own motion. Our primary objectives are to improve public administration and promote good administrative practice.

At the conclusion of an investigation, whether it be the investigation of a complaint or an own motion investigation, a report is prepared for delivery to the authority concerned, which will include recommendations for addressing and rectifying any action which in the opinion of the Ombudsman –

- appears to have been taken contrary to law
- was unreasonable, unjust, oppressive, or improperly discriminatory
- was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory
- was taken in the exercise of a power or discretion and was so taken for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations
- was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given
- was based wholly or partly on a mistake of law or fact, or
- was wrong.

These are the criteria set out in s 28(1) of the *Ombudsman Act 1978*.

A report can also be delivered to the relevant Minister and/or Parliament. My office has no coercive power in relation to the adoption of recommendations but is dependent on constructive negotiation and persuasive argument. It is uncommon for an agency not to accept recommendations we make.



## RIGHT TO INFORMATION REVIEWS

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During the reporting year my office received numerous requests for the review of decisions taken by public authorities on applications for assessed disclosure under the RTI Act not to release the information sought. If at the conclusion of a review I am of the view that the authority's decision was incorrect I can make a fresh determination, which the authority is obliged to implement.

## PUBLIC INTEREST DISCLOSURES

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My office has a significant role under the *Public Interest Disclosures Act 2002* to receive and investigate public interest (or "whistleblower") disclosures and oversee the manner in which public authorities deal with such disclosures.

## PERSONAL INFORMATION PROTECTION

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My office provides an avenue of redress for people who believe that their personal information has been misused by a public authority in breach of the *Personal Information Protection Act 2004*.

## HEALTH COMPLAINTS COMMISSIONER

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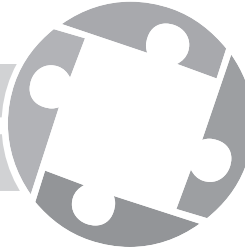
The Ombudsman is also the Health Complaints Commissioner under the *Health Complaints Act 1995* and receives complaints relating to the provision of a health service by a health service provider in either the public or the private sector. The Commissioner's functions are outlined in s 6 of the Act and include -

- preparing and regularly reviewing a Charter of Health Rights
- identifying and reviewing issues arising out of complaints and suggesting ways of improving health services and preserving and increasing health rights
- providing information, education and advice in relation to the Charter, health rights and responsibilities, and the procedures for resolving complaints
- receiving, assessing and resolving complaints, and
- enquiring into and reporting on any matter relating to health services at his or her own discretion or on the direction of the Health Minister.

## ENERGY OMBUDSMAN

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Consumers are able to lodge complaints against energy entities with the Ombudsman for investigation and resolution under the *Energy Ombudsman Act 1998*. The office has the power under the Act to make determinations and awards against the entities where appropriate.



## WATER AND SEWERAGE

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Pursuant to the *Water and Sewerage Industry Act 2009*, a customer of a water and sewerage corporation who has made a complaint to the corporation under its customer complaints process and is not satisfied with the outcome of the complaint may make a complaint about that outcome to the Ombudsman. It is a condition of a corporation's licence that it will be bound by the Ombudsman's determination in relation to the complaint. The broader administrative actions of the corporations come within the general Ombudsman jurisdiction.

## POLICE COMPLIANCE AUDITS

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My office has the responsibility for ensuring compliance by Tasmania Police with the procedural requirements of the *Telecommunications (Interception) Tasmania Act 1999*, the *Police Powers (Controlled Operations) Act 2006* and the *Police Powers (Surveillance Devices) Act 2008*.

## OTHER STATUTORY FUNCTIONS

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I am also able to review certain decisions of the Commissioner of Police under the *Witness Protection Act 2000* and decisions about the release of information under the *Adoption Act 1998*.

## REFERRAL SERVICE

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The office plays an important role in referring members of the public to the body best able to address their concerns when those concerns relate to matters that are out of our jurisdiction. In most cases, we are able to advise a complainant of the body they need to speak to. We regularly refer people to the Integrity Commission, the Commonwealth Ombudsman, the Telecommunications Industry Ombudsman, the Financial Ombudsman Service, the Office of the Anti-Discrimination Commissioner and the Office of Consumer Affairs and Fair Trading.



# OMBUDSMAN ACT 1978

## REVIEW OF COMPLAINTS

### BACKGROUND

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As indicated in the preface to this report, the introduction of an online complaint form, particularly the integrated form which allowed complainants to submit their complaints directly to my office rather than as an email attachment, gave rise to an increase in out of jurisdiction complaints, the vast majority of which in previous years would have been recorded as enquiries. This in part explains the 16% drop in the number of out of jurisdiction enquiries recorded in the reporting year. The improvement of our website with effect from July 2010 is also likely to have had an effect on this figure.

However, the number of out of jurisdiction enquiries in the 2009/10 reporting year was very high at 2,828, which represented a 63% increase over the previous year. The number in the current reporting year - 2,386 - was also very high when compared with previous years. I noted in my last annual report that a significant number of these increased enquiries came from prisoners in the various prison facilities throughout the State utilising the secure, free call number to my office on the Prison Service's Arunta telephone system, and that remained the case in the current reporting year.

In my last report I suggested some reasons for this, including the use of the line to my office by prisoners as a means of "beating the system" and increasing the number of calls they can make. I also noted that the line to my office is the only contact some prisoners have with an outside agency. In the latter case, though the line should only be used during business hours, prisoners would often call after hours and on weekends and holidays, leaving long messages. This posed a significant burden on our reception staff who were required to sift through these messages.

Discussions took place between my office and Tasmania Prison Service in late 2010 aimed at reducing the number of both the "prank" Arunta calls and the out of hours calls and, as a result, the line was made unavailable to prisoners out of hours and during holiday periods. The misuse of the system by prisoners was more difficult to police and control, but the Prison Service continues to monitor the situation and the number of calls has steadily decreased. Though the number of out of jurisdiction Arunta calls dropped by only 5% over the full reporting year, the decrease was all in the last months of that year.

Complaint numbers have been influenced by categorising what would in previous years have been recorded as enquiries as out of jurisdiction complaints, virtually throughout the reporting year. The first version of the online complaint form was introduced in July 2010 and the integrated form in February 2011.<sup>1</sup> Nonetheless, there was still a slight increase in the number of complaints that were within jurisdiction. The out of jurisdiction complaints contributed to an increase of 12% in the number of complaint files closed during the period, and contributed to an increase in the number of complaints resolved within 90 days from 77% in 2009/10 to 82% in the reporting year.

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<sup>1</sup> The integrated form communicating directly with our Resolve case management system.



Complaints were divided between the various areas of government as follows:

General Agency (Government Departments)	65%
Public Authorities	19%
Local Government	14%
Government Business Enterprises	2%

In 59% of cases, a finding was made that there had been no defective administration and 28% were either declined or discontinued. Only 2% of complaints were substantiated, either in whole or in part.

## GENERAL AGENCY

Complaints against government departments accounted for nearly two thirds of all complaints received, and as in previous years, most complaints were against the Department of Justice, the Department of Health and Human Services and the Department of Police and Emergency Management. Together these Departments accounted for 86% of all general agency complaints. At the other end of the scale, the Department of Premier and Cabinet and the Department of Treasury and Finance were the agencies least complained about, each only accounting for 1% of total complaints received.

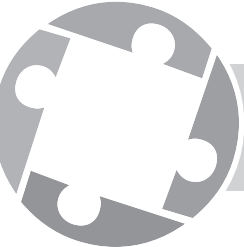
## THE DEPARTMENT OF JUSTICE

Once again, more complaints were received against the Department of Justice than any other agency (46% of all general agency complaints) due to the fact that Corrective Services comes under the auspices of the Department. Overall, the number of complaints against the Department remained static and the number of complaints by prisoners in the State's correctional facilities remained high. Prisoner complaints accounted for 73.7% of complaints against the Department in the reporting year. While this represented only a small increase over the number of complaints received in the previous year, the increase in 2009/10 had been 24% greater than in 2008/09.

Half the complaints received from prisoners related to their security classification and placement within the prison system. Other significant areas of complaint included -

- property issues, including the loss of property when transferring a prisoner from one facility or unit to another
- the severity of punishments handed down for prison offences
- the use of intelligence to determine where a prisoner would be accommodated
- an alleged failure by the Prison Service to deliver prisoner mail, or to forward mail on, and
- pre-release leave under s 42 of the *Corrections Act 1966*.





In my last annual report I referred to the own motion investigation I had conducted into a decision by the then Director of Prisons in August 2008 not to allow a prisoner in the Mary Hutchinson Women's Prison to keep her newborn baby with her. As a result of that investigation I made a recommendation that the Interim Standing Order dealing with the accommodation of children in prison be reviewed. I also recommended that protocols be developed between the Prison Service and Child and Family Services, Department of Health and Human Services to review the way in which cases such as the one the subject of my investigation are handled in the future.

During the reporting year, an associated issue arose concerning the delay that sometimes occurs between the sentencing of a mother to a term of imprisonment and the finalisation of her application to have her child with her.

The relevant Director's Standing Order was amended in May 2011 in accordance with my recommendation. The new Standing Order also provides for applications by mothers to have their children with them in prison to be processed within 21 days, and allows the Director to permit a mother remanded into custody to retain her child with her in prison pending a formal application and assessment where no alternative carer is available. The Prison Service also received approval in early 2011 for the creation of a new position, Coordinator of Family and Child Support, one of the primary functions of which is to coordinate the services required for the safe and appropriate management of mothers and children within the prison system.

I am satisfied that the appropriate steps have been taken by the Tasmania Prison Service to address the concerns that have been either raised with or identified by me in this area.

Throughout the reporting year, I have also continued to monitor the implementation of the recommendations made by me in the report of my review of the Tamar Unit and the Behaviour Management Program which was tabled in Parliament in June 2009. I am satisfied with the progress made to date in this regard, but other developments, including the publication of the Palmer Report in June 2011 and the fact that Stage D of the Prison Infrastructure Redevelopment Project is yet to be completed, have meant that some of my recommendations remain outstanding.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

The number of complaints against the DHHS remained largely unchanged from the last reporting year, and accounted for 27% of total complaints received. Human Services once again accounted for the majority of complaints against the Department (58%).

As in previous years, only a very small proportion of complaints against the Department were found to be substantiated either partly or in full. 56% were either declined or discontinued, and in 32% of cases, a finding was made that there had been no defective administration.

Nearly all divisions of the DHHS were referred to in complaints, and matters complained of included -

- the charging of hospital fees to mental health patients subject to involuntary admissions
- issues related to the care and management of children in State care, and
- access to the Patient Travel Assistance Scheme.



My office also continued to receive complaints from residents of the Ashley Youth Detention Centre and these were dealt with by way of direct referral to the Centre's management rather than to the Office of the Secretary. This resulted in complaints being addressed promptly and resolved informally where possible. Reports from Centre management as to the outcome of complaints satisfied me that they had been dealt with fairly and appropriately.

A significant number of complaints against Housing Tasmania were received in the reporting year. These complaints largely related either to eligibility for, access to or charges associated with assisted housing.

Housing Tasmania has implemented a three tiered review process for customers who are unhappy with a decision in relation to their housing:

1. customers should first contact their Tenancy Officer and/or their local Service Hub Area Manager;
2. if the customer remains unsatisfied, he or she can then contact Housing Tasmania's customer service hotline; and
3. if the customer is still unhappy with the decision, he or she can ask for it to be reviewed by the Housing Review Committee.

In many of the complaints to my office, the complainant might have gone through the first two steps referred to above but had not sought to have the decision they were concerned about reviewed by the Housing Review Committee.

I am able to decline to accept a complaint where provision has been made under an administrative practice for the review of the action complained about. In those cases referred to, the complainants were provided with information about the Committee and it was suggested to them that they refer their concerns for review. Complainants were also advised that if having sought a review by the Committee they remained unhappy, they could then approach my office. In the vast majority of cases however, nothing further was heard from the complainant.

## DEPARTMENT OF POLICE AND EMERGENCY MANAGEMENT

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My office and the Tasmanian Integrity Commission are the two independent bodies in the State with jurisdiction to review the activities of Tasmania Police and its members. Broadly speaking, the Integrity Commission has jurisdiction to investigate allegations of misconduct made against individual Police officers whereas my jurisdiction is confined to the administrative actions of Tasmania Police and its Officers. As has always been the case however, most complaints received during the reporting year were concerned with the way individual officers had conducted themselves in the field and involved operational rather than administrative actions. They were therefore out of my jurisdiction.

In my 2008/9 annual report, I noted a marked increase in the number of complaints received against Police compared to previous years but complaint numbers now seem to have reached a plateau. There was a very small decrease of 4% in 2009/10 but a marginal increase in the current reporting year.



Actions complained about did not vary significantly from previous years and included -

- alleged failures by Police to investigate and/or progress complaints of criminal conduct
- assault during the course of arrest
- the alleged wrongful issuing of infringement notices and/or laying of charges, and
- general allegations of harassment.

The formal guidelines reached between the Commissioner and this office some years ago for the referral of complaints to Tasmania Police were no longer felt necessary, given the level of cooperation that has developed over time. A less formal arrangement now sees complaints forwarded directly to Police Professional Standards rather than the Commissioner's office, and officers from Professional Standards have also shown themselves willing to address enquiries made by telephone. Complaints that are forwarded are investigated either by Professional Standards or the Commander of the relevant Police District and the outcome of the investigation reported to us. Most complaints are resolved appropriately through this process.

None of the complaints received in the reporting year were sufficiently serious to warrant direct investigation by my officers.

## LOCAL GOVERNMENT

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For the second year in a row, there was a slight increase in the number of complaints received against municipal councils – a 13% increase in the reporting year. Complaints were spread between all councils, although only one complaint was received against the Glenorchy City Council - against which most complaints were made last year. The number of complaints against the Hobart City Council also reduced and was less than half that received in 2009/10. The council most complained about in the reporting year was the Launceston City Council, followed by Clarence City Council.

The only Councils not complained about were Flinders Island and Central Coast.

Planning and development decisions once again figured strongly as a cause for complaint, and other matters complained of included -

- the issue of permits and licences
- dog control
- infrastructure management and maintenance
- the closure or restriction of services
- alleged failure to act on environmental nuisances, and
- fines and infringement notices.



## PUBLIC AUTHORITIES

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Complaints against public authorities continued to increase. Complaints increased by a third in 2009/10 and the reporting year saw a further increase of 18%. The reason for the increase last year was the fact that it was the first full year in which the water and sewerage corporations conducted operations and my office received a large number of complaints relating to the corporations' charges and billing practices. Complaints against the corporations also accounted for 67% of all public authority complaints in the reporting year, with Southern Water accounting for 70% of these.

## WATER AND SEWERAGE CORPORATIONS

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As in the last reporting year, complaints were received from customers who had been charged for water and sewerage in relation to land with no water or sewerage infrastructure connected. However, the water and sewerage corporations are lawfully able to levy charges in those circumstances. The definition of a 'customer' contained in the relevant legislation includes an owner or occupier of land that is not connected to a corporation's water or sewerage infrastructure but which could be so connected, and there is a specific provision authorising water and sewerage corporations to levy service charges against properties where a water or sewerage service is available, even though the property is not connected to a water or sewerage system.

Most complaints in the last reporting year were from customers of Southern Water who had not received accounts for water and sewerage services for the previous year and who were concerned that they would receive accounts for the 2009 and 2010 billing years at the same time. My officers and I liaised with Southern Water on a regular basis while these issues were reviewed, and the number of this type of complaint has now reduced.

We also implemented a process, similar to one that is used in the Energy jurisdiction, of referring billing complaints to a designated senior officer of Southern Water, who then makes contact with the complainant to discuss their concerns. Complainants thus avoid having to go through a call centre and are able to speak directly to someone with the authority to resolve their complaint. Most complaints were indeed resolved in this way.

A new area of complaint in the reporting year related to the roll out of water meters in the southern half of the State. Complaints came primarily from owners of strata title units, who were initially, unlike other property owners, being asked to meet the cost of the meter and its installation. This was because the definition of a corporation's "water infrastructure" in the legislation did not include any pipe or apparatus downstream of a connection point to a water main; in other words, the corporation's responsibility ended at the point that a water main was connected to a strata subdivision. Southern Water gave the owners of strata title units the option of either installing one meter at the connection point to a strata subdivision at Southern Water's expense with the metered charge to be divided between all the unit holders, or of buying and installing their own separate meter.

This did not seem entirely appropriate, given that other property owners were not being charged at all for the provision and installation of meters. The only way that a strata title holder could access a free meter was if he or she, and the other unit holders, agreed to share one meter and to divide the charges subsequently levied. This however, did not take into account the possible variations in the amount of water actually used by the individual unit holders.



Regular meetings took place between Southern Water and my officers, and Southern Water was alert to the anomaly facing strata title unit holders. Late in the reporting year, an amendment to the *Water and Sewerage Industry Act 2008* was proposed by Southern Water to the effect that:

*a property consisting of a lot that, but for the interposing of pipes situated in whole or in part on common property, would be connected to a regulated entity's water infrastructure is to be taken to be a property that is connected to the regulated entity's water infrastructure or sewerage infrastructure.*

That amendment has now been passed and allows for separate meters to be installed at each individual unit owner's property.

There remains the issue of the installation costs, with Southern Water still looking to the customer to meet those costs, and this is something that will be the subject of ongoing discussion.

## CASE STUDIES

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### Complaint Against Brighton Council

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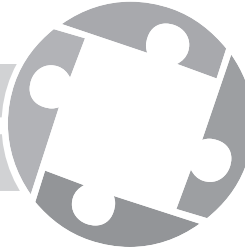
The complainant submitted an Application for the Approval of a Use/Development in November 2005. Along with the application form, various other documents were provided in support, including a surveyor's subdivision layout plans which included not only the part of the lot which was subject of the application, but also the balance lot in order to show possible future development.

The inclusion in the submitted plans of an, as yet unapplied for, subdivision was in order to provide sufficient information for Council to satisfy itself as to the criteria set out in the Planning Scheme. Under relevant clauses, Council had to take into consideration the possible future development of the land and nearby land and also the staging of the subdivision.

The subdivision was eventually approved but no application for subdivision of the balance lot was ever actually submitted. In late 2009 Council provided information in response to enquiries by a member of the public in relation to the subject land. A copy of Council's Geographic Information System (GIS) map was given to the person, as well as a subdivision layout plan which showed the approved subdivision, and also the possible future subdivision of the balance lot. The complainant was aggrieved that the information in relation to the, as yet, unapproved subdivision was released to a member of the public by Council. The claim was that the information was potentially commercially sensitive and had resulted in unwanted communication by the member of the public with the complainant.

It was apparently Council's normal practice to upload the details of lot layouts onto its GIS, based on future subdivision proposals. This was to provide Council with a "blue print" of future development so that it could plan for upgrades to infrastructure if needed. It was the printout from the GIS showing possible future development and the release of the plans that proved to be contentious.

I concluded that because the plans had been in the public domain for the requisite period under the planning legislation, they were not confidential in the legal sense. However, I also concluded that the release of the plans and the GIS was not good administrative practice because, quite apart from any issues for future developers in relation to the information being released from GIS, they were potentially misleading.



I suggested that it would be more prudent if Council had a policy of not releasing the “blue print” GIS information but only provided the same information as a person would be able to obtain through the LIST. Copies of plans, once outside of the statutory inspection period, should only be provided after an RTI Act application that identifies them with sufficient specificity.

### **Complaint Against Burnie City Council**

Mrs H complained to me about the use of a public space adjoining her property. An aspect of Mrs H’s complaint concerned Council’s decision to allow a community group to use the public space as a vegetable garden, the placement of a shed, fencing and crates on the space, and Council’s failure to maintain the space.

Council was invited to respond to Mrs H’s complaint, and in doing so advised that it was already investigating the use of the public space as it had received a number of complaints. In the interim, Council advised that the use of the space was subject to a licence agreement with the community group, and the agreement was subject to an option to renew.

I asked Council to provide me with the outcome of its investigation, which it did in July of this year. In response to Mrs H’s complaint, Council advised that an option to renew the licence would not be given to the community group, and that the community group “would be responsible for returning the land occupied to its previous condition.”

Given this outcome, I decided that an investigation by me of Mrs H’s complaint was unjustified. At the conclusion of my involvement in this matter, Mrs H wrote to me and expressed her appreciation for the involvement my Office, and the outcome achieved.

### **Complaint Against Department of Health and Human Services (DHHS)**

Ms C lodged a complaint with me, raising her concerns about the treatment of her five children whilst they were in foster care. The children were aged between eight and 16 and had been placed with foster carers by DHHS after they had become subject to a care and protection order under s 42 of the *Children, Young Persons and their Families Act 1997*.

The principal allegations made by Ms C in her complaint were that the children had suffered emotional and physical abuse at the hands of their carers, and that staff in Child Protection Services (CPS), the relevant part of DHHS, had not adequately addressed or responded to her concerns about the alleged abuse. At about the time the complaint was made, the allegations were made the subject of public notoriety, as a result of being disclosed by the Leader of the Opposition in the Parliament.

One of my Investigation Officers entered into lengthy correspondence with staff of CPS in relation to the allegations made by Ms C. She also inspected all CPS files relating to the children, and obtained information from the Family Inclusion Network (FIN), which had provided support for Ms C and her family. She also met with the children’s parents, in company with her Manager at that time the Principal Officer (Ombudsman).

My jurisdiction under the *Ombudsman Act* is confined to reviewing the administrative actions of public authorities (including DHHS). The relevant administrative action in this case was the response of DHHS to the allegations of abuse made against the carers, and my enquiries focussed on the adequacy of that response. It was beyond my power to directly investigate allegations of abuse against a foster carer.



I did not carry out a formal investigation into the complaint made to me by Ms C because I saw no reason to do so. Rather, the case was dealt with under s 20A(1) of the Act, which empowers me to make any preliminary enquiries I consider necessary for the purposes of ascertaining if a complaint should be investigated. The preliminary enquiries made by my Office in response to the complaint led me to conclude that formal investigation of the matters raised in the complaint was unnecessary and unjustifiable.

In its initial response to the complaint, DHHS told my office that the carers had provided a high level of care in often challenging and extremely difficult circumstances. DHHS informed us that CPS and the many support workers allocated to the children had not had any concern for the welfare of the children whilst they were with the carers.

However, the Department said that concerns for the welfare of the children had occasionally been raised by their parents and by a support worker for the family. These concerns had been fully investigated on each occasion, and had been judged to be unfounded. Numerous workers involved in the case management of the children had been contacted by DHHS, and none had any concern for the children's well-being.

The children themselves had all been interviewed on various occasions by DHHS officers, and had not raised any complaints about the carers or the care they were receiving.

Inadequate communication between CPS and Ms C appears to have been a significant contributing factor in this case. Ms C claimed that CPS had not taken her concerns seriously, or responded to them, but this was not borne out by the information available to me. The files provided to me were comprehensive, and showed that both CPS and the carers took exceptional care of these sometimes very difficult children.

DHHS also provided me with copies of the policies and guidelines in use by CPS staff in relation to how they communicate with parents. Those policies and guidelines, which I am satisfied are appropriate, were applied and followed in this case.

At no time did the children make accusations about the carers to their teachers, support workers or counsellors. In fact, when questioned, the children denied any ill treatment by the carers. While the parents may have believed that the children had been ill treated and that CPS had not responded appropriately to their concerns, I was satisfied on the material available to me that neither was the case.

Under all the circumstances, I concluded that the carers had been severely wronged by the use, in the political sphere, of the allegations made against them, for this had given the allegations unjustified notoriety.

### **Complaint Against Glamorgan Spring Bay Council**

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The complainant alleged various failures on the part of Council in relation to the planning process applied to the development of a commercial property adjacent to his home. The complainant did not object to the development as a whole, only to specific aspects of it.

Of particular concern to the complainant was a 'petition' which the owner of the commercial development had prepared and to which he had gathered signatures that supported the activities of his business. The complainant alleged that the petition was misleading as it wrongly suggested that the whole of the development was being jeopardised by objectors, and was concerned that it would be considered as part of the planning process. Section 339B of the *Local Government Act 1993* makes the presentation of a misleading petition to Council an offence.





The Council rejected the complainant's contention that the petition was misleading, but in my view it probably was. However, the document did not technically constitute a petition, since it did not ask Council to do anything and did not warrant further action.

Of more concern was a related issue raised by the complainant. The petition had been signed by a Council officer who had subsequently made decisions in relation to the permit conditions for the development in contention. This officer was also the person whom the complainant had rung when enquiring about breaches of those permit conditions. When asked about this, Council said that its officer had signed the document as a private citizen and that signing the document had not affected the performance of his Council duties.

Decisions of Council officers must not only be unbiased, but there also should be no opportunity for a reasonable perception of bias. In this case it was quite reasonable for the complainant to doubt the fair-mindedness of a Council officer when that officer had shown clear support for a development which the complainant opposed. It was my view that if the Council officer wished to sign the document of support, then it was inappropriate for him to be involved in any way in the decision-making which occurred within Council in relation to the development.

While Council has developed a Code of Conduct for Councillors, there is no equivalent Code of Conduct for Council officers. Council was asked to comment on the need for such a Code in the light of these events. In response, Council advised that it would consider drafting a Code of Conduct for employees, designed to prevent perceptions by the public of bias.

This office wrote to the Director of the Local Government Division suggesting that a Code of Conduct be incorporated into the *Local Government Act* for employees, which would bring the Act into line with mainland Acts. A response was received stating that this suggestion would be added to suggestions for the Local Government Division's register of suggested amendments for consideration in the future.

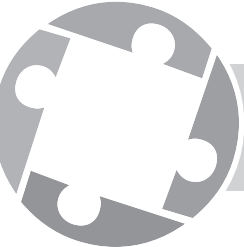
### **Complaint Against Legal Aid Commission of Tasmania**

The complainant had been involved in a series of protracted Family Court proceedings with the father of her child, in relation parenting issues. In some of those proceedings the complainant met the cost of private legal representation; in others she received grants of assistance from the Legal Aid Commission of Tasmania.

The complainant made an application to the Commission for legal assistance but it was refused by one of the Commission's officers on the basis that her case did not meet the merits test contained in the Commonwealth Legal Aid Guidelines which have been adopted by the Commission. The complainant sought a review of that decision by a Review Committee pursuant to s 29 of the *Legal Aid Commission Act 1990*. The Chair of the Review Committee subsequently wrote to the complainant, advising her that the Committee had determined to confirm the decision of the officer to refuse the application. No reasons were given in support of this determination.

The complainant made a further application for assistance some months later, and this applicant was also refused on the basis of the Commonwealth merits test. The complainant applied for a review of that decision also. The Director of Legal Aid responded to the complainant's application for review. The Director took the view that the further application for legal aid was substantially the same as the previous application, because it involved the same issues and facts. He advised that in those circumstances the decision of the Review Committee on the previous application still applied and aid would not be granted unless the complainant could demonstrate some significant change to her circumstances. The complainant sought to do this, but the Director remained firm in his view.





The complainant then queried with the Director his power to refuse to refer a request for the review of a decision refusing assistance to a review committee, and asked that the review committee which dealt with the first application provide reasons for its decision. The Director referred the request for reasons to the Committee. He also advised that it was protocol for him to assess all requests for referral to a review committee, that he was authorised by the Commission to refuse such requests, and that pursuant to that authority he could determine whether or not a request would proceed to a review committee.

The complainant complained to my office about several aspects of her interactions with the Commission, but I identified only two issues which I was able and prepared to investigate.

These were:

1. whether or not there is any discretion on the part of the Director of Legal Aid to refuse to submit a request for the review of a decision to deny an application for aid to a review committee; and
2. the failure of the Review Committee to provide written reasons for its decision of 25 January 2008 to uphold the preliminary decision to refuse aid.

I identified a further matter not raised by the complainant, namely whether decisions of the Director to refuse to grant aid are reviewable by a review committee. Under s 29 of the Act, a person can seek the review of a decision by an "Officer" of the Commission and the question that arose was whether the Director was such an officer for the purposes of the section.

When notified of the complaint, the Chairperson of the Commission acknowledged that the complainant should have been given reasons for the Review Committee's determination of the first application for review, and asked the Director to ensure that these were provided.

I sought advice from the Solicitor-General on the other aspects of the complaint, and provided a copy of this advice to the Chairperson of the Commission. In turn, the Commission sought its own legal advice and provided a copy to me.

It was ultimately our shared view that the Commission, and therefore the Director as its delegate, can decline to refer a request for a review to a review committee because, amongst other things, there is nothing in the Act which requires the Commission to refer a request for a review, and there would be many requests for review which would be patently unmeritorious and which would not warrant referral. On the other hand, the Commission disagreed with my conclusion that a request could be made for the review of a decision by the Director to refuse to grant aid.

I also raised a question for consideration in relation to the nature of a determination by a review committee. That issue was whether a review committee, when considering a request for a review, should ask itself the question, 'Did the original decision maker make a mistake?' or is the appropriate question, 'Should the Commission grant this application, and if so on what terms?'. In other words, should a review committee consider whether the original decision maker made the right decision at the time it was made, or should it stand in the shoes of the original decision maker and consider the application on its merits afresh?



I favoured the latter approach, considering it to be more consistent with the purposes of the Act, but was concerned that the review process involved the former.

It was against this background that I commenced discussions with the Chairperson of the Commission.

Those discussions concluded with the following matters being agreed -

- a decision of the Director to refuse an application for assistance is reviewable
- when determining a review, the Review Committee is to determine the application for assistance anew – a review is a reconsideration of an application on its merits, and
- in so doing, the committee should apply the law and circumstances as they exist at the time the review is determined, including the requirements of the Act and any relevant guidelines.

In light of this agreement, I considered that no further action on the complaint was necessary. The result, however, was that the Commission needed to modify some of its administrative practices.

### **Complaint Against Tasmania Prison Service (TPS)**

My office received a coordinated complaint from 97 prisoners in the Risdon Prison Complex in relation to the costs charged to them for making telephone calls. The essence of the complaint was that those prisoners with families in the north of the State or whose only contact point outside the prison is a mobile phone are paying considerably more in call charges than those prisoners whose families are in the south.

Enquiries confirmed that these charges were the charges levied by TPS's telecommunications service provider pursuant to a service contract, which were being passed on to prisoners. While overall charges were reasonable, STD rates applied to calls made to numbers in the north and mobile phone calls were charged at a higher rate than a local landline call. The Prison Service maintained that it had negotiated the best outcome for prisoners under the circumstances, and that there was nothing it could do to address the disparity highlighted by the complaint.

I decided to compare the arrangements that had been made in Tasmania in relation to prisoner telephone calls with those obtaining in other Australian jurisdictions. One of my officers wrote to Corrective Services in each State, and received a variety of responses. One State declined to provide the information, saying it was commercial in confidence, while others were more open and helpful.

Most other States that provided information had similar arrangements to those in Tasmania, with STD calls attracting a higher rate of charge than local calls. The most significant difference identified was between South Australia and the other jurisdictions. Call rates within South Australia are consistent across the prison system, and it appears that their prison service had been able to negotiate a call cost of \$0.22 per call regardless of where a prisoner is located.

There was significant variation between the costs of calls to mobile telephones. Tasmania, the ACT and Victoria identified costs of \$0.60, \$0.72 and \$0.70 per minute respectively. This contrasted quite markedly with the costs in South Australia, NSW, Western Australia and the Northern Territory, of \$0.22, \$0.33, \$0.30 and \$0.30 respectively. Thus South Australia's 'flat rate' also applies to calls to mobiles. The cost for these calls is significant when, as is often the case, the inmate's family has no landline connection.



In light of the variations outlined, and the significant cost savings apparently able to be achieved by some jurisdictions, I suggested to the Department of Justice that it might be advantageous to consider some changes when the contract next comes up for renewal, if not earlier than that. In particular it would clearly be of benefit to the various jurisdictions to communicate regarding the various costs options, which does not appear to have occurred in the past.

It was also noted that Western Australia is actively trialling the use of Skype internet video conferencing to allow inmates to make video calls to family and legal representatives, which again is a much cheaper option.

### **Complaint Regarding Shooting on Crown Land**

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The complainant applied for and was issued with a permit under the *Firearms Act 1996* to shoot vermin on unallocated Crown Land. His complaint was that Crown Land Services (CLS) was unable to advise him where he was actually allowed to shoot.

Enquiries revealed that all unallocated Crown land had either been sold, transferred to municipal councils or other State agencies, or declared as reserves, and that only a few properties still being considered for sale remained unallocated. The complainant's difficulty in locating unallocated and unoccupied Crown land to shoot over was largely occasioned by the fact that there is virtually no unallocated Crown land left in existence.

In addition, it appears that CLS does not maintain a register of unallocated and unoccupied Crown lands and thus there was no way to ascertain where such land, if any, might be. Accordingly, although the complainant held a permit to shoot over unallocated land, no such land could be found.

Not only was this an unsatisfactory state of affairs, but it also gave rise to a concern, because a permit under the *Firearms Act* such as that granted to the complainant can only be granted under s 39 of that Act where the applicant has a 'genuine reason' for possessing a firearm. One of the 'genuine reasons' listed in s 37 is that the applicant intends to possess or use the firearm for recreational hunting or vermin control. If that is the case, the applicant is required to produce a document giving permission from a landholder to allow the possessor to hunt vermin or game across their land. The Director-General of Lands is a landholder for the purposes of the Act.

CLS granted such permission to the complainant on 28 May 2009, but there was no real opportunity for the complainant to use his firearm for the permitted reason. I was concerned that the permission in this instance appears to have been illusory; and yet could be used to obtain a firearm licence. I considered that, because the permission being granted was being used by the complainant to gain a firearm licence, it was incumbent on CLS to ascertain before granting it that there was in fact suitable land available over which a firearm could be used. As noted above however, it was unable to do so.

Following a meeting between the Department and one of my officers, CLS liaised with other sections of the Department of Primary Industries, Parks, Water and Environment, including the Game Management Unit and Parks and Wildlife Service, as well as the Department of Police and Emergency Management (DPEM), to develop and implement changed procedures in relation to granting permission to shoot on public land for the purposes of section 39 of the *Firearms Act*. CLS wrote to the Commissioner of Police, seeking to have the *Firearms Act* amended by deleting reference to the Director-General of Lands as a landholder.



In addition, CLS advised that they would change their procedures regarding the issuing of permits from 1 July 2011. This lead time was required because the Police Firearms Unit of DPEM needed to send out notifications to firearms licensees well ahead of their licences expiring.

From 1 July, existing licensees whose firearms licences had expired and new applicants who might have previously sought permission to shoot on Crown land need to seek permission from the Director of Parks and Wildlife Services to shoot over specified reserves, such as Game Reserves. This permission is for the purposes of s39 of the *Firearms Act* only. To actually hunt on these reserves, applicants now need to apply for a separate game permit.

### **Complaint Against Sorell Council**

Council was aware that Mr R and others were very concerned about the impact the development of the Sorell Plaza at 12 Cole Street and 4 Pelham Street, Sorell would have on traffic and their amenity as residents of Pelham Street. These concerns had been made known to Council, which gave assurances to Mr R and others early in the development process that there would be no vehicular traffic entering or exiting the complex from Pelham Street. Council also provided verbal advice to Mr R and other residents prior to an application by the developer to amend the relevant planning scheme to rezone 4 Pelham Street for business use, that it would not permit access through 4 Pelham Street to 12 Cole Street. Based on these assurances, neither Mr R nor any other resident made submissions in relation to the application for rezoning, although Mr R subsequently acknowledged that he was aware he had a right to do so.

Council then failed to give written notification to adjoining landowners following the lodgement of the formal application for the land at 4 Pelham Street to be rezoned. This failure constituted a breach of the procedures set out in the *Land Use Planning and Approvals Regulations 2004*.

It was clear from the decision of the Tasmanian Planning Commission affirming the rezoning application that both Council and the Commission were aware that the developer's ultimate purpose in seeking the rezoning of 4 Pelham Street was to facilitate integrated access and egress from the Sorell Plaza, even though at that time no application to allow that access and egress had actually been made. It transpired that the application for rezoning was one in a series of applications made by the developer culminating in a successful application to allow access to the development through 4 Pelham Street and its use as a car park. When he became aware of this, Mr R complained to my office.

In its response to the complaint, Council maintained that each of the applications made by the developer had been discrete from the others. However, the contents of the Planning Commission decision in relation to the initial rezoning and Council's knowledge of the ultimate purpose for the rezoning indicates that the individual applications made to Council regarding the development of 4 Pelham Street were not effectively separate, but rather were steps in a process designed to achieve a desired outcome.

Once the rezoning took effect, a car park was a permitted use on the land and consequently not open to debate or scrutiny. Council as the planning authority would have been aware of this.

The failure of Council to comply with the provisions of Division 2 of the *Land Use Planning and Approvals Regulations 1993* denied potential objectors the opportunity to make submissions, although it is unlikely that Mr R and other affected residents would have done so based on the representations made to them by Council.



The only application in relation to which notice was required was the initial application for rezoning, and on its face this application made no reference to the land being used for access to the development or for parking. In any event, Council's failure to give the required notice did not invalidate the amendment to the planning scheme subsequently approved by the Commission.

I concluded however, that Council had been disingenuous in the way it had managed the concerns of the local community, and Mr R in particular, in relation to the development of the Sorell Plaza. It made representations to affected residents in relation to the future use of 4 Pelham Street, knowing that once the land had been rezoned certain uses would be permitted, and that nobody, including Council, would be able to prevent the developer from utilising the land for any such use.

Mr R was rightly aggrieved with the outcome of the process. He complained of a lack of openness and transparency, and I agreed that both were lacking in this instance. Without that openness and transparency, individuals and interest groups will not be satisfied that their views have been considered, and this can only lead to a lack of confidence in Council and its processes.

### **Complaint Against Tasmania Police**

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Mr C complained to my office that Tasmania Police had failed to prosecute the perpetrator of an assault. Mr C alleged that he had been the victim of two separate assaults, both of which had occurred at the one party. Police investigated, and one assault became the subject of court proceedings. It was intended that the other would be progressed by summons, but ultimately it did not proceed, because action had not been taken in the required time.

Police had prepared an "Offence Report" in relation to the second assault, which had been marked as requiring "Court Proceedings", but there was no system in place to monitor the matter and ensure that proceedings were issued within the stipulated time.

In response to enquiries from my office, Tasmania Police acknowledged that an error by an individual officer had led to the failure to prosecute, but also recognised that a failure to appropriately supervise had added to a poor outcome.

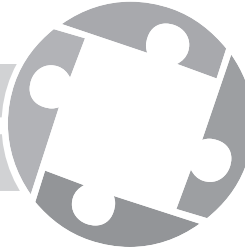
As a result of this case, Tasmania Police introduced a requirement that a court file be opened in relation to any "Offence Report" that is to progress to court proceedings. The opening of a court file generates a Court File Tracking Number, which now ensures that files in relation to matters that are to proceed by way of summons, in particular, are submitted in a timely manner and that there is a mechanism for tracking the matter's progress.

### **Complaint Against TOTE Tasmania**

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Mr P placed a bet with TOTE Tasmania that Spain would win the 2010 World Cup one goal to nil, and in the event, this is what happened.

However, TOTE betting rules provided that bets placed on World Cup games were limited to the results at the conclusion of normal time. At that stage of the game, the score was nil-all and Spain's winning goal was kicked during extra time in a penalty shoot-out. TOTE relied on the rules to decline to pay out on Mr P's bet.



Mr P complained to TOTE, and when his claim was refused also complained to my office. Preliminary inquiries were conducted, and it was found that TOTE's general Terms and Conditions for placing bets and its Privacy Policy were easily accessible on its website. However, the rules applicable to Mr P's bet did not appear to be as readily accessible to customers.

When this was pointed out to TOTE, it undertook to amend its website to improve accessibility to this information. TOTE also reviewed its decision in relation to Mr P's claim and decided on this occasion to pay out on his bet on the basis of the score after the penalty shoot-out.

### **Complaint Against DPIPWE and The Wellington Park Management Trust**

A complaint was made against the Wellington Park Management Trust by a tour operator who had been running tours to the top of Mount Wellington for over eight years. A business licence from the Trust under the *Wellington Park Act 1993* to conduct those tours became necessary, but the complainant's application for a licence was refused on the basis that he did not have accreditation under the accreditation program run by the Tourism Industry Council of Tasmania (TICT).

The complainant had lost accreditation with the TICT some time before, but had not been concerned because accreditation was not then necessary. Now the lack of accreditation stood in the way of his continuing to operate his business. He claimed that the TICT is an industry lobby group; it is composed of operators in direct competition to him; that his relationship with the body and some of its members was not harmonious; that and these factors would affect his ability to gain accreditation.

The Parks and Wildlife Service (PWS) manages the issue of business licences for the Trust under an administrative arrangement, but the Trust sets the conditions of those licences. The PWS has a policy, in respect of the lands under its own control, of refusing to give a business licence to a person whose business is not accredited with the TICT. The General Manager of the PWS indicated to this Office that the policy in question had Ministerial endorsement. The Trust has adopted the conditions set by PWS in relation to the issuing of its own licences.

A business licence can be issued by the Trust under s 31 of the *Wellington Park Act 1993* or, in relation to reserved land, by the responsible Minister under s 41 of the *National Parks and Reserves Management Act 2002*. In both cases, the power to issue a licence is delegable, and in the case of the Trust, the power has presumably been delegated to officers in PWS as part of the administrative arrangement mentioned. Under both Acts, the power to issue a licence is a discretionary one requiring a consideration of the merits of each individual application by the person exercising the power.

I am concerned that the policy that has been adopted is inconsistent with this for two reasons:

1. the effect of the policy is that responsibility for deciding whether a business licence is issued effectively devolves from the statutory decision-maker to the TICT - if the TICT decides not to accredit an applicant, no licence will issue; and
2. another effect of the policy is that due regard may not be given to the merits of the particular case. (The slavish application of a policy with this result is contrary to law).

The point has also been made to me that the TICT may well comprise competitors of the person who is applying for a licence, and that the decision not to accredit may be tainted by a conflict of interest, real or perceived.



I wrote to the Minister expressing my concerns and recommended that the policy be reconsidered. In his response the Minister disagreed with any suggestion that the policy was unlawful and denied that the power to issue a licence had devolved to the TICT. He said that accreditation was only one of the conditions that an applicant was required to meet, and referred in this regard to a requirement that applicants also provide evidence of insurance cover. It remains the case however, that accreditation is a necessary prerequisite to the granting of a licence.

The Minister also said:

*The actual accreditation requirement is flexible in regard to the source of tourism accreditation. The requirement is for an operator to be accredited under the National Tourism Accreditation Programme. The operator you mentioned has the option to seek accreditation from an accreditation body other than the Tourism Industry Council of Tasmania (TICT) if he has any concerns as to the independence of that body.*

My office was unable however, to discover any alternative accreditation process for a Tasmanian operator which does not utilise some input from the TICT. For example, the Australian Tourism Accreditation Program web site refers operators to the program manager in their State, and the program manager listed for Tasmania is the Industry Services Coordinator of the TICT.

I therefore wrote to the Secretary of the Department asking for information in relation to any alternative accreditation bodies known to the Department which, when a Tasmanian business operator seeks accreditation through them, do not involve the TICT.

In response, the Secretary advised that the national accreditation program, endorsed by Tourism Accreditation Australia Ltd, had been *developed by aligning the six State and Territory-based tourism accreditation programs, including Tasmania's*, and said:

*Where a business has a legitimate reason not to apply for accreditation through their own State branch, they can apply through the National office to have the accreditation assessed by the National Program Manager.*

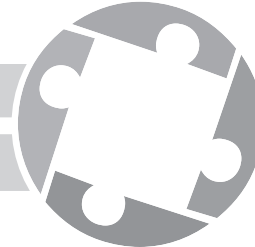
I understood from the response of the Secretary and the Minister that the Department intend to continue to require the endorsement of a non-government body – if not the TICT, its national equivalent - before granting business licences to operate on reserved land.

The end result of this case was that I remained concerned at the administrative processes being used by PWS and the TICT, having been unable to persuade the Department and the Minister that those processes were inappropriate.

I am not in this process criticising the TICT. My concern is in relation to the decisive weight given by the Trust and the Minister to the decisions of the TICT in relation to accreditation. I can think of no equivalent instance of an outside body influencing the exercise of a discretion in relation to the granting of a valuable asset such as a business licence.

My only recourse, in a situation where I consider the actions of the Department and the Trust to be unreasonable, is to make my concerns known to Parliament through this Annual Report. That is the reason why this summary of the case is so detailed.





# FREEDOM OF INFORMATION ACT / RIGHT TO INFORMATION ACT

## INTRODUCTION

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The *Freedom of Information Act 1991* (FOI Act) was repealed by the *Right to Information Act 2009* (RTI Act) with effect from 1 July 2010.

The role of the Ombudsman under the FOI Act was to review decisions by agencies and Ministers under the Act where access to requested information had been refused. The Ombudsman has a similar role under the RTI Act, but also has responsibility for –

- issuing and maintaining Guidelines to assist users of the Act
- issuing and maintaining a Manual related to the operation of the Act, and
- providing oral or written advice to public authorities or Ministers on the operation of the Act.

The Ombudsman is required by s 53 of the RTI Act to include a report on the operation of the Act in the Ombudsman's annual report under the *Ombudsman Act*. This chapter represents that report.

## FREEDOM OF INFORMATION ACT

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My Office continued to perform work under the FOI Act for the whole of the reporting year.

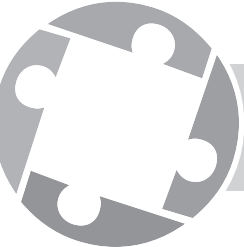
This continued work, past the date when the FOI Act was repealed, is explained by s 5 of the *Right to Information (Consequential and Transitional) Act 2009*. This section preserved the right of a person to seek review by the Ombudsman under the FOI Act of a decision to refuse a request for information made under the Act prior to its repeal. It also required existing reviews to be completed.

To summarise and also amplify the statistics in Appendix A –

- six FOI reviews were current on 30 June 2010
- 27 further applications for review were received under the Act during 2010/11
- 36 FOI review files were closed during the year, and
- 11 of these resulted in formal review decisions, with eight of these resulting in the original decision being varied or set aside.

The bulk of the FOI work has fallen to one part-time officer. Much of this related to reviews sought by one particular applicant, pursuing a preoccupation with matters relating to Aurora Energy. This applicant was particularly active with requests for information from the company in the last two months before the repeal of the FOI Act, and was responsible for 12 of the 27 applications for review under the Act during the reporting year.





A decision on my Ombudsman website entitled *Mr Y and Aurora Energy Pty Ltd*, made in May 2011, deals with some of these applications for review.

## PUBLICATIONS

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I have described above the responsibilities of the Ombudsman under this Act.

As detailed in last year's annual report, I issued a Manual, two completed Guidelines and one draft Guideline on 1 July 2010, the date of the commencement of the Act. These were issued by publication on my Ombudsman website.

The Manual lacked two chapters at the time of publication, and these were subsequently completed.

The first two Guidelines published were -

- Guideline 1/2010 - in relation to the review of decisions by the Ombudsman, and
- Guideline 2/2010 - in relation to the refusal of an application for disclosure under the RTI Act, s 20.

The first of these Guidelines indicated the processes that I expected to be following under the new legislation, in handling reviews. These processes have been less formal than I then expected. For instance, we have only conducted one directions hearing in the last year, whereas I initially expected these to be relatively common. I am presently reviewing the Guideline in light of our experience with the Act, and am doing so in consultation with agencies. I expect to issue a revised version shortly.

During the year, I issued two further Guidelines -

- Guideline 3/2010 - in relation to the process of disclosing information under each type of information disclosure (19 August 2010), and
- Guideline 4/2010 - in relation to searching and locating information (20 December 2010).

It has become apparent that a Guideline is needed in relation to the imposition of fees and charges under the Act, and one is currently in preparation.

## STATISTICS

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As can be seen in greater detail in Appendix A -

- we received a total of 30 applications for review under the RTI Act in the reporting year
- 14 of the review files had been closed by year's end
- only seven of these resulted in a formal decision, with six of these resulting in the affirmation of the original decision, and
- eight of the new applications for review were against one local council (these eight applications were all from the same applicant).



Taking the FOI and RTI statistics together, we received a total of 57 applications for review during the year. This is a 4% reduction on the number of applications of review received in 2008/09 (64). (We received a total of 128 applications for review in 2009/10, but that was an exceptional year, as a result of the activity of one particular individual, mentioned in the FOI section above.)

All in all, therefore, it has been a relatively normal year for review activity. However, we have noticed an absence of very difficult reviews, of the kind that we have come to expect in recent years. Based on our experience within the office, on informal feedback and on feedback in workshops, we have the impression that a shift in culture is taking place in agencies, and that agencies are taking to heart the principle in s 12 (3) of the RTI Act, that “assessed disclosure is the method of disclosure of last resort”.

## WORKSHOPS AND ADVICE

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I regard the provision of workshops as an important aspect of the work done by my Office in this jurisdiction. This goes hand in hand with the provision of a Manual, and with the education and guidance of users of the Act through the issuing of Guidelines.

The provision of workshops is also important in practice because of the requirement in s 24 (2) of the Act that the principal officer of a public authority or a Minister must not delegate his or her functions or powers under the Act unless he or she is satisfied that the proposed delegate “has the skills and knowledge necessary to perform or exercise those functions or powers”. This creates a need for education about how the Act operates.

My Senior Investigation and Review Officer has been conducting RTI workshops since February 2011, and has now provided 13 workshops. This represents the delivery of training to 95 individuals. There have been nine workshops in Hobart, two in Launceston, one in Georgetown and one in Nubeena.

A workshop is run in our office in Hobart on the afternoon of the last Thursday of every month, and workshops are run elsewhere as may be needed.

The current cost of attending a workshop is \$35, and this includes provision of a copy of the RTI Act, the Regulations, the Manual and all current Guidelines.

The workshops are presently of an “entry level” nature. In due course, we will run some sessions on specific topics, likely to be of interest to more experienced practitioners.

## ASSOCIATION OF INFORMATION ACCESS COMMISSIONERS

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The RTI Act was part of a wave of reform to freedom of information laws across Australia. Following these reforms, there are now Information Commissioners in the Commonwealth sphere, NSW, Queensland, NT and WA. (The review role falls to Ombudsmen in South Australia, Tasmania and NZ.)

This has given impetus to the idea that there should be regular meetings of Australasian Information Commissioners and their counterparts. A relatively impromptu meeting of this kind took place in Brisbane in September 2010, at which the decision to form the Association of Information Access Commissioners was made. The Association then met in Perth, WA, in April 2011. The next meeting is due to take place in Canberra in November 2011.

A national RTI conference is scheduled for Sydney in August 2012.



## CASE STUDIES

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### George Town Council – Legal Professional Privilege

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By separate applications for assessed disclosure, two applicants sought legal advice obtained by George Town Council in relation to the setting of its rates for 2010/2011. The Council claimed that the information was exempt under s 31 of the RTI Act, on the grounds of legal professional privilege. Both applicants applied to me separately under s 44 of the Act for external review. This section provides for external review where -

- the public authority has notified the applicant of its decision on internal review, or
- the public authority has failed to provide its decision within 15 working days of the applicant seeking it.

In determining the process for this review, I took the view that both applications to me should be dealt with together, as both sought the same information from the Council. The parties agreed with this. Section 47(1)(b) of the RTI Act empowers me to decide the process for dealing with the review, and s 47(1)(i) empowers me to decide the parties to the review.

In his submission to me, one of the applicants referred me to a Council meeting which discussed the legal advice obtained by Council, suggesting that the privilege attaching to such advice had been waived. The Council's submission to me was that the information was not considered in an open Council meeting, and that information was delivered to nine Councillors in accordance with s 338A(1)(b) of the *Local Government Act 1993*. The effect of this provision is to forbid a Councillor from disclosing information that was given to him or her by the general manager (among others) on the condition that it be kept confidential.

I was satisfied that the disclosure of the information would involve the revelation of communications between the Council and its lawyers, and that these occurred for the dominant purpose of giving and obtaining legal advice. I also determined that there was no evidence that privilege had been waived by Council. I was of the view that the only possible waiver by the Council was the provision of the advice to the nine Councillors, and that this did not amount to waiver. This was because the information had been provided to the Councillors in a manner consistent with the confidentiality which legal professional privilege seeks to protect.

The full decision can be read on my Ombudsman website.

### Department of Infrastructure Energy and Resources Personal Information

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The applicant applied to the Department for information relating to allegations made against her of breaches of confidentiality. The Department claimed that all of the information responsive to this application was exempt under s 36(1) of the RTI Act. This section exempts information from disclosure where its disclosure "would involve the disclosure of personal information of a person" who is not the applicant. Personal information is defined in s 5 of the Act. The exemption in s 36 (1) is subject to the public interest test in s 33.



By reason of the terms of the definition and by reason of the terms of s 33, my decision on this review involved three issues -

- whether the disclosure of the information under the Act would involve the disclosure of information or opinion in any recorded format “about” a person
- whether the identity of the person was apparent or was reasonably ascertainable from the information or opinion, and
- whether, after taking into account all relevant matters and whilst giving consideration to the matters listed in Schedule 1 of the Act and regarding those matters listed in Schedule 2 as irrelevant, it would have been contrary to the public interest to disclose the information.

I was satisfied that the information was exempt under s 36(1) of the Act, as all of the information was “about” a person (other than the applicant) whose identity was apparent from it. This was so, despite the information also being about the applicant. I determined that it would be contrary to the public interest to release the information, and in reaching this conclusion I considered Schedule 1 of the Act, in particular paragraphs 1(a), (g), (h), (m) and (n).

I also referred to *Re Matthews and Australian Securities and Investments Commission* (2010) 118 ALD 23, which discusses the notion of the public interest.

The full decision can be read on my Ombudsman website.

### **Tasmania Police Sufficiency of Search etc.**

The applicant applied to me for external review under s 45(1)(b) of the RTI Act. This section provides for review where a public authority or Minister has made a decision that the information sought was not in existence on the day the application for assessed disclosure was made.

In the course of this review, and on the request of one of my senior investigators, Tasmania Police conducted further searches for the information. These searches located six pages of information. Tasmania Police disclosed redacted versions of this information to the applicant, and claimed that some of the redacted information was exempt under s 36(1) (personal information of another), and that the remaining redacted information was exempt under s 30(1)(e) (information for intelligence, including databases of criminal intelligence).

The issues for my determination thus became -

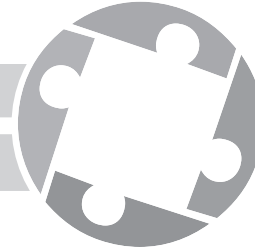
- whether Tasmania Police made a sufficient search for information
- whether the redacted information was exempt under s 30(1)(e), and
- whether the redacted information was exempt under s 36(1).

After taking into account further searches Tasmania Police undertook, I was satisfied that it had provided all of the information which was responsive to the application for assessed disclosure which was in its possession, and in existence at the time the application was made.



The information claimed to be exempt by Tasmania police under s 36(1) was the name of an informant. I was satisfied that this information was the personal information of that informant, and therefore fell within s 36(1). I then considered the public interest test in s 33, which applies to this exemption. I concluded that disclosure of this information was contrary to the public interest. In doing so, I considered the list of matters in Schedule 1 of the Act, and I took the view that item 1(n) of this Schedule was of greatest significance. This item concerns the question of whether disclosure would prejudice the ability to obtain similar information in the future.

Tasmania Police decided that certain numbers appearing on the pages of information were exempt under s 30(1)(e), and had therefore been redacted. I upheld this decision, as this information was information which formed part of a database of criminal intelligence. I note that s 30(1)(e) is not subject to the public interest test.



# PUBLIC INTEREST DISCLOSURES ACT 2002

## INTRODUCTION

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The *Public Interest Disclosures Act 2002* (PID Act) was amended by the *Public Interest Disclosures Amendment Act 2009*, with effect from 1 October 2010.

The amendments to the Act altered the responsibilities of the Ombudsman under the Act, enlarging them in the process. The responsibilities of the Ombudsman under the Act now include -

- determining whether disclosures received or referred to the Ombudsman qualify as public interest disclosures under the Act
- investigating public interest disclosures, where appropriate
- preparing and publishing guidelines and standards for the procedures to be followed by public bodies in implementing the requirements of the Act
- approving such procedures, when developed by public bodies
- preparing and publishing guidelines for the purpose of determining whether improper conduct (as defined by the Act) is serious or significant
- monitoring the progress of investigations conducted under the Act by public bodies, and
- providing advice to public bodies on the Act.

## GUIDELINES

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It was important for the operation of the amended Act that guidelines be in place on 1 October 2010 to assist users of the Act to determine whether improper conduct, as defined by the Act, is serious or significant. Because of the nature of that definition, the Act would not have been able to operate without such a guideline.

I issued such Guidelines on 1 October 2010, as Guideline 1/2010. This can be seen on my Ombudsman website.

I later issued Guidelines and Standards for the procedures to be followed by public bodies, at the end of March 2011. These include Model Procedures for public authorities to adopt if they see fit.

I first put a draft of these Guidelines and Standards out for consultation on 14 December 2010, and then followed up with workshops in Hobart and Launceston. These workshops (which I delivered myself) were designed to assist public authorities to better understand the Act, and to elicit comments on the Guidelines and Standards, including the Model Procedures, before they were finalised.

The Guideline and Standards can also be seen on my Ombudsman website, where the Model Procedures are provided in Word format, for public authorities to download easily, and modify.



Technically speaking, any body which is a public body within the terms of s 4 of the Act is obliged to establish its own procedures for the purposes of the Act, complying with the Guidelines and Standards when they do so. The number of bodies which fit within that definition is very large indeed, and it is unrealistic to get all of those bodies to comply with this requirement, particularly given the low usage of the Act. For example, since the definition of “public body” includes any body, whether incorporated or not, whose members or a majority of whose members are appointed by a Minister, the requirement to establish procedures for the purposes of the Act technically falls on every Ministerial advisory committee of which the members, or the majority of the members, are so appointed. This is impractical. Since I must approve all such procedures before they are adopted, this would also place an undue burden on the limited resources of my Office.

I decided that I should obtain procedures from the largest public bodies, and therefore the ones which might be thought most likely to receive a disclosure under the Act. I wrote to some 60 bodies in this regard, asking for draft procedures to be submitted to me for approval by 30 June. Few public bodies had complied by the end of the reporting year, and the process of obtaining and approving the procedures is ongoing.

## REVIEW OF THE ACT

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Early in the reporting year, the CEO of the Integrity Commission, asked me to provide training to her staff on the operation of the Act. As I prepared this training, I found it very difficult to determine how the PID Act is meant to interact with the *Integrity Commission Act 2009*. In particular, the definition of “improper conduct” in the first is hard to marry with the definition of “misconduct” in the latter.

The Board of the Integrity Commission has asked me to join with Integrity Commission staff to review how the two Acts interact. This work has yet to be undertaken.

## THE YEAR UNDER REVIEW

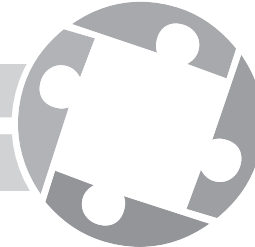
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I am required by s 84 of the Act to report on various matters regarding the PID Act in my annual report. To satisfy the requirements of that section, I report -

- that copies of current guidelines and standards published by me under Part 6 of the Act may be obtained or accessed under the “Publications” tab on my Ombudsman website at [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au): s 84(a)
- that I received six approaches during the year which might potentially be seen as disclosures under the Act: s 84(b)

Each of these was against a different body. Four were found to be out of jurisdiction, on the basis that the disclosure was not by a public officer, or was not against a public body. One of those cases is continuing under the *Ombudsman Act*. Of the two cases which were not out of jurisdiction, one was investigated by the police, and was found unproven. The other was one where I refused to investigate on the basis that the matter had been adequately dealt with by the Auditor-General.

- that of the six disclosures mentioned, I determined two to be public interest disclosures: s84(c)

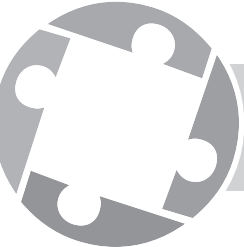


- that I did not investigate any disclosed matter during the year: s84(d)
- that I did not formally refer any disclosed matter to any other entity or officer for investigation, although I did rely upon investigations carried out by the police and by the Auditor-General in deciding (under s 40 of the Act) not to investigate two disclosed matters: s 84(e), and
- that, as indicated, I declined to investigate two disclosed matters during the year, on the basis that they had been adequately investigated by the police and by the Auditor-General: s 84(f)(i).

The first involved an allegation of improper conduct with respect to an employment matter. The other involved an allegation of improper conduct in the nature of an alleged waste of public resources.

- that no disclosed matters were referred to me by a public body during the year, for investigation: s84(f)(ii)
- that no disclosures were referred to me under the Act by the President of the Legislative Council or by the Speaker of the House of Assembly during the year: s84(g)
- that I did not take over the investigation of any disclosed matter during the year: s84(h)
- that I did not make any recommendations during the year, consequent upon the investigation of a disclosed matter: s 84(i)
- that I did not make any recommendations during the year in relation to any disclosed matter: s 84(j)
- that I did not make any recommendations during the year in relation to the procedures established by a public body: s 84(k), and
- that no action was taken during the year, consequent on a recommendation made by me under the Act – there having been no such recommendation: s 84(l).





# PERSONAL INFORMATION PROTECTION ACT 2004

Schedule 1 of the *Personal Information Protection Act 2004* (the PIP Act) creates a set of personal information protection principles by which all public authorities holding the personal information of members of the community are bound. The principles and other provisions of the Act regulate the manner in which an authority can collect, maintain and use personal information and the limited circumstances in which such information can be disclosed.

If someone believes that the principles of the PIP Act have been breached by a public authority, and he or she has raised the matter with the agency and is not satisfied with the response, then a complaint can be made to my office. If it is decided that the complaint should be dealt with, any investigation conducted by my office is conducted in accordance with the powers conferred by the *Ombudsman Act 1978*.

The PIP Act was amended in July 2010 to coincide with the repeal of the *Freedom of Information Act 1991* (the FOI Act) and the introduction of the *Right to Information Act 2009* (the RTI Act). The amendments have made the PIP Act now the prime piece of legislation dealing with the management of personal information in the possession of public authorities. The PIP Act was amended to incorporate and modify provisions concerning personal information which were previously found in the FOI Act, rather than having those provisions included in the RTI Act. The amendments relate to -

- the procedure by which a person may request access to their own personal information and the way in which a personal information custodian responds to such a request
- requests for personal information of a medical or psychiatric nature concerning the person making the request, and
- applications for the amendment of personal information in the possession of a personal information custodian where that information is incorrect, incomplete, out of date or misleading.

The definition of a personal information custodian in s 3 of the PIP Act was also amended, with the result that the class of persons potentially subject to the PIP Act is now wider.

Over recent months, it has become apparent that public authorities need guidance in relation to the interaction between the PIP Act and the RTI Act, and I intend to publish a Guideline on this subject under the RTI Act in the near future.

The PIP Act has now been in operation for over five years but it was not until the reporting year that we received the first complaint alleging a breach of its provisions. This complaint has yet to be finalised.



## INSPECTIONS UNDER POLICE LEGISLATION

The *Police Powers (Surveillance Devices) Act 2006* (the *Surveillance Devices Act*) governs the use that a law enforcement agency makes of surveillance devices and also the records that it is obliged to keep in respect of each warrant for which it applies.

The *Police Powers (Controlled Operations) Act 2006* (*Controlled Operations Act*) contains the procedures to be followed and the records to be maintained by a law enforcement agency when conducting controlled operations. A controlled operation is one that is conducted for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence and involves, or may involve, controlled conduct, which is conduct that might otherwise result in criminal responsibility.

Both Acts require the appointment of an inspection entity and the Ombudsman has been that entity since May 2008. Tasmania Police and the Australian Crime Commission are law enforcement agencies for the purposes of the Acts, but to date the Commission has not applied for any warrants nor conducted any controlled operations in Tasmania.

My office is required by s 41 of the *Surveillance Devices Act* and s 32 of the *Controlled Operations Act* to inspect the records of a law enforcement agency at least once every 12 months in order to determine the extent of compliance with the legislation by the agency and its officers. Following the inspections, I am obliged by s 42 of the *Surveillance Devices Act* and s 32 of the *Controlled Operations Act* to report to the Minister on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating my inspection. The Acts came into force in January 2009 and my office first inspected Tasmania Police's relevant records on 25 June 2009.

I have authorised a number of my officers to undertake inspections on my behalf and three of those officers conducted an inspection of the relevant records of Tasmania Police on 21 June 2011. My staff inform me that Detective Inspector Cretu, the officer responsible for Investigation Support Services, offered assistance during the actual inspection process and cooperated fully at all times.

Considerably more warrants or extensions of warrants had been granted between the 2010 and 2011 inspections. The most recent inspection identified some comparatively minor omissions in procedure, but in general I am satisfied with the efforts made by Tasmania Police to comply with the record keeping requirements of the Act and am confident that any problems identified by my staff are addressed and resolved in a timely manner.

My office is also the inspection entity under the *Telecommunications (Interception) Act 1999* and since December 2006 has been inspecting the records which the Act requires Tasmania Police to keep in relation to telecommunications intercepts. The records are required to be inspected at least once every six months to ensure compliance by Police with obligations under Part 2 of the Act in relation to the keeping of records and in relation to the provision of advice to the Minister. Regular inspections are made in June and December of each year, and in the reporting year those inspections took place on 17 December 2010 and 27 June 2011.

I am pleased to report that my officers continue to be impressed by the processes put in place by Tasmania Police to ensure compliance with the record keeping requirements of the Act and to facilitate the inspection of records. No issues of non-compliance arose that had not been identified and addressed in previous inspections. All aspects of the inspections indicated compliance by Police with the requirements of Part 2 of the Act.



The only issue that did arise related to the records of the use and communication of lawfully obtained information required by ss 5(1)(d)(e) and (f) of the Act. In order to be satisfied of compliance in this regard, my officers need to inspect the Use and Communication Register for a warrant, and in the case of expired warrants they need to do so before the destruction of records. Issues in relation to the availability of these Registers were referred to in my last annual report, and they are the topic of ongoing discussions between my office and Tasmania Police.



# ENERGY OMBUDSMAN ACT 1998

## INTRODUCTION

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As Ombudsman, I administer the *Energy Ombudsman Act 1998*. Two staff assist me in this jurisdiction, a Principal Officer and an Investigation Officer. They are supported by the Office's administration team.

As can be seen from the statistics in Energy Table 3 in Appendix A, only four of the 454 complaints which were closed in this jurisdiction during the reporting year related to gas. Virtually all of the work in this jurisdiction relates to the supply of electricity by Aurora Energy Pty Ltd, and this is because of its monopoly position as the distributor of electricity and as the retailer of electricity to domestic and small business consumers. Hence, this report largely relates to complaints against Aurora Energy.

## STATISTICS

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Demand for our services in this jurisdiction continues to increase.

The complaint statistics are -

- a 12% increase in new complaints received (414 to 465)<sup>2</sup>, and
- an 8% increase in complaint files closed (422 to 454)<sup>3</sup>.

However, the figures for enquiries show a drop in demand -

- a 22% reduction in enquiries opened and closed during the year (210 to 163)<sup>4</sup>
- a 23% decrease in out-of-jurisdiction enquiries (52 to 40)<sup>5</sup>, and
- a 23% decrease in enquiries generally (262 to 203)<sup>6</sup>.

These variations may in part be explained by the introduction in July 2010 of an online complaint form, and by the new website which we launched in 2009/10. It may be that potential complainants are using the website to better inform themselves, and are using the online complaint form in circumstances where they might otherwise have rung our Office with an enquiry. However, that explanation is to some extent incompatible with the fact that the number of out-of-jurisdiction complaints has only increased slightly (from 11 to 13).

The foreword to this annual report includes a more detailed discussion of the effect on our statistics of the introduction of the online complaint forms.

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<sup>2</sup> This is on top of a 48% increase in 2009/10 (279 to 414).

<sup>3</sup> This is on top of a 38% increase in 2009/10 (305 to 422).

<sup>4</sup> This follows a 44% increase in 2009/10 (146 to 210).

<sup>5</sup> This follows a 53% increase in 2009/10 (34 to 52).

<sup>6</sup> This follows a 46% increase in 2009/10 (180 to 262).



Other statistics which I regard as significant in showing how this jurisdiction is operating are -

- the fact that, between July/Sept 2006 and Jan/March 2011, the percentage of cases which have been closed in less than 28 days has gone from 20.64% to 79.2%, the percentage closed in less than 60 days has gone from 60.32% to 91.6%, and the percentage closed in less than 90 days has gone from 77.78% to 92.7%
- the fact that, across the year, an average of 41% of the complaints received each month were addressed using our RHL process, whereby the complaint is referred to Aurora Energy to give the company an opportunity to quickly resolve the complaint without further involvement from us, and
- the fact that 46 were open at the end of the reporting year, an increase from 35 in the previous year. 30 of these, two files were open for over 300 days old, but reasonably close to finalisation. It necessarily tends to be the case that the files that remain open more than 90 days are difficult ones. We are constantly working to reduce the number of files open for more than 300 days, across the Office of the Ombudsman and Health Complaints Commissioner as a whole.

## SYSTEMIC ISSUES

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### Access to meters

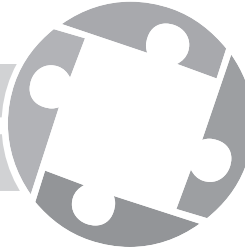
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There are two major systemic issues to mention. One relates to access to meters, and the other relates to customers being charged for electricity on the wrong tariff.

I addressed the issue of access to meters at some length in my last annual report. Briefly, we received many complaints from late 2009 and into 2010 as a result of the adoption by Aurora Energy of a policy, understandably based on worker safety, under which a meter reader was not expected to enter a property where the reader had reason to believe that there might be an unrestrained dog. Under such circumstances, customers were receiving accounts based on an estimate of their electricity consumption, and this was unsatisfactory for many people.

Customers who wished to make sure that their meter was read were being told by Aurora Energy call centre staff that they would have to restrain their dog for a period of seven working days – the anticipated date of the read, as indicated on their last bill – and three working days each side of that date. Understandably, many dog owners found this requirement to be very onerous, and were concerned for the welfare of their animals when restrained over such a long period.

We met with Aurora Energy personnel about this on some eight occasions during 2010, and I also raised the issues directly with the CEO, Dr Peter Davis, on two other occasions. In the discussions, we explored with the company ways in which their processes might be altered to address the extensive concern to which the implementation of the new policy had given rise. We were told that the issue potentially affected 25% of the company's customers.



The negotiations ultimately led to some very significant changes -

- the reduction of the period within which a customer's meter may be read, from seven business days to three business days – the “Approximate Next Read Date”, and one business day either side of that date
- provision of a special reading of the meter at no cost to the customer if the meter is not read during this three-day period and the customer requires an actual read of the meter, as opposed to a bill based upon an estimate of consumption
- the leaving of a calling card by the meter-reader, if requested by the customer, and
- the introduction of a trial under which customers may read their own meters if they wish, submitting the meter data to the company online.

In the long term, the problem of safe access to meters will be solved by the distribution of “smart” meters, which will transmit the electricity consumption data direct to Aurora Energy, making meter reading on the premises unnecessary.

### **Wrong tariff issue**

We have lately received a number of complaints from customers who find that they have been paying for electricity on the wrong tariff.

Generally speaking, there are two types of case. One type involves a customer who is living in a relatively new house, and who finds that they have been paying for their electricity on Tariff 22, rather than on the normal residential tariffs, Tariffs 31 (light and power), 41 (hot water) or 42 (HydroHeat). Tariff 22 is a general tariff that is applicable, in part, to a temporary electricity supply put in place to enable a house to be built. If the electrical contractor responsible for completing the electrical work done in the construction of the house does not submit an Electrical Works Request (EWR) to Aurora Energy when the building has been completed, requesting a change of tariffs, the electricity consumption at the premises will continue to be charged on Tariff 22.

We had a case this year where the complainant was in this category and had been on the wrong tariff for eight years.

A second type of case results from the installation of new heating, qualifying the occupier for HydroHeat. In this type of case also, the customer will continue to pay for their electricity on the wrong tariff if the responsible contractor does not lodge an EWR with Aurora Energy to bring about a tariff change.

A frequent problem in these cases is that the electrical contractor who should have lodged the paperwork either cannot be identified, or is not prepared to assist the complainant to address the issue. When this occurs, it is often difficult for the customer to find an electrical contractor who is prepared to lodge the EWR, because the contractor is unable to adequately check the work that was done. Sometimes the property has changed hands, and the disadvantaged customer has no recourse against the electrical contractor who was at fault.

We have entered into discussions with Aurora Energy and with Workplace Standards Tasmania (WST) to try to address this issue. We have involved WST because it is responsible for the administration of laws relating to electrical contractors.

I will report on these discussions in my next annual report.



## OTHER MATTERS

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The level of liaison between my Office and Aurora Energy continues to grow, but without affecting the independence and impartiality with which we discharge our functions. My staff meet with Aurora Energy staff on a routine monthly basis to discuss outstanding files, and other occasional meetings occur, in which I participate. These other meetings have occurred for various reasons, for instance -

- to brief us on progress with the development and implementation of Aurora Energy's new billing system, which went live in February. Fortunately, the transition to the new system has not given rise to many complaints
- to brief us on the implementation of structural changes within the company
- to brief us on Aurora Energy's submission to the Australian Energy Regulator of its regulatory proposal for the period 2012/17, and
- to discuss the systemic issues which I have mentioned above.

During the year, I returned to the former practice of issuing a quarterly report on the operation of the Energy Ombudsman jurisdiction. This is provided to Aurora Energy and TasGas, and is also published on my Energy Ombudsman website.

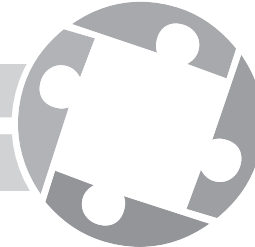
I have continued regular involvement in the work of the Australia and New Zealand Energy and Water Ombudsman Association (ANZEWO), and indeed hosted a meeting of the Association in Hobart in November 2010.

Finally, I would like to quote some positive feedback for our Office that was included in a report published by TASCOS in January of this year, entitled "Living in the Country: Consumer perspectives on energy supply in rural Tasmania". The report includes this passage, under the heading "Energy Ombudsman" (at p 40) -

*While most complaints were either dealt with satisfactorily by Aurora or not pursued by the consumer, some complaints were referred to the Energy Ombudsman for resolution.*

*Those consumers with experience of the Energy Ombudsman spoke highly of the service provided and believed that their matters had been satisfactorily resolved by the Ombudsman's intervention. There was a high level of knowledge among interviewees in the community of the existence of the Energy Ombudsman's Office and its role.*

This is pleasing recognition of the work done in this jurisdiction.



# HEALTH COMPLAINTS ACT 1995

## INTRODUCTION

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I hold appointments both as Ombudsman and Health Complaints Commissioner, and the full title of our Office is “Office of the Ombudsman and Health Complaints Commissioner”.

This Chapter is included so that this annual report gives a full picture of the work of the Office, and it covers material that is outside the necessary scope of my report under the *Ombudsman Act*. It is therefore deliberately brief.

My annual report under the *Health Complaints Act 1995* has been published at the same time as this report, and can be seen at [www.healthcomplaints.tas.gov.au](http://www.healthcomplaints.tas.gov.au).

## STATISTICS

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These are the notable statistics for the year in this jurisdiction -

- a 25% increase in complaints received (236 to 295)
- a 27% increase in complaints closed (216 to 275)
- as in 2009/10, only 1% of cases assessed outside the required 90-day period
- a slight drop in the percentage of cases closed which were more than 12 months old – from 13.8% to 12.4%
- a 14% decrease in the number of enquiries (484 to 418), and
- a 21% increase in the number of cases referred to conciliation (57 to 69).

## COMPLAINT MANAGEMENT

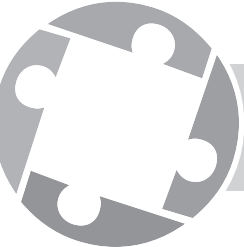
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Careful attention to assessment times continues to pay off, with so few cases going beyond the 90-day assessment limit required by the Act. The time taken is not always under our control, since we are so dependent on prompt replies from others.

As earlier mentioned, we are working generally across the whole of the Office to reduce the number of files which are open for more than 300 days. This is particularly difficult to achieve in the Health Complaints jurisdiction because of the time delays which naturally arise in the conciliation process, and the number of cases which now go to conciliation.

The number of cases going to conciliation has increased from 38 in 2007/08 to 69 in this last financial year – a rise of 82% - and yet I have only two legally trained staff members with advanced conciliation skills, one of whom





works only 0.4 FTE. This is an issue which must be addressed over time, particularly because we continue to attract cases which give rise to substantial compensation payments, where it is necessary for the conciliator to have a good understanding of the legal principles which would apply if the complaint was litigated.

## INVESTIGATION

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Two major investigations were completed during the year. Summaries of these cases – each of them significant – are to be found in the Investigations chapter of my annual report as Health Complaints Commissioner.

## CONCILIATION

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I have referred above to the growth in the number of complaints which now proceed to conciliation – conciliation being where the parties can come together in a confidential environment, attempting to resolve the issues between them with the aid of a skilled facilitator. Part of the reason for this growth is that under the *Health Complaints Act* a complaint must be assessed within 90 days, and beyond that point in time there is no scope to continue to explore resolution between the parties other than by referring it to conciliation. However, it is principally a reflection of the importance which we place on conciliation as a means of resolving issues which remain outstanding for the complainant, and as a means of pursuing systemic improvement.

## AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA)

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This was the first year of the new national scheme for the registration and accreditation of members of the principal health professions. The scheme is administered by AHPRA, which works in conjunction with ten National Boards for the various professions covered by the scheme.

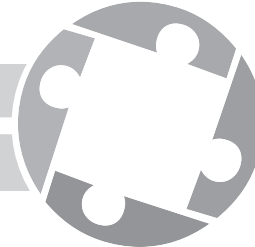
During 2010, a Memorandum of Understanding (MoU) was agreed between AHPRA and the various health complaint entities, including myself, to guide the interaction between each of them and AHPRA, particularly with respect to the operation of section 150 of the *Health Practitioner Regulation National Law Act*. This MoU was signed in October 2010, and has worked well. However, we continue to work on improving the efficiency of the interaction, which has been very harmonious. There were some early teething troubles, where we had some concern about the effect of the new process on our ability to assess complaints quickly. But as AHPRA and the Boards developed their internal systems and refined their delegations, these concerns fell away. Given the pressures involved in implementing an entirely new system of such magnitude and complexity, it is commendable that things settled down so quickly.

## CONCLUSION

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I mention a couple of matters in conclusion.

Through a process completed just after the end of the reporting year, an additional officer was appointed to the Health Complaints team, bringing it up to 3.8 FTE. I hope that, with this extra resource, we can turn our attention to more investigation work in this jurisdiction in future years.



During the year, the Disability Commissioners and equivalents for each of the States and Territories started regular meetings. Since responsibility for disability complaints often falls to health complaints entities, these meetings have been held in conjunction with the biennial meetings of those entities.

It would be highly desirable to promote the work of the Health Complaints Commissioner to the disability sector, if we can find the resources to do so. We get relatively few complaints from that sector, despite it being an area of need.



# OFFICIAL VISITORS

## OVERVIEW

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The Prison Official Visitors Scheme and the Mental Health Official Visitors Scheme are administered from my Office with the support of a part time manager and part time administrative officer. The administration of the Mental Health Official Visitors Scheme was transferred to my office on 1 July 2009 and I am currently the Coordinating Official Visitor of the Mental Health Official Visitors Scheme.

## PRISON OFFICIAL VISITORS

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The Prison Official Visitors continue to play a vital role in monitoring and reporting on the treatment and conditions of prisoners and detainees in the State's prisons. They also assist prisoners and detainees to raise and resolve concerns and complaints.

Visitors are appointed by the Minister under the *Corrections Act 1997* for a fixed term of two years. Up until June 2010, Visitors received a small annual honorarium and a contribution to their expenses. I am pleased to report that the government has provided funding from 1 July 2010 to remunerate the Prison Official Visitors at the same rate as the Mental Health Official Visitors.

One new Official Visitor was appointed during the year, and at the end of the reporting period there were seven Visitors who between them visited all the correctional facilities in the State. These facilities include the Reception Prisons in Hobart and Launceston as well as the facilities at the Risdon Prison Complex and the Hayes Prison Farm.

Visitors come from diverse backgrounds, with a range of experience, expertise and skills. They each bring their own perspective to the role. Their combined observations provide a detailed picture of the prison environment, its management and the prevailing concerns of prisoners and detainees.

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

- access to medication and medical and dental treatment
- the cost of telephone calls using the Arunta telephone system
- the cost of canteen items and the variety of items available



- dietary issues and food quality
- access to educational opportunities and literacy programs
- access to personal property held by the prison, and lost property, and
- concerns about outside issues, such as Centrelink benefits and utility bills.

The Official Visitors regularly report their observations and concerns to me, and I refer more serious or systemic issues to Prison Management for its response, which is generally positive and constructive. I also provide a report to the Minister on a quarterly basis on issues raised by Official Visitors and on the operation of the scheme in general. The Visitors' reports keep me informed about the state of the prison system, which is an otherwise largely closed environment. For example, the Official Visitors were instrumental in bringing to my attention the condition of inmates in the Behaviour Management Programme housed in the maximum security Tamar Unit, which was the subject of a report I tabled in Parliament on 24 June 2010 under the *Ombudsman Act 1978*.

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

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

## MENTAL HEALTH OFFICIAL VISITORS

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Mental Health Official Visitors are appointed under the provisions of Part 11 of the *Mental Health Act 1996* (the Act).

Official Visitors have an oversight role in respect of the accommodation, assessment, treatment and care or persons with mental illness in approved hospitals and the secure mental health unit (the Wilfred Lopes Centre). They also examine the opportunities for recreation, education and training for persons with mental illness who are patients in approved hospitals.

Apart from visiting patients with these types of oversight in mind, Official Visitors also investigate suspected contraventions of the Act in the care or treatment of persons with mental illness, and investigate complaints made by persons receiving care or treatment for mental illness.

Official Visitors visit approved hospitals and the Wilfred Lopes Centre in accordance with s 77 of the Act, which requires visits to be made at least once a month. Visits are usually made by a panel of two visitors.



Visits were made each month to the Wilfred Lopes Centre and the following approved hospitals during the reporting year -

- the Royal Hobart Hospital, including the Department of Psychological Medicine, the Psychiatric Intensive Care Unit and the Emergency Department
- the Roy Fagan Centre
- the Millbrook Rise Centre
- the Launceston General Hospital, including Northside Clinic and the Emergency Department, and
- the North West Regional Hospital, including the Spencer Clinic and the Emergency Department.

Additional visits were also made to these facilities to visit patients who had made complaints. A total of 179 visits were made by Visitors to approved hospitals in the reporting year.

In accordance with s 81 of the Act, I provide a report to the Secretary of the Department of Health and Human Services on or before 31 August each year on the visits and investigations made by the Official Visitors in the course of the previous financial year, and on the results of those visits and investigations.

During the course of the year I also report to Mental Health and Statewide Services following the routine monthly visits to approved hospitals. These reports outline issues of interest and concern that have been raised by patients with Official Visitors and issues brought to my attention by the panel.

## COMPLAINTS

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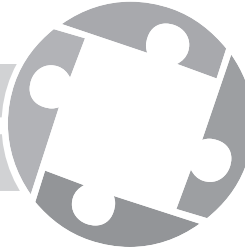
Under s 75(f) of the Act, Official Visitors investigate complaints made by persons receiving care or treatment for mental illness.

During 2009/10, a total of 160 complaints were received from patients in approved hospitals or the Wilfred Lopes Centre during routine monthly visits. The majority of these complaints were resolved following discussion with relevant clinical staff.

In addition, a total of 121 complaints were received from patients outside of the routine monthly visits. Once again, the majority of these complaints were resolved following discussion with relevant clinical staff. Overall 85% of patients who made a complaint were seen in person by an Official Visitor.

I had no cause during the year to report a suspected breach of the Act to the Mental Health Tribunal, as required by s 79 of the Act.

I note that my oversight of the Scheme intersects well with my role as Health Complaints Commissioner. There have been occasions when I have considered taking on matters as Commissioner which have become known to me through my work with the Scheme; there have also been occasions when complaints which have come to me as Commissioner have been addressed through referral to an Official Visitor.



## STAFFING ISSUES

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During 2010/2011, two Visitors were reappointed for a further three year term, and one Visitor did not request reappointment.

I advertised for expressions of interest for appointment as a Mental Health Official Visitor and six new Visitors were appointed during the 2010/2011 year.

As at 30 June 2011, and excluding the Manager Official Visitors and myself, there were 14 Visitors. Six of these were in the North of the state, and eight in the South.

In the reporting year, I hosted two Statewide meetings of Visitors. Short training exercises were also held with Visitors from both the North and South of the State when they met for their regular regional meetings. At one Statewide meeting a senior practitioner from Mental Health Services presented a training session about the seclusion and restraint provisions of the Act. This presentation was also attended by officers who work in the Health Complaints area of my Office.

## OTHER MATTERS

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During the year I took the opportunity to visit all the approved hospitals in the North East and the South of the State. This was a valuable exercise, which enabled me to see firsthand the facilities visited by Official Visitors each month and to meet with senior staff in those facilities. I am planning to visit the approved hospital on the North West Coast as soon as it can be arranged.

In June 2011 the draft exposure *Mental Health Bill 2011* was released for public consultation. I was invited to participate in the work of the committee which is currently responsible for the review of the Act, the Mental Health Act Review Advisory Committee, and the Manager Official Visitors is my nominee for this purpose. I see this as a valuable opportunity to contribute to this reform.

In another jurisdiction, the Children's Commissioner has piloted a Children's Visitors program for children in care and is now further developing a Children's Visitors program model for consideration by the Minister for Children. The Manager Official Visitors is my representative on the group which is conducting this work.

## CONCLUSION

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The two Official Visitors schemes thus operated very effectively during the year under review.



## APPENDIX A: STATISTICS – OMBUDSMAN ACT

TABLE 1. ENQUIRY ACTIVITY

	2009/10	2010/11	Variance
Enquiries opened and closed in the period	682	567	-17%
Out of Jurisdiction enquiries	2,828	2,386	-16%
<b>Total Enquiries</b>	<b>3,510</b>	<b>2,953</b>	<b>-16%</b>

	2009/10	2010/11	Variance
Enquiries	3,510	2,953	
less Arunta	1,039	993	
<b>Total</b>	<b>2,471</b>	<b>1,960</b>	<b>-21%</b>

TABLE 2. COMPLAINT ACTIVITY

	2009/10	2010/11	Variance
Carried forward from previous period	162	119	
Opened in Period	549	702	28%
Closed in Period	592	664	12%
<b>Carried Forward (still open)</b>	<b>119</b>	<b>157</b>	

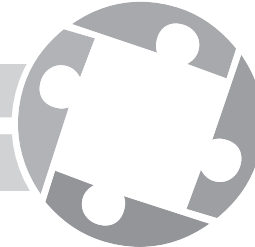
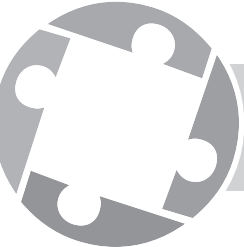


TABLE 3. COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS

Department	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
EDUCATION (DEPT OF)							
Office of the Secretary	0	2	1	1	0	0	0
Schools	1	0	1	0	0	0	1
Tasmanian Archive and Heritage Office	0	2	1	0	0	0	1
Tasmanian Polytechnic	1	2	1	0	0	1	0
Departmental/Not specified	6	10	10	3	1	4	2
Subtotal	8	16	14	4	1	5	4
HEALTH AND HUMAN SERVICES (DEPT OF)							
Ashley Youth Detention Centre	10	9	7	5	0	2	0
Children & Families Division	1	0	0	0	0	0	0
Community Health Services	1	0	0	0	0	0	0
Correctional Health Services	2	0	0	0	0	0	0
Health Services	3	2	1	1	0	0	0
Human Services	63	62	61	33	3	22	3
Mental Health Services	2	2	2	2	0	0	0
Patient Travel Launceston General Hospital	0	2	2	0	0	2	0
Population Health	13	13	12	3	5	4	0
Statewide Systems Development	2	6	5	0	3	2	0
Departmental/Not specified	8	11	9	4	1	2	2
Subtotal	105	107	99	48	12	34	5

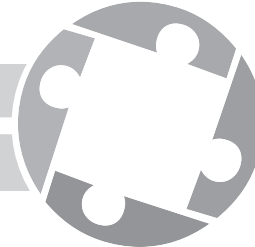




Department	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
INFRASTRUCTURE, ENERGY & RESOURCES (DEPT OF)							
Forest Practices Authority	0	2	2	1	0	1	0
Land Transport Safety	18	8	6	2	1	2	1
Mineral Resources Tasmania	1	0	1	0	1	0	0
Passenger Transport	7	1	1	0	0	1	0
Racing Services Tasmania	1	0	0	0	0	0	0
Roads and Traffic	2	0	1	0	0	1	0
Sullivan Cove Waterfront Authority	1	0	0	0	0	0	0
Departmental/Not specified	0	5	2	0	0	2	0
Subtotal	30	16	13	3	2	7	1

## JUSTICE (DEPT OF)

Community Corrections	1	0	0	0	0	0	0
Corrective Services	0	0	1	0	0	0	1
Crown Law	1	0	0	0	0	0	0
Guardianship and Administration Board	5	0	1	1	0	0	0
Legal Aid	0	0	1	0	0	1	0
Magistrates Courts	2	3	3	1	1	1	0
Monetary Penalties Enforcement Project	1	0	0	0	0	0	0
Monetary Penalties Enforcement Service	12	13	14	1	2	9	2
Office of Consumer Affairs and Fair Trading	7	14	16	7	0	8	1
Office of the Anti-Discrimination Commissioner	0	1	0	0	0	0	0
Ombudsman	0	1	1	0	0	1	0
Parole Board	3	0	0	0	0	0	0
Prison Services	98	123	120	17	24	67	12
Public Guardian	0	2	1	1	0	0	0
Tasmanian Electoral Commission	1	1	1	1	0	0	0
Victims Support Services	1	1	1	0	0	1	0
Workplace Standards Tasmania	3	3	3	0	0	3	0
Departmental/Not specified	3	5	3	2	0	1	0
Subtotal	138	167	166	31	27	92	16



Department	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
POLICE AND EMERGENCY MANAGEMENT (DEPT OF)							
Minister for Police and Emergency Management	1	1	0	0	0	0	0
Northern District	0	1	1	0	0	1	0
Tasmania Fire Service	0	1	1	0	0	1	0
Tasmania Police Service	44	24	22	8	1	11	2
Departmental/Not specified	0	20	22	10	1	9	2
Subtotal	45	47	46	18	2	22	4
PREMIER AND CABINET (DEPT OF)							
Attorney-General	0	1	1	1	0	0	0
Local Government Division	0	1	0	0	0	0	0
Office of the State Service Commissioner	0	1	1	0	0	1	0
Service Tasmania Unit	2	0	0	0	0	0	0
Departmental/Not specified	1	0	0	0	0	0	0
Subtotal	3	3	2	1	0	1	0



Department	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
PRIMARY INDUSTRIES, PARKS WATER AND ENVIRONMENT (DEPT OF)							
Biosecurity and Product Integrity	1	1	1	1	0	0	0
Environment Protection Authority	0	1	1	1	0	0	0
Heritage Tasmania	1	0	0	0	0	0	0
Information and Land Services	11	8	9	1	3	4	1
Inland Fisheries Services	1	0	0	0	0	0	0
Marine Farming Planning Review Panel	1	0	0	0	0	0	0
Marine Resources	1	0	0	0	0	0	0
Minister for Primary Industries and Water	1	0	0	0	0	0	0
Parks and Wildlife Service	1	2	2	1	0	1	0
Resource Management and Conservation	1	0	1	0	0	1	0
Royal Tasmania Botanical Gardens	1	0	0	0	0	0	0
Shack Sites Project Manager	1	0	1	1	0	0	0
Tasmanian Heritage Council	0	1	1	1	0	0	0
Water Resources	3	0	0	0	0	0	0
Departmental/Not specified	2	13	4	2	0	1	1
Subtotal	26	26	20	8	3	7	2
TREASURY AND FINANCE (DEPT OF)							
Revenue, Gaming and Licensing Division	2	0	0	0	0	0	0
State Revenue Office	5	2	1	0	1	0	0
Departmental/Not specified	3	1	1	1	0	0	0
Subtotal	10	3	2	1	1	0	0
<b>Grand Total</b>	365	385	362	114	48	168	32



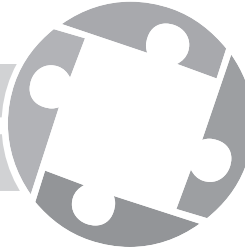
TABLE 4. COMPLAINTS AGAINST LOCAL GOVERNMENT

Council	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
Break O'Day Council	4	3	2	2	0	0	0
Brighton Council	2	3	1	0	0	1	0
Burnie City Council	2	2	2	0	1	1	0
Central Coast Council	1	0	0	0	0	0	0
Central Highlands Council	1	2	1	1	0	0	0
Circular Head Council	1	1	2	1	0	1	0
Clarence City Council	11	9	9	4	1	3	1
Devonport City Council	2	1	2	0	1	1	0
Dorset Council	0	4	3	1	1	1	0
Flinders Island Council	1	0	1	0	0	1	0
George Town Council	3	5	4	0	2	2	0
Glamorgan/Spring Bay Council	3	2	3	1	0	1	1
Glenorchy City Council	15	1	1	0	0	1	0
Hobart City Council	11	5	6	2	1	3	0
Huon Valley Council	3	4	5	1	0	4	0
Kentish Council	1	4	4	2	0	2	0
Kingborough Council	2	4	3	1	1	1	0
Latrobe Council	1	1	0	0	0	0	0
Launceston City Council	2	11	2	1	1	0	0
Meander Valley Council	1	3	2	1	0	1	0
Northern Midlands Council	1	3	3	1	1	1	0
Sorell Council	5	5	4	1	0	3	0
Southern Midlands Council	1	5	5	0	0	5	0
Tasman Council	1	5	5	1	0	3	1
Waratah/Wynard Council	2	2	2	1	1	0	0
West Coast Council	2	3	3	0	2	1	0
West Tamar Council	1	2	1	0	0	1	0
<b>Total</b>	<b>80</b>	<b>90</b>	<b>76</b>	<b>22</b>	<b>13</b>	<b>38</b>	<b>3</b>



TABLE 5. COMPLAINTS AGAINST PUBLIC AUTHORITIES

Public Authorities	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
Ben Lomond Water	6	13	12	1	0	10	1
Chiropractors and Osteopaths Registration Board	1	0	0	0	0	0	0
Cradle Mountain Water	7	10	8	2	0	6	0
Guardianship and Administration Board	2	1	2	0	1	1	0
Health Complaints Commissioner	1	0	1	0	0	0	1
Law Society of Tasmania	1	1	0	0	0	0	0
Legal Aid Commission	3	6	8	3	0	3	2
Medical Council of Tasmania	3	0	0	0	0	0	0
Mental Health at Peacock Centre North Hobart	1	0	0	0	0	0	0
Metro Tasmania	1	2	1	0	0	1	0
Nursing Board of Tasmania	2	0	1	0	0	1	0
Office of the Tasmanian Energy Regulator	1	0	0	0	0	0	0
Property Agents Board	1	1	1	1	0	0	0
Retirement Benefits Fund Board	4	5	1	1	0	0	0
Resource Management & Appeals Tribunal	0	1	1	1	0	0	0
Southern Water	39	52	51	13	4	20	14
Tasmanian Ports Corporation Pty Ltd	1	0	0	0	0	0	0
Tasmanian Qualifications Authority	0	1	1	0	0	1	0
The Legal Profession Board of Tasmania	0	1	1	0	0	1	0
The Public Trustee	9	9	4	2	1	1	0
Tote Tasmania	1	1	1	0	0	0	1
Transend Networks	0	3	2	1	0	1	0
University of Tasmania	11	6	10	4	0	5	1
Wellington Park Management Trust	1	0	1	0	0	0	1
<b>Total</b>	<b>96</b>	<b>113</b>	<b>107</b>	<b>29</b>	<b>6</b>	<b>51</b>	<b>21</b>



**TABLE 6. COMPLAINTS AGAINST GOVERNMENT BUSINESS ENTERPRISES AND OTHER AUTHORITIES**

GBEs and Other Authorities	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
Aurora Energy	0	2	2	1	0	1	0
Forest Practices Authority	1	0	1	1	0	0	0
Forestry Tasmania	2	5	4	2	2	0	0
Motor Accidents Insurance Board	1	3	2	2	1	1	0
TT Line	3	1	4	2	0	0	0
<b>Total</b>	<b>7</b>	<b>11</b>	<b>13</b>	<b>8</b>	<b>3</b>	<b>2</b>	<b>0</b>

**TABLE 7. TOTAL CASES OPENED, CLOSED AND SUBSTANTIATED**

	Received 2009/10	Received 2010/11	Closed 2010/11	Declined	Discontinued	No defective Administration	Partly/Fully Substantiated
Out of Jurisdiction total	1	103	102	102	0	0	0
<b>Grand Total</b>	<b>549</b>	<b>702</b>	<b>660</b>	<b>275</b>	<b>70</b>	<b>259</b>	<b>56</b>



FIGURE 1. WHO IS BEING COMPLAINED ABOUT?

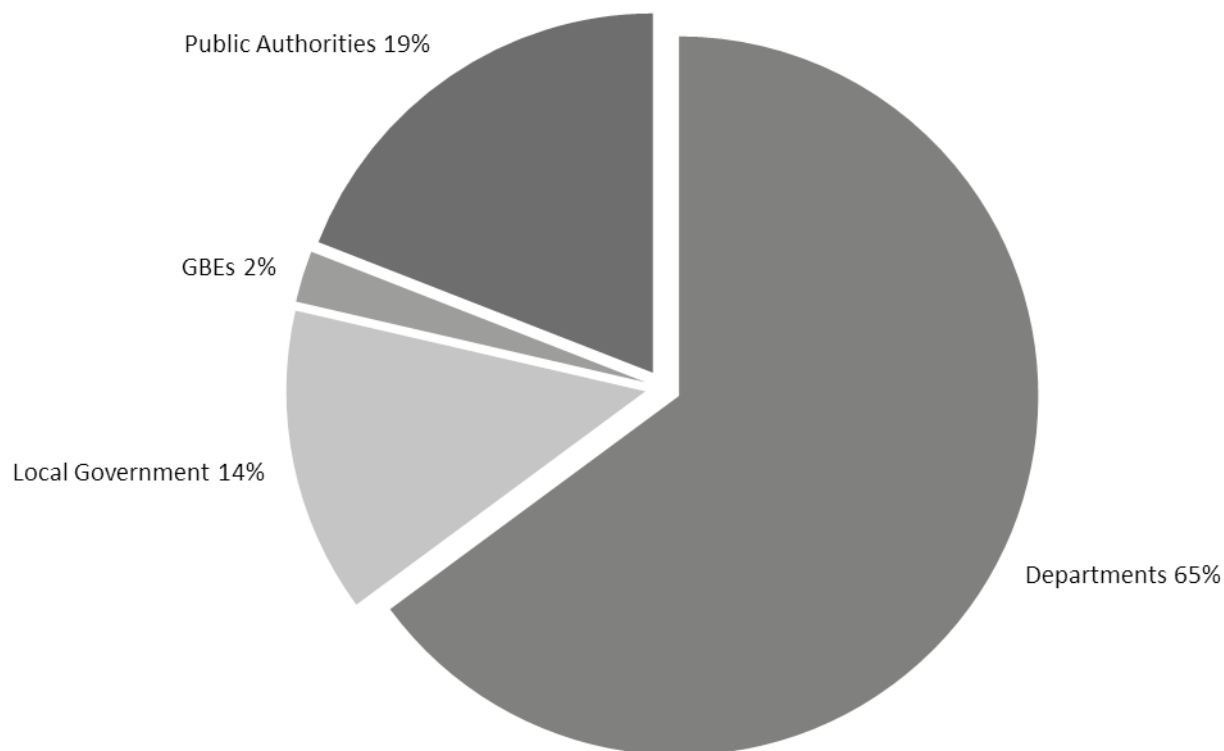


FIGURE 2. WHAT IS THE BREAKDOWN OF COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS

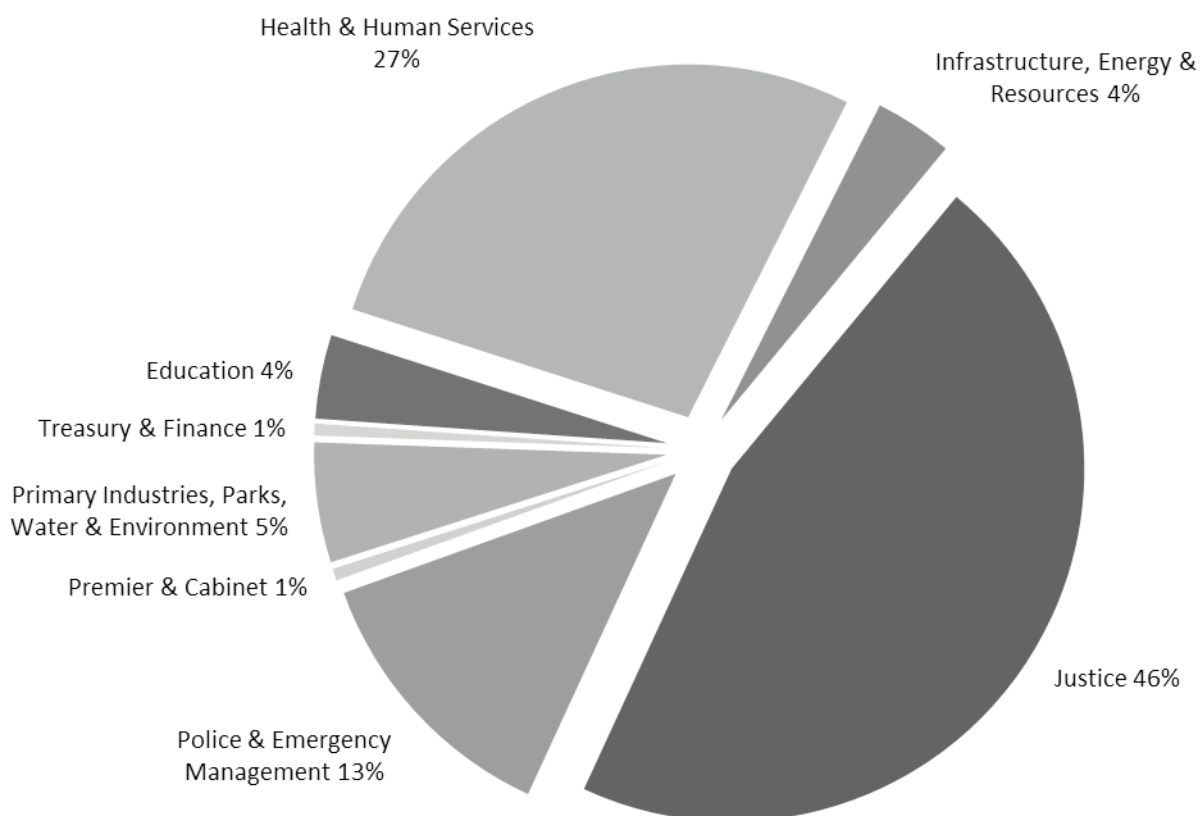




FIGURE 3. REASONS FOR CLOSURE (EXCLUDING FOI AND RTI)

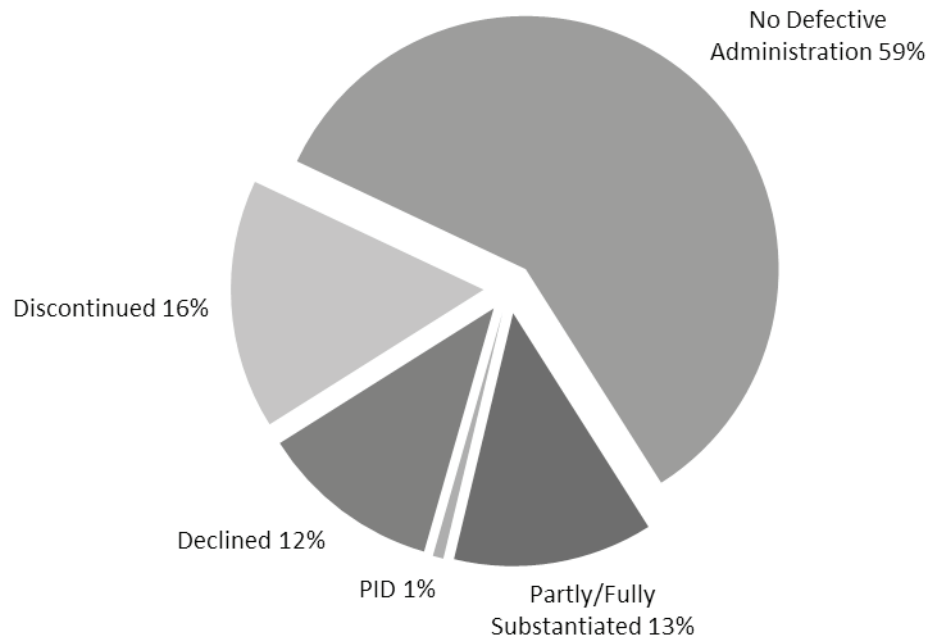
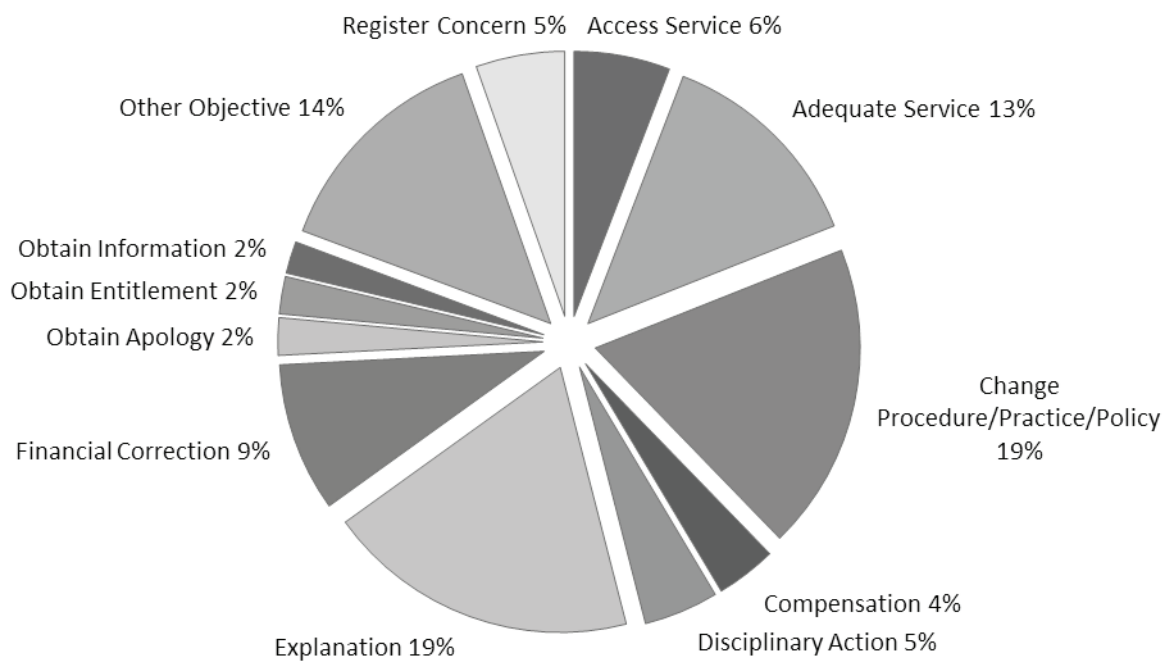


FIGURE 4. WHAT WERE COMPLAINANTS OBJECTIVES?





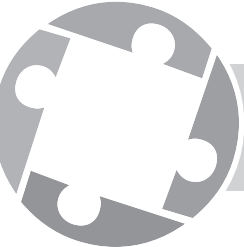


FIGURE 5. TIME TAKEN TO RESOLVE COMPLAINTS (EXCLUDING FOI & RTI)

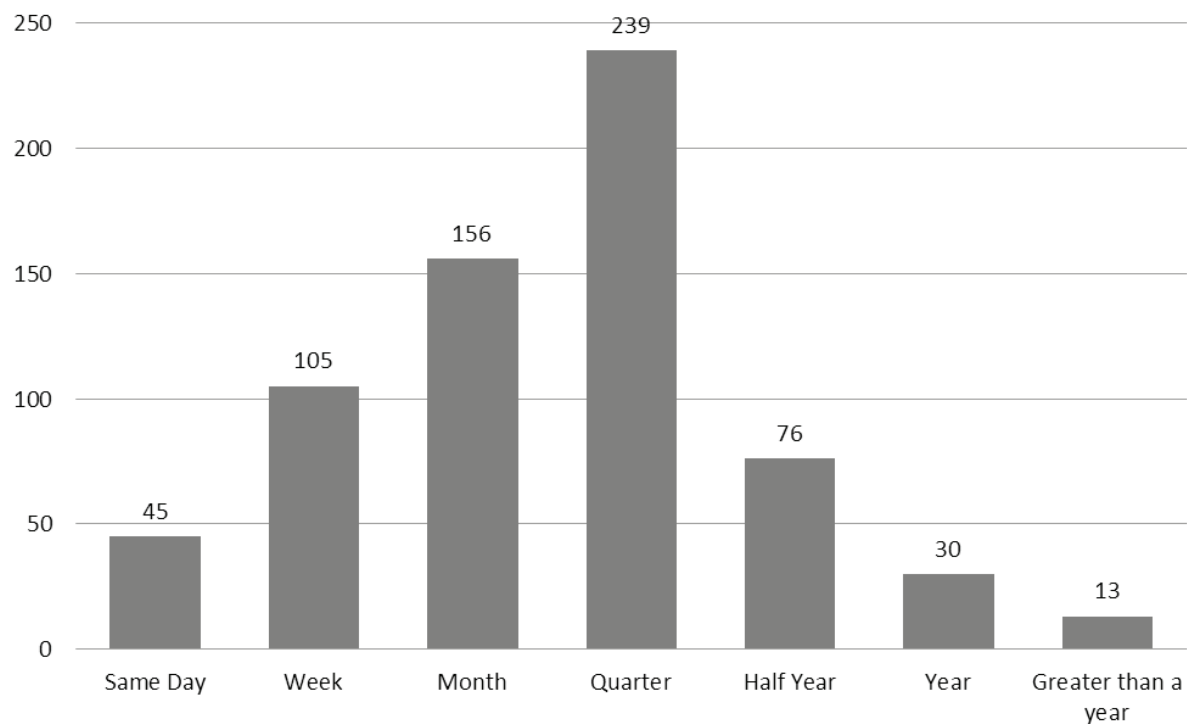
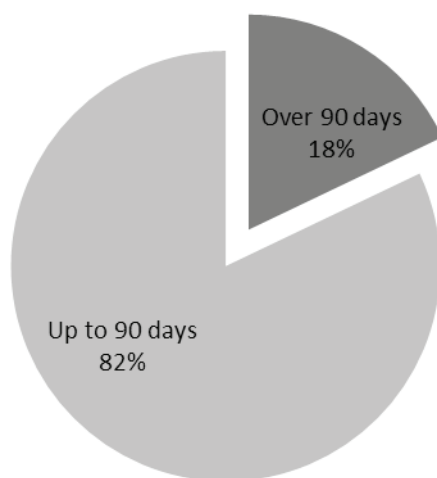


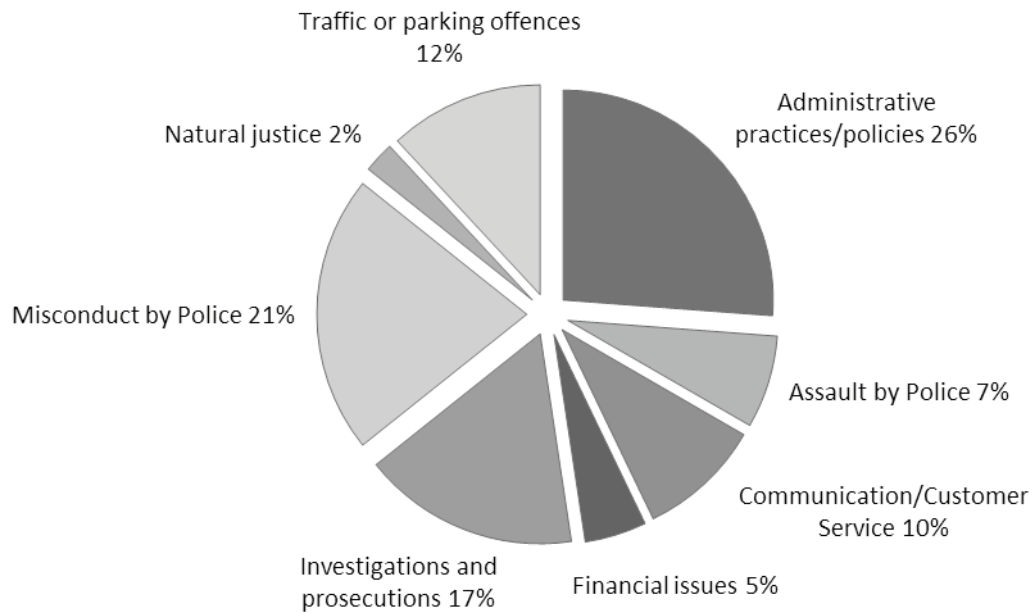
FIGURE 6. COMPLAINTS RESOLVED WITHIN 90 DAYS





## COMPLAINT ISSUES

**FIGURE 7. WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST POLICE AND EMERGENCY MANAGEMENT?**



**FIGURE 8. WHAT WERE THE MAIN ISSUES AGAINST STATE GOVERNMENT DEPARTMENTS?**

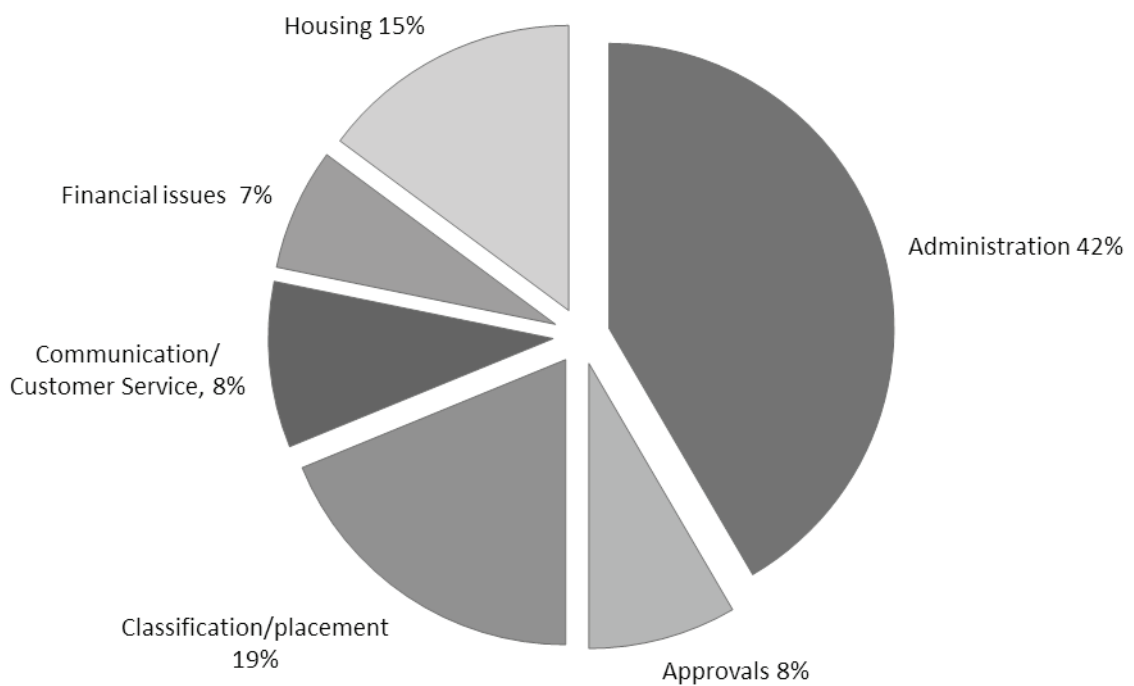




FIGURE 9. WHAT WERE THE MAIN ISSUES AGAINST CORRECTIVE SERVICES?

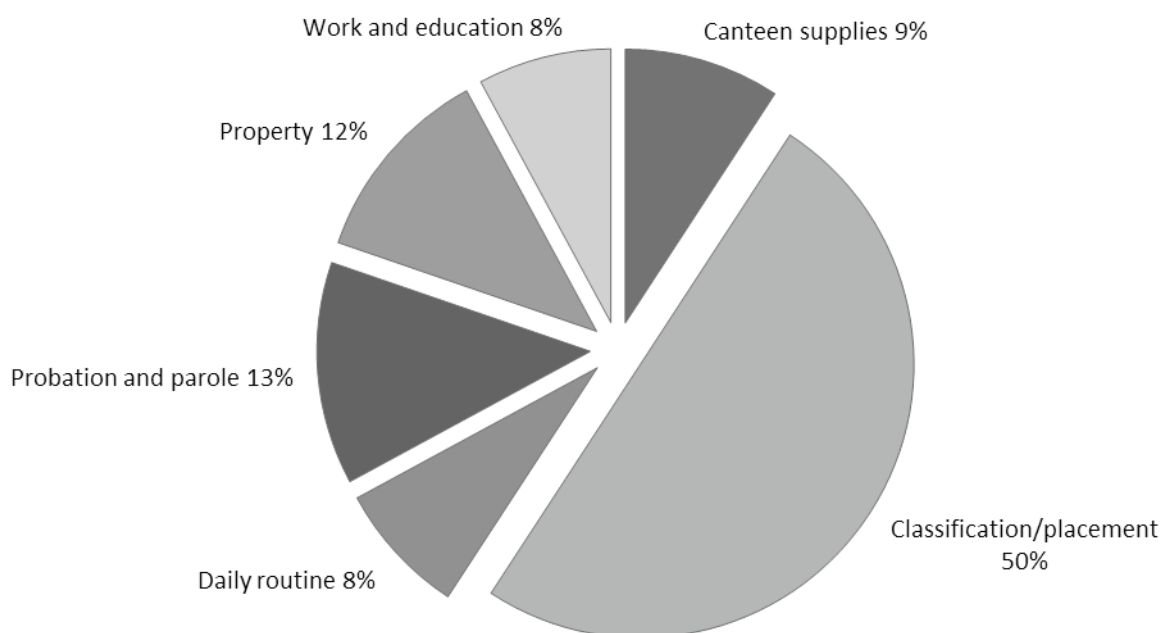


FIGURE 10. WHAT WERE THE MAIN ISSUES AGAINST LOCAL GOVERNMENT?

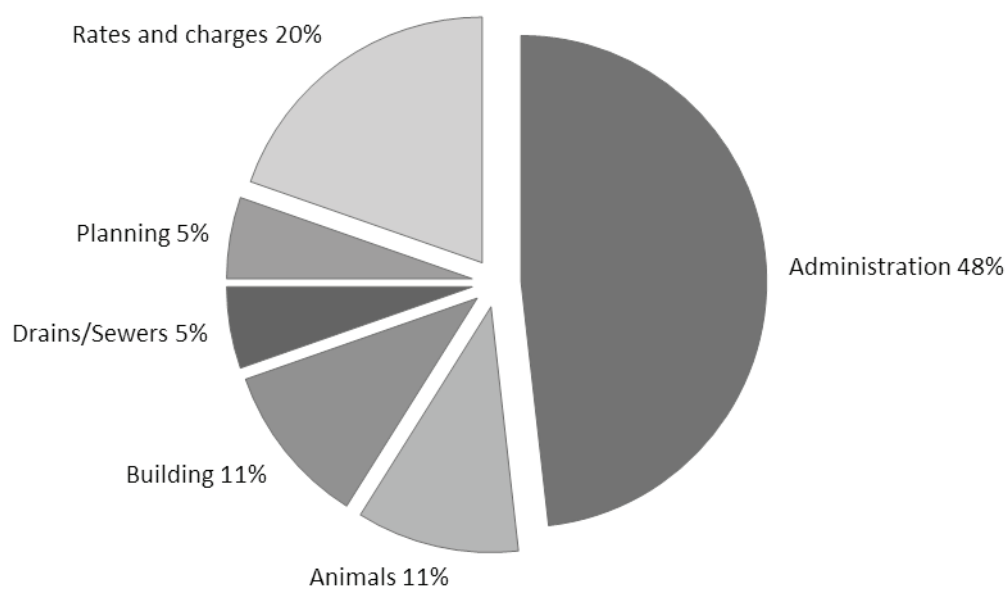
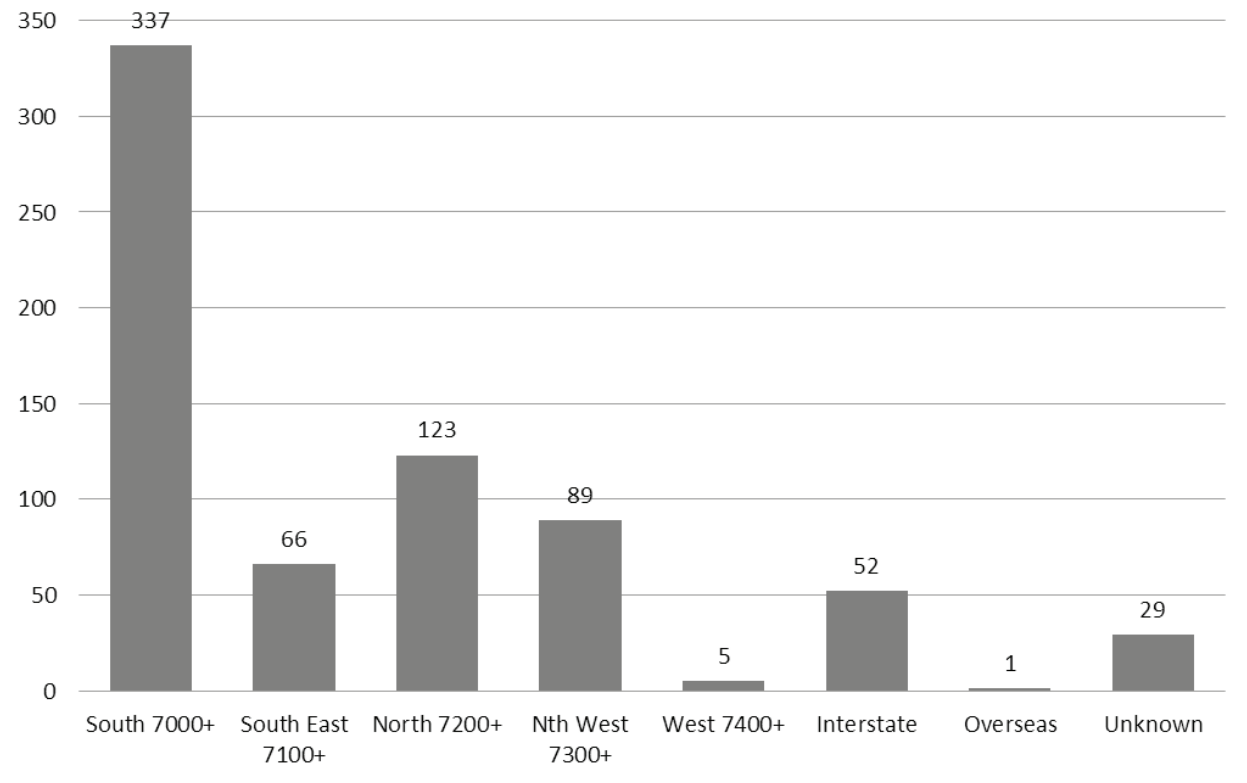




FIGURE 11. GEOGRAPHICAL LOCATION OF COMPLAINANTS





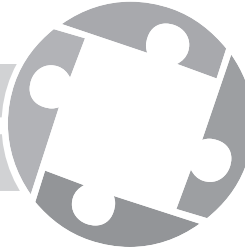
## FREEDOM OF INFORMATION

FOI TABLE 1. RESULTS OF FINALISED CASES

Decision	2009/10	2010/11
Agency Decision Affirmed	9	3
Agency Decision Varied	20	6
Agency Decision Set Aside	14	2
Other	77	25
<b>Total</b>	<b>120</b>	<b>36</b>

FOI TABLE 2. REVIEWS AGAINST STATE GOVERNMENT DEPARTMENTS

Departments	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Department of Economic Development, Tourism & the Arts	0	0	0	0	0
Department of Education	11	0	1	0	0
Department of Environment Parks Heritage & Arts	0	0	0	0	0
Department of Health & Human Services	18	0	1	1	1
Department of Infrastructure, Energy & Resources	7	0	1	1	0
Department of Justice	13	0	3	1	1
Department of Premier & Cabinet	4	3	3	1	0
Department of Primary Industries & Water	3	0	1	1	1
Department of Police & Emergency Management	4	7	7	2	2
<b>Subtotal</b>	<b>60</b>	<b>10</b>	<b>17</b>	<b>7</b>	<b>5</b>



FOI TABLE 3. REVIEWS AGAINST LOCAL GOVERNMENT

Councils	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Huon Valley Council	1	0	0	0	0
Southern Midlands Council	1	0	0	0	0
Tasman Council	1	0	0	0	0
West Coast Council	1	0	0	0	0
Subtotal	4	0	0	0	0

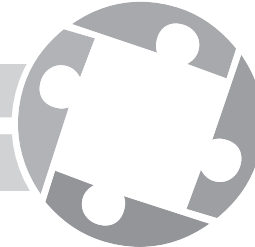
FOI TABLE 4. REVIEWS AGAINST STATUTORY AUTHORITIES AND OTHER BODIES

Statutory Authorities and Other Bodies	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Aurora Energy	54	12	11	4	1
Forestry Tasmania	1	1	1	0	0
Health Complaints Commissioner	1	0	0	0	0
Law Society of Tasmania	2	1	1	0	0
Legal Profession Board of Tasmania	0	1	1	0	0
Motor Accidents Insurance Board	1	0	0	0	0
Nurses Board of Tasmania	1	0	0	0	0
Property Agents Board	3	1	3	0	0
Retirement Benefits Fund Board	1	0	0	0	0
Subtotal	64	16	17	4	1



FOI TABLE 5. REVIEWS AGAINST MINISTERS

	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
<b>Councils</b>					
Minister for Education & Skills	0	1	1	0	0
Minister for Energy & Resources	0	0	1	0	0
Subtotal	2	1	2	0	0
<b>Grand Total</b>	<b>128</b>	<b>27</b>	<b>36</b>	<b>11</b>	<b>6</b>



## RIGHT TO INFORMATION

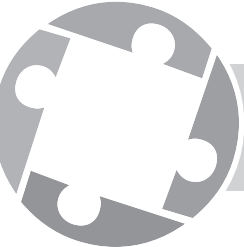
RTI TABLE 1. RESULTS OF FINALISED CASES

Decision	2009/10	2010/11
Agency Decision Affirmed	0	6
Agency Decision Varied	0	0
Agency Decision Set Aside	0	1
Other	0	7
<b>Total</b>	<b>0</b>	<b>14</b>

RTI TABLE 2. REVIEWS AGAINST STATE GOVERNMENT DEPARTMENTS

Departments	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Department of Education	0	1	1	0	0
Department of Health & Human Services	0	3	2	0	0
Department of Infrastructure, Energy & Resources	0	1	0	0	0
Department of Justice	0	1	0	0	0
Department of Primary Industries & Water	0	1	0	0	0
Dept of Police & Emergency Management	0	7	4	2	0
<b>Subtotal</b>	<b>0</b>	<b>14</b>	<b>7</b>	<b>2</b>	<b>0</b>



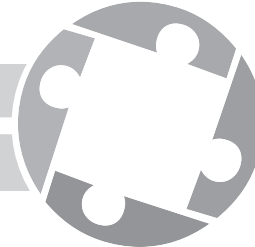


RTI TABLE 3. REVIEWS AGAINST LOCAL GOVERNMENT

Councils	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Dorset Council	0	1	0	0	0
George Town Council	0	8	5	4	0
Launceston City Council	0	2	0	0	0
Subtotal	0	11	5	4	0

RTI TABLE 4. REVIEWS AGAINST STATUTORY AUTHORITIES AND OTHER BODIES

Statutory Authorities and Other Bodies	Applications Received 2009/10	Applications Received 2010/11	Closed 2010/11	Reviews undertaken	Agency Decision Varied
Aurora Energy	0	1	0	0	0
Motor Accidents Insurance Board	0	2	1	1	0
Southern Water	0	1	1	0	0
Tote Tasmania	0	1	0	0	0
Subtotal	0	5	2	1	0
Grand Total	0	30	14	7	0



## APPENDIX B: STATISTICS - ENERGY OMBUDSMAN ACT

ENERGY TABLE 1. ENQUIRY ACTIVITY

	2009/10	2010/11	Variance
Enquiries opened and closed in the period	210	163	-22%
Out of jurisdiction enquiries	52	40	-23%
<b>Total Enquiries</b>	<b>262</b>	<b>203</b>	<b>-23%</b>

ENERGY TABLE 2. COMPLAINT ACTIVITY

	2009/10	2010/11	Variance
Carried forward from previous period	43	35	
Opened in Period	414	465	12%
Closed in Period	422	454	8%
<b>Carried Forward (still open)</b>	<b>35</b>	<b>46</b>	

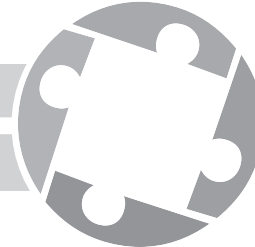
ENERGY TABLE 3. CLOSURE REASONS BY ENTITY

Provider name	Complaints No action - OOJ - register only	Complaints Referred to higher level	No further investigation Fair/reasonable offer	No further investigation Insufficient grounds/not warranted	No further investigation No further contact from customer	No further investigation Withdrawn by customer	Out of jurisdiction	Resolved Facilitated resolution	Resolved Negotiated resolution	Grand Total
Aurora – Network Division		27		14		3	4	36	23	107
Aurora – Retail Division	1	170	2	36	9	9	8	67	41	343
Origin Energy							1			1
Tas Gas Network								1		1
Tas Gas Retail				1						1
Transend Networks								1		1
<b>Grand Total</b>	<b>1</b>	<b>197</b>	<b>2</b>	<b>51</b>	<b>9</b>	<b>12</b>	<b>13</b>	<b>105</b>	<b>64</b>	<b>454</b>

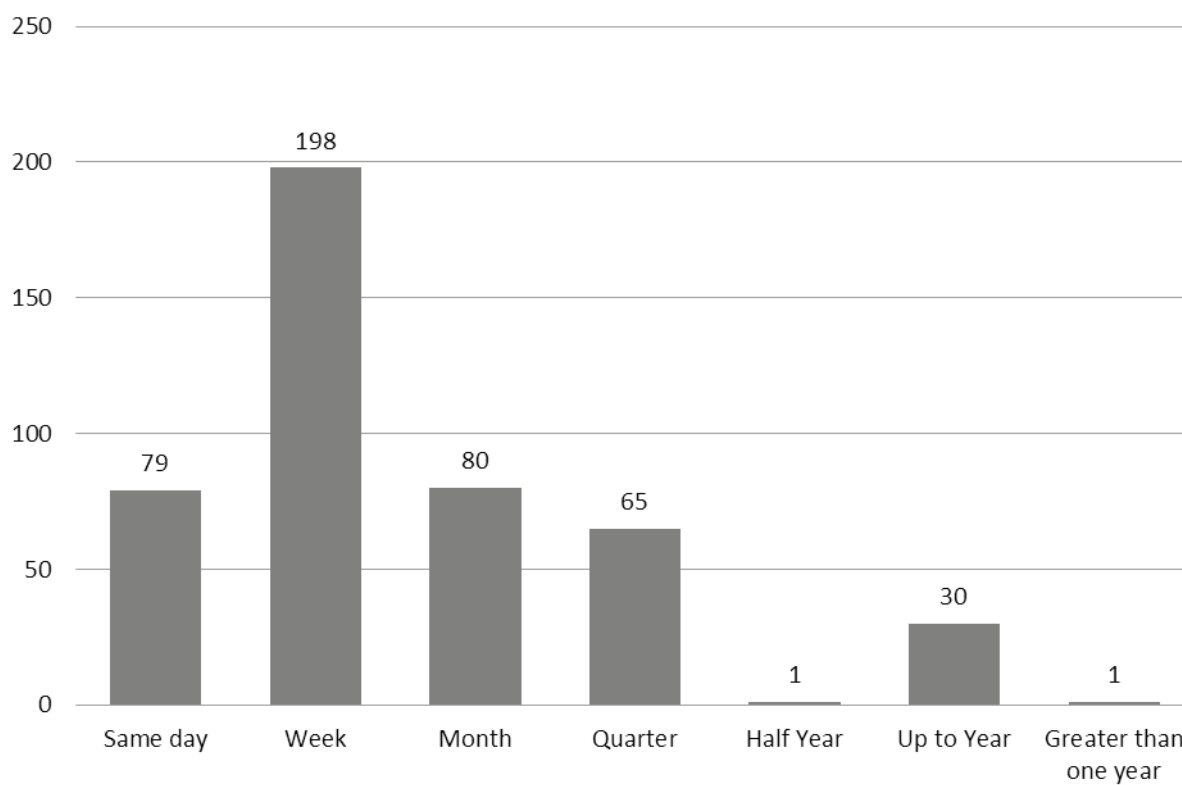


ENERGY TABLE 4. CLOSURE REASONS BY CATEGORY

BILLING	2009/10	2010/11	LAND	2009/10	2010/11
Backbill	2	0	Easement	2	0
Delay	8	4	Network assets	13	14
Error	14	19	Other	3	4
Estimation	26	36	Street lighting	2	0
Fees & charges	17	23	Vegetation management	6	4
High	74	71	Land Total	26	22
Meter	30	27			
Other	5	15	PROVISION		
Rebate / concession	9	29	Disconnection / restriction	4	3
Refund	0	2	Existing connection	24	20
Tariff	14	22	New connection	50	26
Billing Total	199	248	Provision Total	78	49
CREDIT			SUPPLY		
Collection	4	6	Off supply (planned)	11	10
Disconnection / restriction	36	28	Off supply (unplanned)	24	22
Payment difficulties	40	44	Quality	2	1
Credit Total	80	78	Sustainability initiatives	0	1
			Variation	0	1
CUSTOMER SERVICE			Supply Total	37	35
Failure to consult / inform	6	4			
Failure to respond	4	14	Grand Total	461	487
Incorrect advice / information	10	9			
Poor / unprofessional attitude	2	5			
Poor service	16	19			
Privacy	2	3			
Customer Service Total	40	54			
GENERAL					
Energy / water	1	1			
General Total	1	1			



ENERGY FIGURE 1. TIME TAKEN TO RESOLVE COMPLAINTS

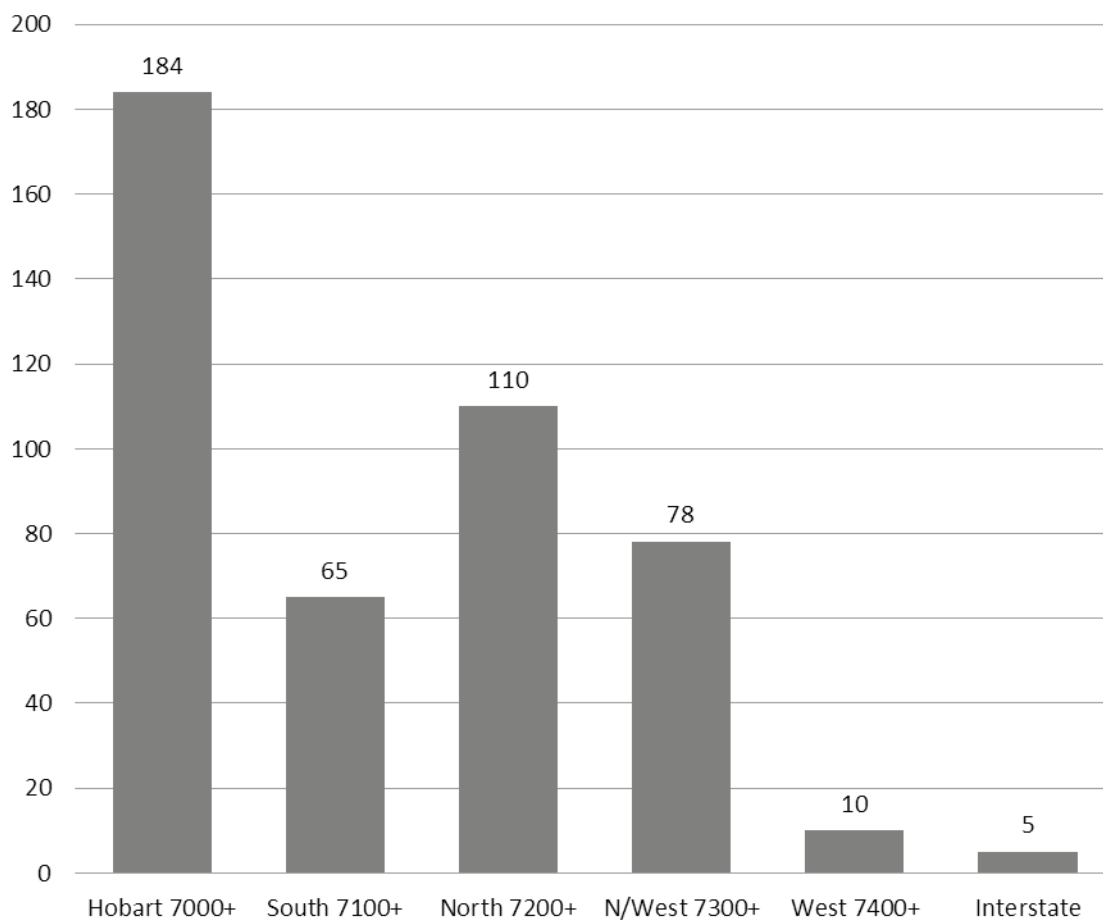


ENERGY FIGURE 2. COMPLAINTS RESOLVED WITHIN 90 DAYS





ENERGY FIGURE 3. GEOGRAPHICAL LOCATION OF COMPLAINANTS





# Office of the Ombudsman and Health Complaints Commissioner

## Financial Statements 2010-11

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Notes to and forming part of the Financial Statements for the year ended 30 June 2011	7

# Office of the Ombudsman and Health Complaints Commissioner

## Statement of Comprehensive Income for the year ended 30 June 2011

	Notes	2011 Budget \$'000	2011 Actual \$'000	2010 Actual \$'000
<b>Continuing operations</b>				
<b>Revenue and other income from transactions</b>				
Revenue from Government				
Appropriation revenue - recurrent	1.6(a), 3.1	2 083	2 095	1 665
Revenue from Energy Entities	1.6(b), 3.2	469	479	436
Other revenue	1.6(c), 3.3	-	21	20
<b>Total revenue and other income from transactions</b>		<b>2 552</b>	<b>2 595</b>	<b>2 121</b>
<b>Expenses from transactions</b>				
Employee benefits	1.7(a), 4.1	1 987	1 826	1 597
Depreciation and amortisation	1.7(b), 4.2	28	44	32
Supplies and consumables	4.3	402	492	403
Other expenses	1.7(c), 4.4	155	166	108
<b>Total expenses from transactions</b>		<b>2 572</b>	<b>2 528</b>	<b>2 140</b>
<b>Net result from transactions (net operating balance)</b>		<b>(20)</b>	<b>67</b>	<b>(19)</b>
<b>Other economic flows included in net result</b>		-	-	-
<b>Other economic flows – other non-owner changes in equity</b>		-	-	-
<b>Comprehensive result</b>		<b>(20)</b>	<b>67</b>	<b>(19)</b>

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

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

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



## Office of the Ombudsman and Health Complaints Commissioner

### Statement of Financial Position as at 30 June 2011

	Notes	2011 Budget \$'000	2011 Actual \$'000	2010 Actual \$'000
<b>Assets</b>				
<i>Financial assets</i>				
Cash and deposits	1.8(a), 8.1	246	171	127
Receivables	1.8(b), 5.1	4	69	83
Other financial assets		-	7	-
<i>Non-financial assets</i>				
Property, plant and equipment	1.8(c), 5.2	-	67	-
Intangibles	1.8(d), 5.3	80	143	145
<b>Total assets</b>		<b>330</b>	<b>457</b>	<b>355</b>
<b>Liabilities</b>				
Payables	1.9(a), 6.1	49	36	38
Employee benefits	1.9(b), 6.2	295	317	281
Other liabilities	1.9(d), 6.3	15	18	17
<b>Total liabilities</b>		<b>359</b>	<b>371</b>	<b>336</b>
<b>Net assets (liabilities)</b>		<b>(29)</b>	<b>86</b>	<b>19</b>
<b>Equity</b>				
Accumulated funds		(29)	86	19
<b>Total equity</b>		<b>(29)</b>	<b>86</b>	<b>19</b>

This Statement of Financial Position should be read in conjunction with the accompanying notes.

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

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

## Office of the Ombudsman and Health Complaints Commissioner

### Statement of Cash Flows for the year ended 30 June 2011

	Notes	2011 Budget \$'000	2011 Actual \$'000	2010 Actual \$'000
<b>Cash flows from operating activities</b>		Inflows (Outflows)	Inflows (Outflows)	Inflows (Outflows)
<b>Cash inflows</b>				
Appropriation receipts – recurrent		2 083	2 095	1 665
GST receipts		-	73	2
Other cash receipts		469	500	461
<b>Total cash inflows</b>		<b>2 552</b>	<b>2 668</b>	<b>2 128</b>
<b>Cash outflows</b>				
Employee benefits		(1 777)	(1 607)	(1 468)
Superannuation		(192)	(180)	(145)
GST payments		-	(61)	(42)
Supplies and consumables		(401)	(503)	(408)
Other cash payments		(155)	(164)	(105)
<b>Total cash outflows</b>		<b>(2 525)</b>	<b>(2 515)</b>	<b>(2 169)</b>
<b>Net cash from (used by) operating activities</b>	8.2	<b>27</b>	<b>153</b>	<b>(41)</b>
<b>Cash flows from investing activities</b>				
<b>Cash outflows</b>				
Cash payments for leasehold improvement		-	(69)	-
Cash payments for intangible asset		-	(40)	(40)
<b>Total cash outflows</b>		<b>-</b>	<b>(109)</b>	<b>(40)</b>
<b>Net cash from (used by) investing activities</b>		<b>-</b>	<b>(109)</b>	<b>(40)</b>
<b>Net increase (decrease) in cash held and cash equivalents</b>		<b>27</b>	<b>44</b>	<b>(81)</b>
<b>Cash and deposits at the beginning of the reporting period</b>		<b>229</b>	<b>127</b>	<b>208</b>
<b>Cash and deposits at the end of the reporting period</b>	8.1	<b>246</b>	<b>171</b>	<b>127</b>

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

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

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

## Office of the Ombudsman and Health Complaints Commissioner

### Statement of Changes in Equity for the year ended 30 June 2011

	Accumulated surplus / deficit \$'000	Total equity \$'000
<b>Balance as at 1 July 2010</b>	<b>19</b>	<b>19</b>
Total comprehensive result	67	67
<b>Total</b>	<b>67</b>	<b>67</b>
<b>Balance as at 30 June 2011</b>	<b>86</b>	<b>86</b>

	Accumulated surplus / deficit \$'000	Total equity \$'000
<b>Balance as at 1 July 2009</b>	<b>38</b>	<b>38</b>
Total comprehensive result	(19)	(19)
<b>Total</b>	<b>19</b>	<b>19</b>
<b>Balance as at 30 June 2010</b>	<b>19</b>	<b>19</b>

This Statement of Changes in Equity should be read in conjunction with the accompanying notes.

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## Note 1      Significant Accounting Policies

### 1.1      Objectives and Funding

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

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

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

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

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

### 1.2      Basis of Accounting

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

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

The Financial Statements were signed by the Head of Agency on 9 August 2011.

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

The Financial Statements have been prepared on an accrual basis and, except where stated, are in accordance with the historical cost convention. The accounting policies are generally consistent with the previous year except for those changes outlined in Note 1.5.

The Financial Statements have been prepared as a going concern. The continued existence of the Office in its present form, undertaking its current activities, is dependent on Government policy and on continuing appropriations by Parliament for the Office's administration and activities.

### 1.3      Reporting Entity

The Financial Statements include all the controlled activities of the Office. The Financial Statements consolidate material transactions and balances of the Office.

### 1.4      Functional and Presentation Currency

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

## 1.5 Changes in Accounting Policies

### (a) Impact of new and revised Accounting Standards

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

- AASB 2008-3 *Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127* – This Standard introduces some minor terminology changes. There is no expected financial impact of applying these changes.
- AASB 2009-5 *Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project* – This Standard introduces small disclosure and classification changes. There is no expected financial impact of applying these changes.

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

The following applicable Standards have been issued by the AASB and are yet to be applied:

- AASB 2009-11 *Amendments to Australian Accounting Standards arising from AASB 9* – The amendments require modification to the disclosure of categories of financial assets. It is not anticipated that there will be any financial impact.
- AASB 1053 *Application of Tiers of Australian Accounting Standards* – This Standard establishes a differential financial reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements. The Standard does not have any financial impact on the Office. However, it may affect disclosures if reduced disclosure requirements apply.
- AASB 1054 *Australian Additional Disclosures* – This Standard sets out the specific disclosures for entities that have adopted Australian Accounting Standards that are additional to the requirements under International Financial Reporting Standards, including disclosures relating to the nature of the financial report, audit fees and the reconciliation of net operating cash flows to net result. It is not expected to have a financial impact.
- AASB 2010-2 *Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements* – This Standard makes amendments to introduce reduced disclosure requirements for certain types of entities. There is no expected financial impact of applying these changes, as the Office is likely to be considered a Tier 1 entity.
- AASB 2010-6 *Amendments to Australian Accounting Standards – Disclosures on Transfers of Financial Assets* – This Standard includes additional presentation and disclosure requirements for financial assets. It is not expected to have a financial impact.
- AASB 2010-7 *Amendments to Australian Accounting Standards arising from AASB 9* – This Standard makes minor revisions, however it is not expected to have a financial impact.
- AASB 2009-12 *Amendments to Australian Accounting Standards* – This Standard introduces a number of terminology changes. There is no expected financial impact.
- AASB 2010-5 *Amendments to Australian Accounting Standards* – This Standard introduces terminology changes as well as presentation changes, however, there is no financial impact from these revisions.

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

## 1.6 Income from transactions

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

#### **(a) Revenue from Government**

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

#### **(b) Revenue from Energy Entities**

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

#### **(c) Other revenue**

Revenue from sources other than those identified above are recognised in the Statement of Comprehensive Income when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably.

### **1.7 Expenses from transactions**

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

#### **(a) Employee benefits**

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

#### **(b) Depreciation and amortisation**

All applicable Non-financial assets having a limited useful life are systematically depreciated over their useful lives in a manner which reflects the consumption of their service potential. Depreciation is provided for on a straight line basis, using rates which are reviewed annually. Major depreciation periods are:

Leasehold Improvements	10 years
------------------------	----------

All intangible assets having a limited useful life are systematically amortised over their useful lives reflecting the pattern in which the asset's future economic benefits are expected to be consumed by the Office. Resolve, the Case Management System software, TRIM, the document and records management system, and the Office websites are amortised on a straight-line basis over 5 years.

#### **(c) Other expenses**

Expenses from activities other than those identified above are recognised in the Statement of Comprehensive Income when a decrease in future economic benefits related to a decrease in asset or an increase of a liability has arisen that can be measured reliably.

### **1.8 Assets**

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

#### **(a) Cash and deposits**

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

#### **(b) Receivables**

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



### **(c) Property, plant and equipment**

#### *(i) Valuation basis*

All Non-current physical assets are recorded at historic cost less accumulated depreciation.

Cost includes expenditure that is directly attributable to the acquisition of the asset. The costs of self-constructed assets includes the cost of materials and direct labour, any other costs directly attributable to bringing the asset to a working condition for its intended use, and the costs of dismantling and removing the items and restoring the site on which they are located.

When parts of an item of property, plant and equipment have different useful lives, they are accounted for as separate items (major components) of property, plant and equipment.

#### *(ii) Subsequent costs*

The cost of replacing part of an item of property, plant and equipment is recognised in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Office and its costs can be measured reliably. The carrying amount of the replaced part is derecognised. The costs of day-to-day servicing of property, plant and equipment are recognised in profit or loss as incurred.

#### *(iii) Asset recognition threshold*

The asset capitalisation threshold adopted by the Office is \$5,000. Assets valued at less than \$5,000 are charged to the Statement of Comprehensive Income in the year of purchase (other than where they form part of a group of similar items which are material in total).

### **(d) Intangibles**

An intangible asset is recognised where:

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

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

The implementation costs of the Office websites are recognised as an intangible asset and are currently valued at cost. The websites were launched and the asset commissioned on 1 July 2010 at which point amortisation commenced.

The implementation costs of TRIM (the Office's document and records management system) are recognised as an intangible asset and are currently valued at cost. The Office went live with TRIM and the asset was commissioned in April 2011 at which point amortisation commenced.

### **(e) Other financial assets**

Other financial assets comprise prepayments. Prepayments relate to actual transactions that are recorded at cost.

## **1.9 Liabilities**

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

### **(a) Payables**

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

## **(b) Employee benefits**

Liabilities for wages and salaries and annual leave are recognised when an employee becomes entitled to receive a benefit. Those liabilities expected to be realised within 12 months are measured as the amount expected to be paid. Other employee entitlements are measured as the present value of the benefit at 30 June 2011, where the impact of discounting is material, and at the amount expected to be paid if discounting is not material.

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

## **(c) Superannuation**

### *Defined contribution plans*

A defined contribution plan is a post-employment benefit plan under which an entity pays fixed contributions into a separate entity and will have no legal or constructive obligation to pay further amounts. Obligations for contributions to defined contribution plans are recognised as an expense when they fall due.

### *Defined benefit plans*

A defined benefit plan is a post-employment benefit plan other than a defined contribution plan.

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

## **(d) Other liabilities**

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

## **1.10 Leases**

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

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

## **1.11 Judgements and Assumptions**

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

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

The areas where estimates of any material amount are made regularly relate to the carrying amount of receivables, refer note 1.8(b), work in progress, refer note 1.8(c), depreciation and amortisation, refer note 1.7(b) and the provision for employee benefits, refer notes 1.9(b) and 1.9(d)

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

## **1.12 Comparative Figures**

Comparative figures have been adjusted to reflect any changes in accounting policy or the adoption of new standards. Details of the impact of changes in accounting policy on comparative figures are at Note 1.5.

Where amounts have been reclassified within the Financial Statements, the comparative statements have been restated.

#### **1.13 Budget Information**

Budget information refers to original estimates as disclosed in the 2010-11 Budget Papers and is not subject to audit.

#### **1.14 Rounding**

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

#### **1.15 Office Taxation**

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

#### **1.16 Goods and Services Tax**

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

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

## Note 2 Explanations of Material Variances between Budget and Actual Outcomes

The following are brief explanations of material variances between Budget estimates and actual outcomes. Variances are considered material where the variance exceeds the greater of 10 per cent of Budget estimate and \$25,000.

### 2.1 Statement of Comprehensive Income

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Employee benefits	(a)	1 987	1 804	(183)	(9)
Supplies and consumables	(b)	402	492	90	22

#### Notes to Statement of Comprehensive Income variances

- (a) The savings in employee benefits during 2010-11 was due to a fixed term investigation officer going on maternity leave and the position not being refilled; the upgrade of the Director of Investigations being finalised in February 2011 and it being funded for the full year and a new position in the Health Complaint area being vacant for the full year.
- (b) The additional expenditure in Supplies and Consumables was mainly attributed to the following items not being included in the original budget: increased rental expense for additional office space; recruitment advertising costs for the Ombudsman position.

### 2.2 Statement of Financial Position

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Receivables	(a)	4	69	65	>100
Property, plant and equipment	(b)	-	67	67	>100

#### Notes to Statement of Financial Position variances

- (a) Trade debtors at 30 June 2011 were \$2,000. The balance of the Receivables account related to GST Input Tax Credits. This GST account is a control account used between Justice and the Office.
- (b) To be able to expand, the Office took over the rent of the back part of its office and upgraded this space. The office fit-out was not included in the original budget.

## 2.3 Statement of Cash Flows

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Other cash receipts	(a)	469	500	31	7
Employee benefits	(b)	1 777	1 607	(170)	(10)
Supplies and consumables	(c)	401	503	102	25
Other cash payments	(d)	155	164	9	6
Cash payments for leasehold improvement	(e)	-	69	69	>100
Cash payments for intangible asset	(f)	-	40	40	>100

### Notes to Statement of Cash Flows variances

- (a) An increase in Other Cash Receipts relates to an increase in the Energy Ombudsman budget and the Office generating some revenue through running Public Interest Disclosure and Right to Information workshops.
- (b) The savings in employee benefits during 2010-11 was due to a fixed term investigation officer going on maternity leave and the position not being refilled; the upgrade of the Director of Investigations being finalised in February 2011 and it being funded for the full year and a new position in the Health Complaint area being vacant for the full year.
- (c) Increased rental expense for additional office space; recruitment advertising costs for the Ombudsman position; and part payment of the TRIM implementation costs were not included in the original budget.
- (d) Contracted services of \$45,000 paid to the Department of Justice were not included in the original budget.
- (e) To be able to expand, the Office took over the rent of the back part of its office and upgraded this space. The office fit-out was not included in the original budget.
- (f) Payments towards intangible assets related to the TRIM Implementation and Resolve/Web Form Integration projects.

## Note 3      Income from transactions

### 3.1      Revenue from Government

Revenue from Government includes revenue from appropriations, appropriations carried forward under section 8A(2) of the *Public Account Act 1986* and Items Reserved by Law.

The Budget information is based on original estimates and has not been subject to audit.

	2011	2010
	\$'000	\$'000
Appropriation revenue - recurrent		
Current year	2 095	1 665
<b>Total revenue from Government</b>	<b>2 095</b>	<b>1 665</b>

### 3.2      Revenue from Energy Entities

	2011	2010
	\$'000	\$'000
Energy Entities Membership and Complaint Levy Fees	479	436
<b>Total</b>	<b>479</b>	<b>436</b>

### 3.3      Other revenue

	2011	2010
	\$'000	\$'000
Commonwealth Ombudsman Funding	17	17
Other revenue	4	3
<b>Total</b>	<b>21</b>	<b>20</b>

## Note 4 Expenses from transactions

### 4.1 Employee benefits

	2011 \$'000	2010 \$'000
Wages and salaries	1 616	1 426
Superannuation – defined contribution scheme	108	106
Superannuation – defined benefit scheme	74	39
Other employee expenses	28	26
<b>Total</b>	<b>1 826</b>	<b>1 597</b>

Superannuation expenses relating to defined benefits schemes relate to payments into the Superannuation Provision Account held centrally and recognised within the Finance-General Division of the Department of Treasury and Finance. The amount of the payment is based on an employer contribution rate determined by the Treasurer, on the advice of the State Actuary. The current employer contribution is 12.3 per cent of salary.

Superannuation expenses relating to the contribution scheme are paid directly to the superannuation fund at a rate of nine per cent of salary. In addition, departments are also required to pay into the SPA a “gap” payment equivalent to 3.3 per cent of salary in respect of employees who are members of the contribution scheme.

### 4.2 Depreciation and amortisation

#### (a) Depreciation

	2011 \$'000	2010 \$'000
Leasehold improvements	2	-
<b>Total</b>	<b>2</b>	<b>-</b>

#### (b) Amortisation

	2011 \$'000	2010 \$'000
Intangibles	42	32
<b>Total</b>	<b>42</b>	<b>32</b>
<b>Total depreciation and amortisation</b>	<b>44</b>	<b>32</b>

### 4.3 Supplies and consumables

	2011	2010
	\$'000	\$'000
Audit fees – financial audit	9	9
Operating lease costs	265	178
Consultants	10	9
Property services	12	11
Maintenance	1	5
Communications	36	29
Information technology	65	59
Travel and transport	38	35
Advertising and promotion	3	5
Printing	7	20
Other supplies and consumables	46	43
<b>Total</b>	<b>492</b>	<b>403</b>

### 4.4 Other expenses

	2011	2010
	\$'000	\$'000
Salary on-costs	107	93
Other expenses	59	15
<b>Total</b>	<b>166</b>	<b>108</b>



## Note 5 Assets

### 5.1 Receivables

	2011 \$'000	2010 \$'000
Receivables	69	189
Less: Provision for impairment	-	(106)
<b>Total</b>	<b>69</b>	<b>83</b>
Settled within 12 months	69	83
<b>Total</b>	<b>69</b>	<b>83</b>

During 2007-08, a debt of an organisation associated with the Child Abuse Review Team (CART) project was assessed as being impaired. The impairment arose as a result of the debtor having failed to settle the outstanding amount and thus the amount was deemed unrecoverable. As discussions with the particular organisation during the intervening period have yielded no further progress, the Office had no option but to write-off the debt as uncollectable in March 2011.

	2011 \$'000	2010 \$'000
<b>Reconciliation of movement in provision for impairment of receivables</b>		
<b>Carrying amount at 1 July</b>	<b>106</b>	<b>106</b>
Amounts written off during the year	106	-
<b>Carrying amount at 30 June</b>	<b>-</b>	<b>106</b>

### 5.2 Property, plant and equipment

#### (a) Carrying amount

	2011 \$'000	2010 \$'000
<b>Leasehold Improvements</b>		
At cost	69	-
Less: Accumulated depreciation	(2)	-
<b>Total</b>	<b>67</b>	<b>-</b>
<b>Total property, plant and equipment</b>	<b>67</b>	<b>-</b>

#### (b) Reconciliation of movements

	2011 \$'000	2010 \$'000
<b>Carrying amount at 1 July</b>	<b>-</b>	<b>-</b>
Additions	69	-
Depreciation	(2)	-
<b>Carrying amount at 30 June</b>	<b>67</b>	<b>-</b>

## 5.3 Intangibles

### (a) Carrying amount

	2011 \$'000	2010 \$'000
<b>Intangibles with a finite useful life</b>		
At cost (Resolve Case Management System)	182	159
Work in Progress (Office Websites)	-	41
At cost (Office Websites)	41	-
At cost (TRIM – Document and Records Management System)	17	-
Less: Accumulated amortisation	(97)	(55)
<b>Total intangibles</b>	<b>143</b>	<b>145</b>

### (b) Reconciliation of movements

	2011 \$'000	2010 \$'000
<b>Carrying amount at 1 July</b>	<b>145</b>	<b>136</b>
Additions – internal development	81	-
Work in progress at cost	-	41
Work in progress capitalised	(41)	-
Amortisation expense	(42)	(32)
<b>Carrying amount at 30 June</b>	<b>143</b>	<b>145</b>

## Note 6 Liabilities

### 6.1 Payables

	2011 \$'000	2010 \$'000
Creditors	36	38
<b>Total</b>	<b>36</b>	<b>38</b>
Settled within 12 months	36	38
<b>Total</b>	<b>36</b>	<b>38</b>

Settlement is usually made within 30 days.

### 6.2 Employee benefits

	2011 \$'000	2010 \$'000
Accrued salaries	40	30
Annual leave	106	84
Long service leave	171	167
<b>Total</b>	<b>317</b>	<b>281</b>
Settled within 12 months	145	113
Settled in more than 12 months	172	168
<b>Total</b>	<b>317</b>	<b>281</b>

### 6.3 Other liabilities

	2011 \$'000	2010 \$'000
<b>Other liabilities</b>		
Employee benefits – on-costs	18	17
<b>Total</b>	<b>18</b>	<b>17</b>
Settled within 12 months	8	7
Settled in more than 12 months	10	10
<b>Total</b>	<b>18</b>	<b>17</b>

## Note 7 Commitments and Contingencies

### 7.1 Schedule of Commitments

	2011 \$'000	2010 \$'000
<b>By type</b>		
<i>Lease Commitments</i>		
Operating leases	1 217	1 371
<i>Total lease commitments</i>	<b>1 217</b>	<b>1 371</b>
<i>Other commitments</i>		
Resolve Case Management System Maintenance	7	20
<i>Total other commitments</i>	<b>7</b>	<b>20</b>
<b>By maturity</b>		
<i>Operating lease commitments</i>		
One year or less	275	261
From one to five years	942	1 053
More than five years	-	57
<i>Total operating lease commitments</i>	<b>1 217</b>	<b>1 371</b>
<i>Other commitments</i>		
One year or less	7	13
From one to five years	-	7
<i>Total other commitments</i>	<b>7</b>	<b>20</b>
<b>Total</b>	<b>1 224</b>	<b>1 391</b>

The Operating Lease commitments include buildings, motor vehicles and information technology equipment leases. All amounts shown are exclusive of GST.

### 7.2 Contingent Assets and Liabilities

Contingent assets and liabilities are not recognised in the Statement of Financial Position due to uncertainty regarding the amount or timing of the underlying claim or obligation.

#### (a) Quantifiable contingencies

A quantifiable contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity.

A quantifiable contingent liability is a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or a present obligation that arises from past events but is not recognised because it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation.

At 30 June 2011 the Office had no contingent assets or liabilities.

## Note 8 Cash Flow Reconciliation

### 8.1 Cash and deposits

Cash and deposits includes the balance of the Special Deposits and Trust Fund Accounts held by the Office, and other cash held, excluding those accounts which are administered or held in a trustee capacity or agency arrangement.

	2011 \$'000	2010 \$'000
<b>Special Deposits and Trust Fund balance</b>		
T528 Office of the Ombudsman Operating Account	171	127
<b>Total cash and deposits</b>	<b>171</b>	<b>127</b>

### 8.2 Reconciliation of Net Result to Net Cash from Operating Activities

	2011 \$'000	2010 \$'000
Net result	67	(19)
Depreciation and Amortisation	44	32
Decrease (increase) in Receivables	14	(43)
Decrease (increase) in Prepayments	(7)	-
Increase (decrease) in Employee entitlements	36	34
Increase (decrease) in Payables	(2)	(48)
Increase (decrease) in Other liabilities	1	3
<b>Net cash from (used by) operating activities</b>	<b>153</b>	<b>(41)</b>

## Note 9 Financial Instruments

### 9.1 Risk exposures

#### (a) Risk management policies

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

- credit risk; and
- liquidity risk.

The Head of Agency has overall responsibility for the establishment and oversight of the Office's risk management framework. Risk management policies are established to identify and analyse risks faced by the Office, to set appropriate risk limits and controls, and to monitor risks and adherence to limits.

#### (b) Credit risk exposures

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

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

The following tables analyse financial assets that are past due but not impaired

#### Analysis of financial assets that are past due at 30 June 2011 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	69	69

#### Analysis of financial assets that are past due at 30 June 2010 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	83	83

#### (c) Liquidity risk

Liquidity risk is the risk that the Office will not be able to meet its financial obligations as they fall due. The Office's approach to managing liquidity is to ensure that it will always have sufficient liquidity to meet its liabilities when they fall due.

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

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

## 2011

Maturity analysis for financial liabilities			
	1 Year	Undiscounted Total	Carrying Amount
	\$'000	\$'000	\$'000
<b>Financial liabilities</b>			
Payables	36	36	36
<b>Total</b>	<b>36</b>	<b>36</b>	<b>36</b>

## 2010

Maturity analysis for financial liabilities			
	1 Year	Undiscounted Total	Carrying Amount
	\$'000	\$'000	\$'000
<b>Financial liabilities</b>			
Payables	38	38	38
<b>Total</b>	<b>38</b>	<b>38</b>	<b>38</b>

## 9.2 Categories of Financial Assets and Liabilities

	2011	2010
	\$'000	\$'000
<b>Financial assets</b>		
Cash and cash equivalents	171	127
Loans and receivables	69	83
<b>Total</b>	<b>240</b>	<b>210</b>
<b>Financial Liabilities</b>		
Financial liabilities measured at amortised cost	36	38
<b>Total</b>	<b>36</b>	<b>38</b>

### 9.3 Net Fair Values of Financial Assets and Liabilities

2011

	Total Carrying Amount \$'000	Net Fair Value Total \$'000
<b>Financial assets</b>		
Cash in Special Deposits and Trust Fund	171	171
Receivables	69	69
<b>Total financial assets</b>	<b>240</b>	<b>240</b>
<b>Financial liabilities (Recognised)</b>		
Trade creditors	36	36
<b>Total financial liabilities (Recognised)</b>	<b>36</b>	<b>36</b>

2010

	Total Carrying Amount \$'000	Net Fair Value Total \$'000
<b>Financial assets</b>		
Cash in Special Deposits and Trust Fund	127	127
Receivables	83	83
<b>Total financial assets</b>	<b>210</b>	<b>210</b>
<b>Financial liabilities (Recognised)</b>		
Trade creditors	38	38
<b>Total financial liabilities (Recognised)</b>	<b>38</b>	<b>38</b>

#### *Financial Assets*

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

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

#### *Financial Liabilities*

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



## **Note 10    Output Group Information**

The Office of the Ombudsman and Health Complaints Commissioner is a single Output which is the fulfilment of the statutory responsibilities of the Ombudsman and Health Complaints Commissioner. The summary budgeted and actual revenues and expenses for this Output are the same as in the Statement of Comprehensive Income and the net assets are the same as the Statement of Financial Position. As a result the inclusion of a separate Output Schedule is not necessary.

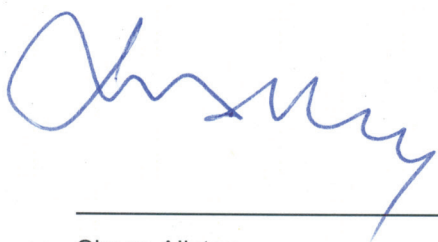
## **Note 11    Events Occurring After Balance Date**

There have been no events subsequent to balance date which would have a material effect on the Office's Financial Statements as at 30 June 2011.

### Statement by Head of Agency and Principal Accounting Officer

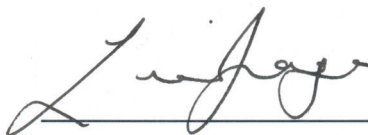
The accompanying Financial Statements of the Office of the Ombudsman and Health Complaints Commissioner are in agreement with the relevant accounts and records and have been prepared in compliance with Treasurer's Instructions issued under the provision of the *Financial Management and Audit Act 1990* to present fairly the financial transactions for the year ended 30 June 2011 and the financial position as at the end of the year.

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



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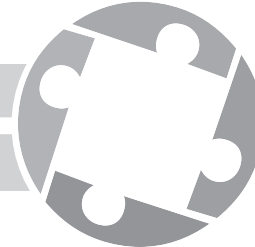
Simon Allston  
HEAD OF AGENCY



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Lianne Jager  
BUSINESS MANAGER





## APPENDIX D: CONTRACTS AND CONSULTANCIES AWARDED

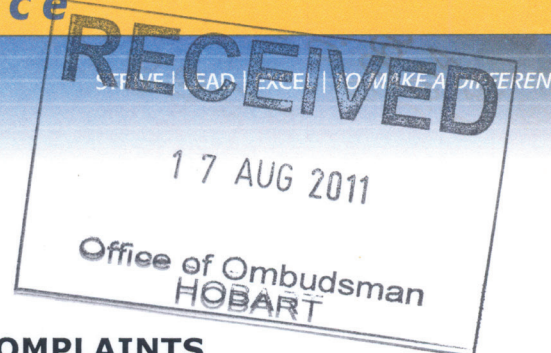
The Office of the Ombudsman and Health Complaints Commissioner ensures that Tasmanian businesses are given every opportunity to compete for Agency business. It is the Office's policy to support Tasmanian businesses whenever they offer best value for money for the Government.

In 2010/11, quotations were sought for a re-fit of the part of the Hobart office space. The project involved converting an open plan work area into four separate offices and installing additional partitions and a small kitchen. Contractors were requested to provide the following services: project management; building works; painting; electrical, fire and lighting; air-conditioning; kitchen and plumbing; and office furniture.

Quotations were obtained from three Tasmanian businesses: Bentley House Commercial Interiors; Franchise Fitouts; and Cunic Constructions. The successful contractor was Bentley House Commercial Interiors, Hobart, Tasmania.

The value of the contract was \$55,292, and was completed in the period between 1 January 2011 and 31 March 2011.





## INDEPENDENT AUDITOR'S REPORT

To Members of the Parliament of Tasmania

### OFFICE OF THE OMBUDSMAN AND HEALTH COMPLAINTS COMMISSIONER

#### Financial Statements for the Year Ended 30 June 2011

I have audited the accompanying financial statements of the Office of the Ombudsman and Health Complaints Commissioner (the Office), which comprises the statement of financial position as at 30 June 2011, the statements of comprehensive income, changes in equity and cash flows for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the statement from the Ombudsman and the Business Manager.

#### Auditor's Opinion

In my opinion the Office's financial statements:

- (a) present fairly, in all material respects, its financial position as at 30 June 2011, and its financial performance, cash flows and changes in equity for the year then ended; and
- (b) are in accordance with the *Financial Management and Audit Act 1990* and Australian Accounting Standards (including the Australian Accounting Interpretations).

#### *The Responsibility of the Ombudsman for the Financial Statements*

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and Section 27 (1) of the *Financial Management and Audit Act 1990*. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

#### *Auditor's Responsibility*

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



An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Ombudsman's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate to the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Ombudsman, as well as evaluating the overall presentation of the financial statements.

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

### **Independence**

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

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

### **TASMANIAN AUDIT OFFICE**

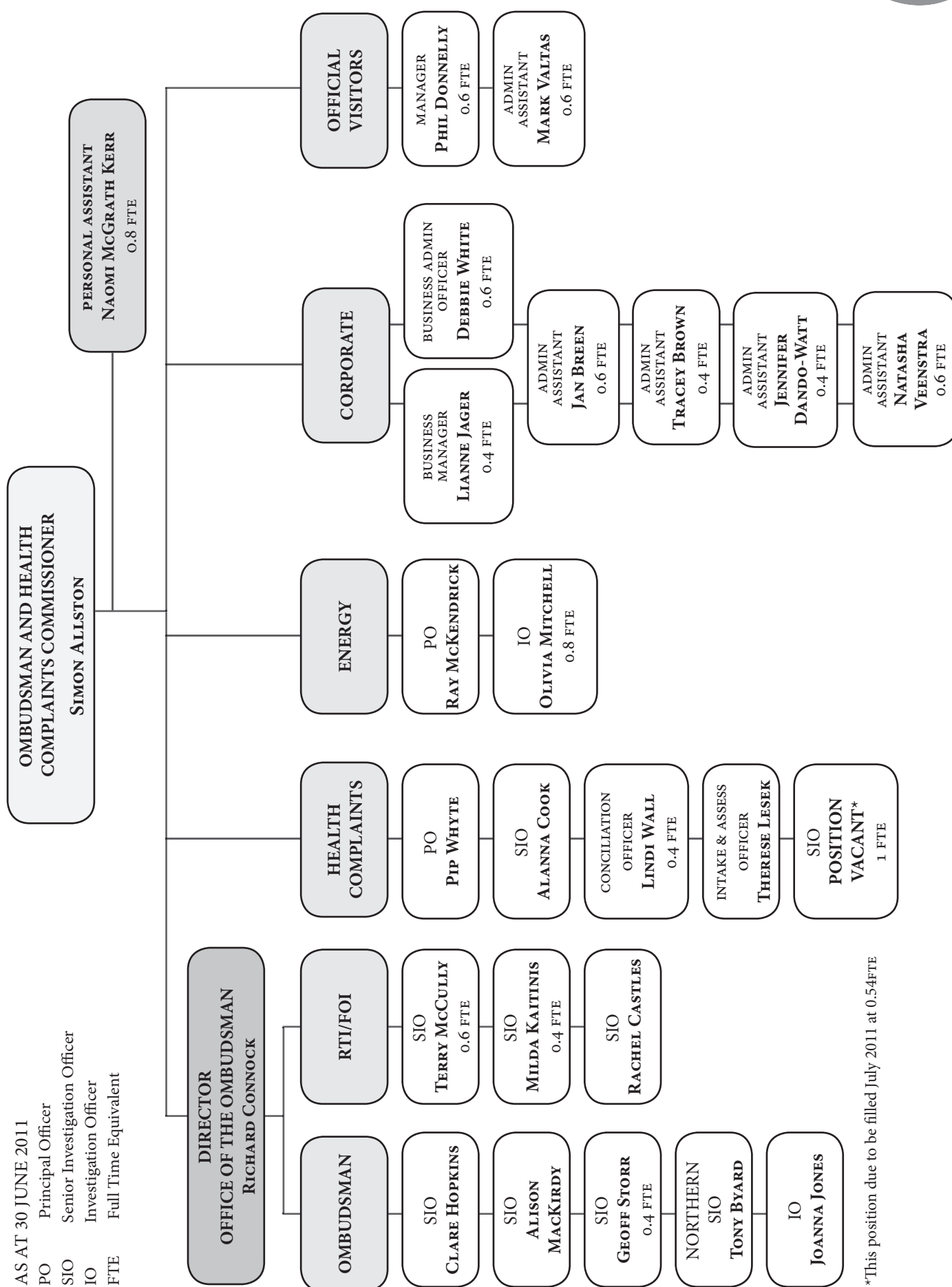
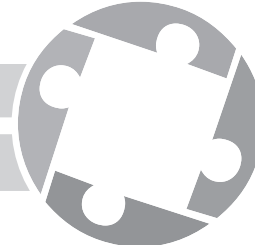


E R De Santi

**DEPUTY AUDITOR-GENERAL**  
**Delegate of the Auditor-General**

HOBART

16 August 2011



\*This position due to be filled July 2011 at 0.54FTE



